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Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA P VG/0318/19

Dr Dai Lloyd AM
Chair
Health, Social Care and Support Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

31 January 2019

Dear Dai,

Thank you for your letter of 16 January requesting an update on progress achieved against the Ruth Marks' Review of Healthcare Inspectorate Wales (HIW) recommendations.

Enclosed is an update against the 14 recommendations aimed specifically at Welsh Government as well as the three joint recommendations. Also enclosed is a progress update in respect of the forthcoming Quality and Governance in Health and Care (Wales) Bill and its potential impact on the culture of continuous improvement and quality of care.

Yours sincerely,

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex A

Update on progress following the Marks Review of Healthcare Inspectorate Wales: *The Way Ahead: To Become and Inspection and Improvement Body*

Written Response by the Minister for Health and Social Services providing an update against the recommendations of the Marks Review of HIW

Considerable progress has been achieved in taking forward the recommendations which are detailed below. A number of the issues raised in the review have also been consulted on in the White paper – Services for the Future published on 28 June, 2017.

The White paper set out Welsh Government proposals in various areas of quality and governance in health and care services which may require future legislation. The proposals included duties for health and social care which promote cultural change including a Duty of Quality; a Duty of Candour; common processes to underpin person-centred health and care, a new arrangement for citizen voice replacing the CHC model, addressing the legislative gaps underpinning HIW and proposals for a new independent body to bring together inspection, regulation and citizen voice.

The results of the consultation and the Welsh Government's intentions were set out in an oral statement on 27 February 2018. The statement outlined the intention to include the proposals on the duty of quality, the duty of candour and the new arrangements for citizen voice in a future Bill. With regard to the proposals on inspection and regulation, there were mixed views in the consultation responses in relation to a merger of the health and social care inspectorates and making them independent of the Welsh Government. We are therefore not looking to make these changes at this time but will instead explore a more proportionate approach to addressing the regulatory gaps which exist and future-proofing the underpinning legislation for Healthcare Inspectorate Wales. This will also allow for closer working with Care Inspectorate Wales. This very much aligns with the recommendations in the Parliamentary Review around joining up inspections.

Officials have been considering the capacity, expectations, gaps and risks associated with the delivery of HIW's functions following the consultation, with a view towards possible future primary legislation to address regulatory gaps and complexities within HIW's current underpinning powers. This has identified the need to ensure capacity at HIW is addressed before changes are made which impact on it. We are supporting the inspectorate to achieve a more sustainable position to deal with current demands and allowing it to be more ready to respond to a new legislative framework in due course. This has included additional funding resource to HIW in 2018/19 (£m - 0.372) and 2019/20 (£m - 0.662) pending a more detailed review by officials.

Impact of the Quality & Governance in Health and Care (Wales) Bill on the culture of continuous improvement and quality of care

The Quality & Governance in Health and Care (Wales) Bill will introduce statutory duties of candour and quality, and replace the current CHCs with a new Citizen Voice Body. All of which are designed to promote a person centred, improvement driven approach to the quality of care.

Duty of Quality

The proposed duty of quality will place an overarching duty on the Welsh Ministers and NHS bodies (LHBS, Trusts and Special Health Authorities) to exercise their functions relating to the health service with a view to securing improvement in the quality of services in the broadest sense. The intent of this change is that when Welsh Ministers and NHS bodies exercise their functions in relation to the health service, they must actively consider whether the decision will improve service quality and secure improvement in outcomes. This will shift the focus of decision making and represent a further step on the journey towards ever-higher standards of person-centred health services in Wales.

Additionally, the duty would strengthen the governance arrangements by requiring the Welsh Ministers and NHS bodies to publish a report annually on the steps they have taken to comply with the duty and assess the extent of any improvement in outcomes.

Duty of Candour

There is evidence that increased openness, transparency and candour are associated with the delivery of higher quality health and social care. Organisations with open and transparent cultures are more likely to spend time learning from incidents, rather than trying to hide or be overly defensive about issues, and they are more likely to have processes and systems in place to support staff when things go wrong.

The proposed duty of candour will promote a culture of openness and maintain public and patient trust in the health service by ensuring patients are informed when care that they have been provided with results in an adverse outcome. This will ultimately improve the quality services by encouraging organisational learning as to avoid future incidents.

When the duty applies, providers of NHS services will be required to notify the service user or their representative, explain what will happen next, provide an apology and offer support, and subsequently provide feedback on investigations, the steps taken to prevent a recurrence and keep records.

The Citizen Voice Body

The creation of a single Citizen Voice Body across health and social care will strengthen the voice of the citizen and helps to deliver on our vision for 'A Healthier Wales' where the voices of citizens are continuously engaged and

listened to. A stronger citizen voice will assist organisations in understanding and becoming more attuned to the needs of service users enable them to better shape services in a more user-focussed way. It will also deliver on the recommendations of the

Parliamentary Review relating to closer integration of health and social care services.

