

PHB 08

Bil Iechyd y Cyhoedd (Cymru)

Public Health (Wales) Bill

Ymateb gan: BMA Cymru Wales

Response from: BMA Cymru Wales

## **PUBLIC HEALTH (WALES) BILL – GENERAL PRINCIPLES**

**Consultation by the National Assembly for Wales Health, Social Care and Sport Committee**

**Response from BMA Cymru Wales**

2 December 2016

## **INTRODUCTION**

BMA Cymru Wales is pleased to provide a response to the Stage 1 consultation by the Health, Social Care and Sport Committee into the general principles of the re-introduced Public Health (Wales) Bill.

The British Medical Association (BMA) is an independent professional association and trade union representing doctors and medical students from all branches of medicine all over the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 160,000, which continues to grow every year. BMA Cymru Wales represents almost 8,000 members in Wales from every branch of the medical profession.

## **RESPONSE**

### **Executive Summary**

- BMA Cymru Wales welcomes the re-introduction of the Public Health (Wales) Bill and broadly supports the provisions that it currently contains.
- We particularly welcome the proposals relating to Health Impact Assessment (HIA) for which we strongly lobbied during the Assembly's consideration of the previous version of the Bill. Adopting these provisions provides an opportunity to position Wales as a world leader in

the application of public health policy and we would therefore urge AMs to support them.

- In considering the Bill afresh, we believe this presents an opportunity for the Assembly to look again at opportunities to further enhance the Bill. We would therefore propose that amendments are considered to add two sets of further provisions, as follows:
  - We call for additional provisions to be incorporated to give Welsh Ministers powers to introduce nutritional standards on a statutory basis for new settings, with the intention to bring forward such nutritional standards for care home and pre-school settings being specified alongside an intention to also place the current nutritional standards for hospital inpatients on a statutory footing.
  - Recognising the key public health challenge presented by the growing prevalence of obesity, we propose that the Bill is also amended to include additional provisions that add a requirement for Local Well-being Plans to include specific actions aimed at tackling obesity within each local authority area.
- Whilst we support the general intention of the proposals for pharmaceutical needs assessments, our support for this part of the Bill is conditional on reassurances we previously received from the former Health Minister being honoured by the current Welsh Ministers. These involve a commitment to involve us in designing the detail of how pharmaceutical needs assessments will be conducted, and agreeing that the contribution of dispensing doctors will be explicitly recognised as part of the assessments.

### **General introduction**

BMA Cymru Wales welcomes the opportunity to respond to this consultation. We followed the progress of the previous version of the Bill during the last Assembly term with much interest, and believe that the inclusion of certain amendments, for which we lobbied, significantly improved the final draft of the Bill. Its subsequent failure to pass at the Stage 4 vote was extremely disappointing and we are therefore very pleased to see that the Bill has now been reintroduced in the current Assembly term, albeit without the previous proposals to restrict the use of e-cigarettes in certain enclosed public places.

Having previously led on the calls for such provisions to be incorporated we are particularly grateful to see the retention within the Bill of proposals that will require Welsh Ministers to make regulations requiring public bodies to carry out

health impact assessments (HIAs) in specified circumstances. We feel this is to be very much welcomed, as their inclusion has substantially strengthened the Bill since it was initially proposed during the Fourth Assembly.

Although we were supportive of the proposals within the previous version of the Bill to restrict the use of e-cigarettes in enclosed public spaces, we acknowledge that a lack of political consensus in the National Assembly contributed to that version of the Bill not ultimately being agreed and has also now led to those provisions not being retained in the current version. Whilst our preference would be to see those provisions once again restored to the Bill, we recognise that this is not likely to be agreeable to Assembly Members. We would, however, much rather see the Bill passed without those provisions than not passed at all.

### **Proposed new provisions to add to the Bill**

Whilst we offer general support for the provisions in the Bill as it currently stands, we believe that now the Bill is being looked at afresh this presents a new opportunity to expand its scope. We would therefore wish to put forward proposals for two further areas which the Bill could cover, as follows:

#### *Nutritional standards*

In the 2014 Public Health White Paper which preceded the previous version of the Bill during the Fourth Assembly, consideration was given to introducing nutritional standards in new settings including pre-school and care home settings. The stated intention was to build on work previously undertaken in schools and hospitals, although it was proposed that this would be done through secondary legislation and/or guidance.

