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Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/5824/19

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

14 January 2020

Dear Dai,

I would like to thank the Health, Social Care and Sport Committee for its scrutiny of the Health and Social Care (Quality and Engagement) (Wales) Bill during Stage 1 of the legislative process.

In Annex A to this letter I acknowledge and set out my response to the 21 recommendations made within the Committee's scrutiny report, published on 15 November 2019. Building upon what I said at the Stage 1 General Principles debate on 26 November 2019, this reflects my current view on the matters raised.

I will also be writing to the Chairs of the Constitutional and Legislative Affairs and the Finance Committees with regard to their Stage 1 reports and will copy all letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Assembly.

Yours sincerely,

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Minister for Health and Social Services

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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: Welsh Government response to the recommendations of the Health, Social Care and Sport Committee regarding the Health and Social Care (Quality and Engagement) (Wales) Bill.

On 15 November 2019 the Health, Social Care and Sport Committee published its Stage 1 scrutiny report in respect of the Health and Social Care (Quality and Engagement) (Wales) Bill. This document provides the Welsh Government's response to the recommendations included in that report.

Recommendation 2. We recommend that the Minister amends the Bill to make provision for the issuing of statutory guidance relating to the duty of quality. Such guidance should, amongst other things, clearly set out how the duty of quality in service provision will be assessed and how an organisation would demonstrate an improved outcome. It should also include details of how innovations and improvements designed in one area will be spread and scaled across the whole of Wales.

Welsh Government response: Accept

This was helpfully raised at Committee. I have reflected on what was discussed and am grateful to the Committee for their contribution on this matter.

At stage 2, I will table amendments to Part 2 of the Bill (improvement in health services) to enable the Welsh Ministers to issue statutory guidance in relation to the quality duty provided for in the Bill. Local Health Boards, NHS Trusts and Welsh Special Health Authorities will all have a duty to have regard to the guidance in their exercise of their functions.

As you will be aware, I am keen to issue guidance to the NHS to assist in the implementation of the duty of quality and to give a practical guide to how we expect NHS bodies to perform the duty. I intend this to be a practical, user friendly document with illustrative examples of how we envisage the duty working in practice. As I stated in Committee, having this guidance to support the duty on the face of the Bill will also help the scrutiny architecture we have in place such as the regulators, Assembly Members and other stakeholders who all have an interest in ensuring the duty of quality is successfully embedded.

Recommendation 3. We recommend that the Minister amends the Bill to make explicit reference to the need to focus on prevention and improve population health as part of the duty of quality.

Recommendation 4. We recommend that the Minister amends the Bill to make specific provision for appropriate workforce planning/staffing levels as part of the duty of quality.

Recommendation 5. We recommend that the Minister amends the Bill to make specific provision for a duty to secure improvements to health equity as part of the duty of quality.

Recommendation 6. We recommend that the Minister amends the Bill to make specific provision for the consequences of non-compliance with the duty of quality.

Recommendation 7. We recommend that the Welsh Government ensures that guidance on the Bill clearly sets out how the duty of quality will align with existing social care duties, and how it will support the integration agenda

Welsh Government response: Reject amendments to the Bill, but will cover the matters outlined in the recommendations within statutory guidance

Statutory guidance will be co-produced with professional and patient representatives to support and assist NHS bodies in their implementation of the duty of quality.

In doing so the guidance will further describe what is meant by quality and how it will work in practice, including: how it should apply across **all** functions and processes of NHS bodies; what it means for considerations and decisions made at all levels; how the quality of services should be considered at a wider population level and how NHS bodies can demonstrate they have complied with the duty, via their annual quality reports, mandated by the Bill.

The guidance will help illustrate how the duty applies to key considerations such as prevention and population health, workforce planning and staffing arrangements and tackling health inequities. It will also highlight the links with existing social care duties, to support integrated services, and explain that non-compliance with the duty will raise concerns and could lead to escalation measures.

Recommendation 8. We recommend that the Welsh Government amends the Bill to make specific provision for a duty on health and social care providers to co-operate in order to secure improvements for services users

Welsh Government response: Reject

I have carefully considered the views of stakeholders' in this regard and am confident we have the means to achieve this within the existing legislative framework.

The Social Services and Well-being (Wales) Act 2014 mandates co-operation and partnership arrangements between local authorities and their relevant partners, including health boards and NHS Trusts, to achieve better outcomes, promote well-being of people and to improve the efficiency and effectiveness of service delivery.

In doing so, the Act places duties on health and local government partners to work together to assess the needs of their population. Under the direction of Regional Partnership Boards they must jointly produce a report on the outcomes of these population assessments and develop a joint area plan for how care and support needs will be met over a three year period.

In parallel, NHS bodies and local authorities must prepare and review their Integrated Medium Term Plans every 3 years. These plans set out how they will work together to continuously improve health services for the people they serve.

The outcomes of these assessments enable local authorities and health boards to plan together how they can address those needs, jointly or individually, in a seamless and integrated way. Improvement in outcomes, across the health and social care system, is very much a shared value and key driver in meeting the priorities set out in A Healthier Wales.

Recommendation 9. We recommend that the Minister amends the Bill to make specific provision for the consequences of non-compliance with the duty of candour.