Update against the recommendations of the Marks Review of HIW – January 2019

Recommendation 1

- The Welsh Government should ensure the new NHS Health Standards include a requirement for NHS Wales to take actions which will result in the most efficient and best services being delivered to patients and service users.

Response – Accepted and implemented

The Health and Care Standards published in April 2015 establish a basis for improving the quality and safety of healthcare services by providing a framework which can be used in identifying strengths and highlighting areas for improvement.

- Where appropriate, HIW and the WAO should jointly scrutinise the governance and leadership of health bodies, in particular measuring the extent to which their activities are driven by the goal of continuously improving services and aspiring to achieve world-class standards.

Response – accepted and implemented

HIW has introduced a process of annual reporting to health bodies which draws together their findings and provides feedback on governance and assurance arrangements.

Recommendation 5

HIW and the Welsh Government should explore the usefulness of audit tools developed by the Royal College of Physicians and consider whether they should be built into the new Health Standards which are being developed; and whether they could contribute to HIW's inspection programmes.

Response - Accepted and implemented

Wherever possible, the Welsh Government has incorporated audit tools from a number of sources within the supporting guidance to the Health and Care Standards.

When developing the methodology for inspections HIW draws on the established professional best practice from a variety of sources and this would include those tools and checklists developed by the Royal Colleges. Representatives of the Royal Colleges are invited to sit on HIW's Stakeholder Reference Groups when new methodologies are being developed and the Academy of Medical Royal Colleges is represented on the HIW Advisory Board.

Recommendation 9

The Welsh Government should:

- Develop healthcare regulations in line with the principles of the White Paper on the regulation of social care services. The regulation and registration of independent healthcare providers should move to a service-based model of registration, instead of the registration of individual premises. This would be a sensible reform and create efficiencies for both providers and HIW as well as increasing alignment between the health and care sectors
- Ensure that only one set of health standards applies across the NHS and independent sectors. HIW should work with NHS Wales, the independent sector and the Welsh Government and all other relevant bodies to develop a coherent set of standards that link with social care standards

Response – Accepted

The White Paper “Services Fit for the Future” included proposals around regulation and inspection and common standards.

Due to breadth and complexity of the issues around moving from an establishment-based regime to a service-based one, it is our intention to develop legislation to be brought forward in a future Assembly term.

This legislation would also be used to introduce a common standards framework.

Recommendation 11

The Welsh Government should remove HIW's responsibility for the following functions:

- supervision of midwives and the transfer of this function to an alternative host organisation should be progressed with urgency

Response - Rejected

From April 2017 midwifery supervision was transferred to an employer led model for Wales.

- carrying out homicide reviews where homicides have been committed by mental health service users. Other healthcare inspectorates across the UK do not fulfil this function, it is recognised that specialist clinical expertise is required, therefore reports are commissioned from equivalent LHB bodies. If the current commissioning arrangements are to continue then the Welsh Government should consider the resource implications

Response – Rejected

Overall it is felt that the function of homicide review should stay with HIW as it provides valuable information and learning and wider intelligence on the quality of mental health services

- contributing to the investigation of deaths in Welsh prisons. By their nature, these investigations are time-consuming, frequently require specialist clinical expertise and sometimes the resources which need to be allocated to them mean that HIW has had to reduce important inspection activities. The Prisons and Probation Ombudsman could obtain specialist clinical advice from Local Health Boards.

Response – Rejected

Reviews of deaths in custody are the means by which HIW fulfils its responsibility for testing healthcare provision by health boards to prisoners. This function should therefore remain with HIW.

- Assessing nurse agencies. Although this will have little impact on capacity within HIW it will help to remove duplication with the work of CSSIW.

Response – Accepted

Responsibility is with CIW under RISCA.

Recommendation 13

As part of the proposals for the Green Paper, Welsh Government should consult on the following:

- Giving HIW a full range of enforcement powers including putting an NHS healthcare provider into special measures without recourse to the Health and Social Services Minister. This will help enhance HIW's independence and assure the public that it is a strong and impartial regulator and inspector.
- The range of options which would make HIW a more independent inspectorate, looking at other models including Estyn, as well as the Auditor General for Wales and the Public Services Ombudsman for Wales.

At the same time, it would be sensible to take into account the possible merger with CSSIW when exploring these options. The public could be consulted on all of these matters including a consideration of the benefits and disadvantages of creating a single regulator with responsibility for health and social care.

Response – Rejected

We believe that the NHS Wales Escalation and Intervention Framework, and the associated mechanisms already provide a robust system for considering the escalation levels of healthcare providers. HIW is a key partner in these arrangements

Services Fit for the Future consulted on proposals to merge inspectorates and to make HIW more independent of Government. Responses to the consultation expressed mixed views on these questions, and we do not intend to take them forward at this time.

