

07 May 2015

Response to the consultation on the Regulation and Inspection of Social Care (Wales) Bill

Healthcare Inspectorate Wales (HIW) welcomes the opportunity to contribute evidence to the consideration of the general principles of the Regulation and Inspection of Social Care (Wales) Bill.

The role of HIW is set out at Annex 1.

General

1. Do you think the Bill as drafted will deliver the stated **aims** (to secure well-being for citizens and to improve the quality of care and support in Wales) **and objectives** set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

HIW supports the aims and objectives of this Bill and believes that they are consistent with the provisions in the Social Services and Wellbeing Act 2014 and the Wellbeing of Future Generations Bill in focussing on outcomes for people and securing their well-being.

HIW considers that this legislation is required, as it is important that the regulatory system is able to respond to new models of service provision to secure wellbeing for citizens into the future. As more and more care is provided to people in the community and in their own homes, it is important that adequate consideration is given to integrated settings and services which provide both health and social care to people.

2. What are the potential **barriers** to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

We welcome the move to a service-based model of regulation and the attempts made by this Bill to simplify the legislative frameworks around the regulation of social care. However, we would note that regulation of independent healthcare providers in Wales will continue to be based upon the Care Standards Act (2000) and focus on establishments and settings. We will therefore continue to have anomalies between the health and care sectors that will need to be addressed.

3. Do you think there are any issues relating to **equality** in protection for different groups of service users with the current provisions in the Bill?

None specifically identified

4. Do you think there are any major **omissions** from the Bill or are there any elements you believe should be strengthened?

Independent healthcare is regulated in Wales under the Care Standards Act 2000. Healthcare Inspectorate Wales (HIW) acts as the regulator of healthcare services in Wales on behalf of the Welsh Ministers.

HIW has responsibility for the registration and inspection of independent healthcare in Wales. This includes the regulation of independent hospitals, independent clinics, independent medical agencies and private dentists. Under the provisions of the Independent Healthcare (Wales) Regulations 2011, HIW registers 'establishments and agencies'. The provisions of this Bill mean that social care will be regulated on a service based model of registration whereas health services will still need to be registered as 'establishments and agencies'. The boundaries between health and social care are not always straightforward and consideration must be given to ensuring that there are no services, establishments or agencies which will escape the provisions of either regulatory regime.

5. Do you think that any unintended consequences will arise from the Bill?

None specifically except the issues at the interface of health and care referred to above.

Provisions in the Bill

6. What are your views on the provisions in Part 1 of the Bill for the **regulation of social care services**?

For example, moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

Service-based regulation

HIW supports the move towards a service based model of regulation and believes that such a move would provide benefits for service providers through a more flexible registration process, and would also provide benefits for the regulator through an ability to address issues at a provider level.

We also note the proposal to introduce a schedule of regulated services which can be amended by regulation. It will be important to ensure that legislation is flexible enough to be adapted to ensure that changing models of service delivery and developments in integrated care can be regulated appropriately.

Public engagement

The inspection approach of HIW is strongly grounded in examining the experience of patients and those using services. We have therefore traditionally looked beyond compliance to examine service quality.

HIW considers that public engagement is crucial to any inspection regime. In every inspection HIW spends time talking to patients, carers and others in order to report on the 'patient experience' at the setting. HIW also uses lay reviewers in many of its inspections to better engage with the public.

HIW also engages with the public by having service users represented on our Advisory Board.

Transparency and accountability

HIW acknowledges the importance of placing clear, understandable information about the quality of service in the public domain.

We support the proposal that providers should be required to publish and open and honest account of the services they provide. We agree that inspection reports and annual reports should be available to the public, and we publish all of our inspection reports on our website.

HIW can understand the potential value of a ratings system; particularly in social care where there can be a large number of providers of broadly comparable services. However, the introduction of quality ratings will need to be carefully considered. Lessons will need to be learned from the experience of other regulators who have introduced ratings to ensure the new system is reliable, consistent and fit for purpose. We agree that there will need to be significant consultation with stakeholders and the public to establish the right approach.