Comparison was given with existing nutritional standards for schools in Wales that were introduced through the Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013, and existing nutritional standards for hospital inpatients through the All Wales Nutrition and Catering Standards for Food and Fluid Provision for Hospital Inpatients and the All Wales Hospital Menu Framework.

A key benefit of the nutritional standards that have been introduced for schools in Wales is the fact they are statutory, and therefore have the force of law. We would note that the Welsh Government was able to introduce these standards

on a statutory basis by utilising powers previously acquired through the Healthy Eating in Schools (Wales) Measure 2009.

We believe that it could also be beneficial for the nutritional standards for hospital inpatients to be placed on a statutory basis, as well as for new nutritional standards for pre-school and care home settings to be similarly made statutory. Particularly when considering pre-school and care home settings, where there are many independent providers, we feel that having these standards applied on a statutory basis would greatly enhance the Welsh Government's ability to see them effectively enforced. Providers which fail to adhere to the new standards could then be subject to appropriate legal penalty.

In order to achieve this, however, the Welsh Government will need to acquire appropriate powers through legislation to be able to bring forward statutory regulations for nutritional standards in these settings. Such powers clearly cannot be derived from the Healthy Eating in Schools (Wales) Measure 2009 as is the case for the current nutritional standards for schools, since that Measure understandably only covers schools.

We therefore suggest that provisions should be added to the Public Health (Wales) Bill which will give Welsh Ministers the power to bring forward statutory nutritional standards for appropriate settings, with the intention to bring forward such standards for care home and pre-school settings also being specified alongside an intention to also place the current standards for hospital inpatients on a statutory footing.

### *Obesity*

A number of stakeholders, including BMA Cymru Wales, expressed disappointment that the previous version of the Bill did not include any provisions aimed specifically at tackling obesity, despite the fact it currently represents one of the greatest public health challenges to the Welsh population and is growing in prevalence.

Indeed, results from the latest Welsh Health Survey<sup>1</sup> show that 59% of adults in Wales are now overweight or obese, including 24% who are classed as obese. This is clearly not something we can ignore.

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<sup>1</sup> Welsh Government (2016) *Welsh Health Survey*. Available at: <http://gov.wales/statistics-and-research/welsh-health-survey/?lang=en>

For people who are overweight and physically inactive, their risk of developing serious life threatening and chronic diseases is markedly increased. There are also substantial health and social care costs associated with the treatment of obesity.

Reversing this trend inevitably requires a multi-agency approach by a number of different public bodies working towards common objectives. We would commend the Welsh Government for committing to tackling obesity in its programme for government for 2016–2021, *Taking Wales Forward*.<sup>2</sup> We would also acknowledge the potential contribution to tackling issues such as obesity offered by the pioneering approach of the Well-being of Future Generations Act (Wales) 2015. However, we note with a degree of concern that there isn't a single mention of obesity in the Welsh Government's recently published well-being objectives which accompany *Taking Wales Forward*.

Although we acknowledge that it is still too early to judge the success of the Well-being of Future Generations Act approach, we are concerned that it is not sufficiently specific to ensure an issue as important as tackling obesity is systematically and consistently pursued across Wales. There are many different actions that could be taken to deliver the goal of a healthier Wales, but we think it is important that we ensure some of this action is specifically focussed on tackling obesity.

BMA Cymru Wales believes that the Public Health (Wales) Bill could present an ideal opportunity to address this point, and we would advocate the Bill being amended to include a specific statutory requirement for public bodies in Wales to develop and take forward strategies for tackling obesity. We recognise that a key vehicle that could be used for delivering this already exists through the requirement placed upon Public Service Boards by the Well-being of Future Generations Act to produce Local Well-being Plans. These plans are required to contain objectives that have been designed to help further the seven well-being goals defined by the Act, with progress against the plans being subject to annual review.

We therefore propose that the Public Health (Wales) Bill be amended to include additional provisions that would add a requirement for the Local Well-being Plans to include specific actions aimed at tackling obesity within each local

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<sup>2</sup> Welsh Government (2016) *Programme for Government*. Available at: <http://gov.wales/about/programme-for-government/?lang=en>

authority area. We feel this could complement and strengthen the approach of the Well-being of Future Generations Act which lacks any provisions to require actions covering specific issues to be included in the Local Well-being Plans.

### **Provisions currently included in the Bill**

Turning to the provisions within the Bill as currently drafted, we would offer the following observations:

#### *Part 2 – Tobacco and nicotine products*

We would express our support for all the proposals currently contained within this part of the Bill.