In the meantime, work is ongoing to develop the capacity of Healthcare Inspectorate Wales.

Recommendation 18

The Williams Commission recommends that if a standard of good practice is identified it should be adopted by all relevant health bodies across the whole of Wales to bring to an end unnecessary variations in the quality of services. Any departure from this principle would have to be justified. So, it would be highly beneficial for the Welsh Government to include this requirement in the refreshed Health Standards and for it to become part of HIW's regulatory regime.

Response - Accepted in principle

The Health and Care standards ensure best practice is being followed and seeks to reduce variation. In addition, the routine sharing of good practice underpins many NHS Wales improvement programmes, including those taken forward by 1000 Lives Improvement. A national clinical lead has been appointed to work with the NHS to drive improvement through reductions in variation. A Healthier Wales restates the importance of managing variation as an element of prudent healthcare.

Recommendation 20

The Welsh Government should:

- Consider the merits of developing a legal duty to involve service users in the governance and scrutiny programmes of HIW. They will have a say in the design, implementation and monitoring of its regulatory activities. Directly listening to the voices of patients and carers can help identify care

which contributes to good health and well-being as well as unsafe and unacceptable care. HIW would be required to report to Welsh Ministers on the involvement of citizens, including children and young people, in its decision making and strategic operations

Response - Rejected

The Welsh Government does not believe there is a need to introduce a legal duty to ensure HIW involves service users. HIW already uses a variety of methods to ensure patient experience is taken into account, including lay reviewers as part of inspection teams, patient involvement in the development of inspection methodologies and CHC involvement in thematic reviews.

- Reflect the principles of Prudent Healthcare, patient involvement and improved outcomes for patients in the refreshed Health Standards which are in the process of being developed and become part of HIW's regulation and inspection regime. The role of HIW would be to scrutinise whether a health body is delivering outcomes for patients which they believe to be important to their health and wellbeing.

Response – Accepted and implemented

The Health and Care Standards embrace the principles of co-production and prudent healthcare.

Recommendation 22

The Welsh Government should place a statutory duty on LHBs, Trusts and CHCs to routinely share complaints information with HIW. This will enhance HIW's ability to fulfil its responsibility to quality assure health bodies performance in relation to dealing with concerns and managing incidents in line with the Doing Well Doing Better – Standards of Health Services in Wales; and to spot serious and systemic failure in health care at an early stage.

Response – Rejected

The Welsh Government does not believe there is a need for a legal duty to routinely share complaints information. HIW can request this information from organisations if required, however we already expect organisations to report this information openly at their Board Quality & Safety committees and publish the papers. Work is already underway on developing all-Wales complaints data set which will allow for ease of sharing of information.

Recommendation 23

The Welsh Government should consider developing tougher and more robust regulations to reinforce the reshaped care standards, applicable to all health care providers in both the NHS and independent sectors.

HIW would scrutinise the implementation of the Standards and consideration should be given to increasing its enforcement powers where breaches take place.

Response – Accepted

The White Paper “Services Fit for the Future” included proposals around regulation and inspection and common standards.

Due to breadth and complexity of the issues around moving from an establishment-based regime to a service-based one, it is our intention to develop proposals for legislation to be brought forward in a future Assembly term.

Recommendation 24

The Welsh Government should include an explicit Duty of Candour in the refreshed Health Standards in order that HIW will be able to assess the extent to which service providers are open and honest about their mistakes, why they have occurred, and what they have done to put things right. HIW will also assess whether Local Health Boards are providing good governance: that information is not only shared with patients, but also with HIW at the earliest opportunity and that safer services are delivered as a result of learning from errors.

Response – Accepted in principle

The Quality & Governance in Health and Care (Wales) Bill will introduce a statutory duty of candour. Health Boards will be required to report on engagement of the duty. This goes further than including with the Health Standards framework.

Recommendation 26

The Welsh Government should:

- Develop regulations to allow HIW to carry out prosecutions where professional healthcare staff provide false or misleading information.
- Develop regulations which impose time-limited registration on services which have failed to comply with regulations and standards. This would exert significant pressures on providers to improve their performance.

Response – Accepted

The White Paper “Services Fit for the Future” included proposals around regulation and inspection and common standards.

Due to breadth and complexity of the issues around moving from an establishment-based regime to a service-based one, it is our intention to develop legislation to be brought forward in a future Assembly term.

Recommendation 29

The voluntary arrangements which underpin the work of Inspection Wales have not supported effective collaboration and the coordination of work programmes between the 4 AIR bodies and at times this may leave patients and service users at risk because a review is not carried out.