Fees Since April 2011, independent healthcare settings have paid a fee to register with HIW under the provisions of the Independent Health Care (Fees) (Regulations) 2011. Fees are payable to register, to make any amendments to registration and then annually to maintain registration. Private dentists have paid to register with HIW since January 2009. It would appear to be equitable to require social care providers to also pay proportionate fees.

7. **What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services?**

For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

HIW believes that the proposed range of issues to be covered through CSSIW's inspections and reviews of local authorities is sufficiently broad.

We support the idea that local authorities should undertake an assessment of local markets. They should develop this in close consultation with the local health service as pressures in the social care system, have been demonstrated to impact on health services. For example, where there is inadequate social care provision, older people tend to remain in hospital longer than their medical need dictates and

this leads to pressures on beds elsewhere in the system. Moreover, it can compromise longer-term capability for independent living.

8. What are your views on the provisions in Part 1 of the Bill for the development of **market oversight of the social care sector**?
For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

It is important that the information and analysis underpinning local market assessments is brought together to inform a broader strategic assessment of provision and risk relating to social care services in Wales.

Within the risk assessment it is clearly important that the regulator considers the overall financial and corporate health of, particularly large, providers. However, we would highlight that introducing significant requirements in this area is likely to lead to a need for the regulator to have staff qualified in areas not traditionally employed to a great extent, such as detailed financial analysis.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the **Care Council for Wales** as Social Care Wales and extend its remit?

HIW does not have a view on the renaming of the Care Council for Wales.

In relation to the extended remit, HIW notes that Social Care Wales (SCW) will undertake an improvement role. Clarity will be needed on how the improvement functions of SCW will interplay with the improvement functions within the health services, particularly given a direction of travel towards increasing integration of services.

With regard to it having a combined role of regulating professionals, setting standards for education and being an improvement body, it is important that there are clear distinctions between the operation of each part of the combined body.

10. What are your views on the provisions in Parts 4 – 8 of the Bill for **workforce regulation**?
For example the proposals not to extend registration to new categories of staff, the removal of voluntary registration, the introduction of prohibition orders.

We do not have a specific view on this.

11. What are your views on the provisions in Part 9 of the Bill for **co-operation and joint working by regulatory bodies**?

HIW welcomes the statutory provision for increased joint working and cooperation. HIW already works closely with other regulators such as the CSSIW on thematic reviews such as the application of the Deprivation of Liberty Safeguards, and forthcoming work on services for people with learning disabilities.

As the regulator and inspectorate for health services, HIW actively shares intelligence with other agencies where required to ensure that there is a joined up approach to improving services. We organise regular meetings in which a wide range of health and care regulators come together to share intelligence and plans.

Delegated powers

12. In your view does the Bill contain a reasonable balance between what is included on the **face of the Bill** and what is left to **subordinate legislation and guidance**?

Yes. Much of the detail left to subordinate legislation will require consultation and consideration, so to include this on the face of the Bill would be premature.

Financial implications

13. What are your views on the **financial implications** of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

We do not have a specific view on this.

Other comments

14. Are there any other comments you wish to make about specific sections of the Bill?

Not at this time. HIW looks forward to the opportunity to discuss our position in more detail in oral evidence to committee.

Healthcare Inspectorate Wales (HIW) is the independent inspectorate and regulator of healthcare in Wales.

Purpose

To provide the public with independent and objective assurance of the quality, safety and effectiveness of healthcare services, making recommendations to healthcare organisations to promote improvements.

Values

- **Patient-centred:** we place patients, service users and public experience at the heart of what we do
- **Openness and honesty:** in the way we report and in all our dealings with stakeholders
- **Collaboration:** building effective partnerships internally and externally
- **Professionalism:** maintaining high standards of delivery and constantly seeking to improve
- **Proportionality:** ensuring efficiency, effectiveness and proportionality in our approach.

Outcomes

Provide assurance:

Provide independent assurance on the safety, quality and availability of healthcare by effective regulation and reporting openly and clearly on our inspections and investigations.

Promote improvement:

Encourage and support improvements in care through reporting and sharing good practice and areas where action is required.

Strengthen the voice of patients:

Place patient experience at the heart of our inspection and investigation processes.

Influence policy and standards:

Use our experience of service delivery to influence policy, standards and practice.