In particular, we welcome the provisions that will extend the ban on smoking to school grounds, hospital grounds and public playgrounds. We are also supportive of the proposal to give Welsh Ministers the power to bring forward regulations that can designate other premises as smoke free, including other non-enclosed settings, if they are satisfied that to do so is likely to contribute towards the promotion of the health of the people of Wales.

#### *Part 3 – Special procedures*

We are supportive of the proposals in this part of the Bill which include ensuring that an individual who performs certain special procedures (i.e. acupuncture, body piercing, electrolysis and tattooing) will in future be required to be licensed to do so, unless they are an appropriate regulated health professional.

We have previously suggested that consideration could be given to extending the list of special procedures to which these provisions apply, to include:

- laser hair removal;
- chemical peels;
- dermal fillers;
- scarification/branding; and
- sub-dermal implantation

With the Bill being considered again, the committee may therefore wish to have another look at this suggestion.

#### *Part 4 – Intimate piercing*

We are supportive of the proposals in this part of the Bill.

### *Part 5 – Health impact assessments*

We are very happy to support the proposals in this section of the Bill, having lobbied strongly for their inclusion when the previous version of the Bill was under consideration. We would therefore strongly urge AMs to support these proposals.

We believe that legislating for mandatory HIA could provide a significant contribution to improving the health and well-being of communities, and position Wales as a world leader in the application of public health policy. Their enactment would enable positive health benefits to be maximised in the development of key policies, plans and programmes, as well enabling negative health impacts to be mitigated against. Additionally, it would substantially develop the health in all policies approach already being taken forward by the Well-being of Future Generations (Wales) Act 2015.

More detailed information on what we consider are the benefits of the HIA proposals can be found within the briefing we sent to AMs when the previous version of the Bill was first introduced.<sup>3</sup>

### *Part 4 – Pharmaceutical services*

When these proposals were initially put forward within the previous version of the Bill, we expressed support for the general intention behind them, but called for safeguards to remove the risk of any threat to the viability of dispensing GP practices. We were particularly concerned about the experience in England where similar proposals had been introduced and this had led to the withdrawal of dispensing rights for some GP practices. Given that certain GP practices in Wales, particularly in rural areas, rely on the additional profit from dispensing to remain financially viable when catering for often small and dispersed registered patient lists, we warned that such practices could be placed at risk unless appropriate safeguards were also agreed. In recognition of the current recruitment and retention problems which are currently being faced by practices in certain rural parts of Wales, we highlighted the potential negative impact on the provision of services provided under the General Medical Services (GMS) contract by such practices and warned of the potential for the proposals for pharmaceutical needs assessments to therefore lead directly to practice closures.

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<sup>3</sup> BMA Cymru Wales (2015) *Briefing on Health Impact Assessments*. Available at: <https://www.bma.org.uk/-/media/files/pdfs/working%20for%20change/policy%20and%20lobbying/welsh%20council/hia%20briefing.pdf?la=en>

A solution we put forward was for a requirement to be agreed that the provision of GMS services should be considered as part of any pharmaceutical needs assessments, and for all pharmaceutical needs assessments to include a risk assessment to existing GMS provision of any new approvals to provide pharmaceutical services.

We raised these concerns directly with the previous Health Minister and were grateful to receive a written assurance from him in return that he would involve us in designing the detail of how pharmaceutical needs assessments will be conducted and that the contribution of dispensing doctors will be explicitly recognised as part of these assessments. We would be grateful now for further reassurance that these welcome undertakings will be honoured by the current Welsh Ministers.

Two amendments agreed to the previous version of the Bill at Stage 3, and which remain part of the Bill as reintroduced, are also helpful in regard to the concern we have highlighted. These amendments relate to regulations that will follow on from the Bill in taking the provisions relating to Pharmaceutical Needs Assessments forward. One of the amendments brought in a requirement that the first time these regulations are made, they will be subject to the affirmative procedure and therefore subject to an enhanced level of scrutiny within the Assembly. The second amendment incorporated a clause into the Bill that regulations may make provision for information to be contained in a pharmaceutical needs assessment relating to persons with whom a Local Health Board has entered into a GMS contract.

Provided the written assurances given to us by the former Health Minister are honoured by the current Welsh Ministers, then we would be happy to support the proposals as currently drafted. Our support is, however, conditional on such reassurance being re-confirmed.

*Part 7 – Provision of toilets*

We are supportive of the proposals in this part of the Bill.

*Part 8 – Miscellaneous and general*

We are supportive of the proposals in this part of the Bill.