The Welsh Government should explore how collaborative working could be strengthened by reviewing current arrangements for cooperation and how they might be reformed through creating a statutory duty. In particular the model of the Local Government (Wales) Measure 2009 which supports collaborative working by the AIR bodies in their review of the performance of local authorities may have relevance to the health sector.

Response – Rejected

This work has now moved on considerably with the publication of an Inspection Wales Remit Paper and Information Sharing Guidance. HIW and CIW have worked together on a review of services for people with learning disabilities.

The Welsh Government does not presently see a need for further statutory duties of collaboration.

Recommendation 30

The collaborative information system consists of Concordat Cymru, Healthcare Summits and the NHS Wales Escalation Arrangements and there may be scope for clarifying how they complement each other as well as assessing whether there is any overlap and duplication of effort. HIW, Welsh Government and other bodies should consider if the current information system is as streamlined and efficient as it could be. Also, it will be useful in future to take stock and evaluate the success of the information sharing system and determine whether any changes are needed.

Response – Accepted and implemented

The NHS Wales Escalation and Intervention Framework involving the collective arrangements in place between the Welsh Government, the Auditor

General for Wales and HIW, allows for an effective sharing of intelligence and coordinated action.

Recommendation 31

The collaborative early warning system should become the central organising principle of the work of Concordat Cymru. It must have high status and profile amongst all members and its aims and methods of working should be published across the whole of the health and social care sector.

Response – rejected

This is the purpose of the NHS Wales Escalation and Intervention Framework.

Recommendation 35

The Welsh Government should consider reforming the work of CHCs in the following ways:

- CHCs must prioritise their patient advice and advocacy service and reduce waiting times.
- The remit of CHCs should extend their advice and advocacy role to provide seamless support to people who use both health and residential social care services.
- There should be a statutory duty for both CHCs and HIW to share information about complaints and other intelligence with each other.
- In future CHC members should provide the lay element of HIW inspections.

Response – Accepted in part

The Quality & Governance in Health and Care (Wales) Bill will include proposals to replace the CHCs with a new Citizen Voice Body, with an extended complaints advice and assistance role that includes social services.

There is nothing to prevent CHC members or members of the new body from providing the lay element of HIW inspections.

As mentioned above, the Welsh Government does not believe there is a need for a legal duty to routinely share complaints information. CHCs and HIW have a Memorandum of Understanding that was reviewed and updated in December 2017. The MOU supports the creation of work programmes that are complementary, avoid duplication and ensures that there are clear processes in place for sharing information and for the cross referral of risks and concerns.

Recommendation 37

The Welsh Government should include an evaluation of culture of health bodies in the revised Standards for Health Services in Wales. This would require an assessment of governance and leadership of Boards and allow HIW to consider whether Boards are empowering and supporting staff to deliver excellent standards of care.

Response – Accepted and implemented

Governance, leadership and accountability already form part of the Health and Care Standards. HIW consider how services are managed and led and whether the workplace and organisational culture supports the provision of safe and effective care.

Recommendation 39

The Welsh Government, LHBs, Trusts, HIW and others should:

- Agree on a common data collection and information system, to be used at the local level, to cover the whole of the NHS in Wales. This will result in the Boards of LHBs and Trusts receiving sound and easier to understand information; as well as more informed data being fed into the various elements of the Welsh Government's performance management framework and information provided to HIW. It will also allow for comparisons of performance and lessons learnt to be disseminated across Wales.
- The local data collection system should include a suite of clinical outcomes in line with national audit requirements which will enable citizens to understand how well services are being delivered locally.

Response – Accepted in principle

The Digital Health and Social Care Strategy for Wales sets out a 'Once for Wales' approach which will create a solid platform for common standards and interoperability between systems and access to structured, electronic records in all care settings to join up and co-ordinate care for service users, patients and carers. The health and social care system in Wales will make better use of available data and information to improve decision making, plan service change and drive improvement in quality and performance.

Recommendation 42

The Welsh Government should consider the issue of a merger between the two inspectorates. The coming years will see a transformation in the delivery of both health and social care services. As both the NHS in Wales and local government will experience reorganisation, patterns of delivery and commissioning will change, and once settled the possibility of a merger could

be explored. A thorough cost benefit analysis should be undertaken on whether a merger is appropriate.

Response – Completed

The question of a merger of HIW and CIW was included in the White Paper “Services Fit for the Future”. Analysis of the responses to that consultation showed there were mixed views in relation to a merger of the health and social care inspectorates and making them independent of the Welsh Government. We do not therefore intend to pursue these changes at this time. Welsh Government will instead explore a more proportionate approach to addressing the regulatory gaps which exist and future-proofing the underpinning legislation for Healthcare Inspectorate Wales. This will also allow for closer working with Care Inspectorate Wales. This aligns with the recommendations in the Parliamentary Review around joining up inspections.