Welsh Government response: Reject amendments to the Bill but will cover within statutory guidance

I am pleased to note the Committee agrees that financial sanctions are not appropriate. As with the duty of quality, the statutory guidance on the duty of candour will clearly explain the relationship between the duty and the NHS Wales Performance Framework, including the Escalation and Intervention arrangements. We will also ensure that where appropriate it clearly aligns with the Putting Things Right arrangements and provides clarity on how the duty fits with the All Wales Raising Concerns (Whistleblowing) Policy.

Recommendation 10. We recommend that the Minister clarifies his intention in regard to what will happen to candour reports, once produced, including how they will be monitored and scrutinised.

Welsh Government Response: Accept

The intention is to co-produce the statutory guidance on candour with professional and patient representatives. Therefore, the detail of how best to utilise the reports will be worked through as part of that process.

Actions I would expect to see include, regular updates to be provided at Quality and Safety Committee meetings, so independent members can seek assurance that the duty is being discharged and learning being taken forward, with escalations to the Board where appropriate.

It is intended the Welsh Government will monitor the content of the candour reports alongside other sources of information such as serious incident reports and complaints data. This will inform regular Quality and Delivery, and Joint Executive Team meetings with health boards and can also inform discussions and evidence considered through the NHS Escalation and Intervention arrangements. Healthcare Inspectorate Wales will also take the reports into account as part of its intelligence gathering, to support its programme of inspection and review activity.

Further detail about the duties to report on quality and candour can be found within Annexes 2 and 3 to my letter to the Committee on 30 August 2019¹ which provide draft outlines of the guidance.

The statutory guidance on candour will set out how Local Health Boards and NHS Trusts should use the data gathered, through reporting annually, to help inform their new annual quality reports and how providers of NHS care can evidence they are promoting a culture that encourages candour and the learning that stems from it.

¹<http://www.senedd.assembly.wales/documents/s93589/Letter%20from%20the%20Minister%20for%20Health%20and%20Social%20Services%20regarding%20the%20Health%20and%20Social%20Care%20Qualit.pdf>

Recommendation 11. We recommend that the Minister amends the Bill to make provision for the members of the Citizen Voice Body to be appointed by the National Assembly for Wales.

Welsh Government response: Reject - but will ensure additional stakeholder involvement in the process

I have listened to the arguments that were made by Committee members on this point. I have also revisited the evidence given by stakeholders. I am aware this is a subject that has elicited some strong views and I welcomed the opportunity, at Committee, to set out our policy rationale for the position we have adopted in the Bill.

I am confident in the approach taken in the Bill – that members of the Board of the Citizen Voice Body will be appointed through the public appointments process, with additional stakeholder involvement at the Advisory Assessment Panel stage, and that all other members (staff and volunteers) will be recruited by the Body itself.

In making appointments to the Board of the Citizen Voice Body, the Welsh Ministers will be bound by the Governance Code on Public Appointments, which sets out the process and principles to follow. As such, the appointments will be independently regulated by the Commissioner for Public Appointments and, ultimately, all Ministers are answerable to the National Assembly for Wales for their decisions.

These appointments will be made solely on merit; in the public interest; without obligation, through a process that is open, transparent, fair and impartial.

In my evidence to the Committee and at the General Principles debate, I confirmed how I believe this significantly improves the current situation with regard to appointment of members and employment of staff within the CHCs.

The Bill establishes the Citizen Voice Body as a legal entity in its own right, with powers to recruit its own staff and volunteers and enter into its own contracts, with its own governance framework, in a way that ensures it can exercise its functions independently of government.

The Bill makes clear that the Body itself will set its own objectives and priorities for the year, in its published annual plan, after consulting whoever it considers appropriate. At the end of each financial year the Body will report on the exercise of its functions, laying a copy before the National Assembly for Wales, and a statement of its accounts will be submitted to the Welsh Ministers and the Auditor General.

These measures will serve to ensure a high degree of independence for the new Body and provides clear opportunities for scrutiny of its work.

Recommendation 12. We recommend that the Minister amends the Bill to make provision for the Citizen Voice Body to have a qualified right of access to health and social care settings for the purpose of speaking to service users, and carrying out reasonable and proportionate checks on the care being provided. Specific conditions or restrictions on the use of this power could be set out in detail in accompanying regulations or statutory guidance

Welsh Government response: Reject – but on 2 December 2019 the Government tabled an amendment to the Bill to introduce a Code of Practice on Access.

The question of access to settings where health or social care services are provided has prompted considerable debate during Stage 1 of the scrutiny process.

The Bill creates a new Citizen Voice Body whose objective and overarching purpose is to represent the public's interest in health and social care. The Citizen Voice Body's central function is to seek the views of the public and I have been clear that seeking views at the point at which services are delivered is a key element. Ensuring that service users can participate in shaping the delivery of services is a fundamental aspiration behind this part of the Bill. I have listened to evidence from stakeholders about how this might be achieved. I have taken account of all the evidence from those in favour of a power of unannounced access for the Body and those that have raised concerns against it.

The Government amendment tabled on 2 December 2019 requires the Welsh Ministers to publish a Code of Practice relating to access to premises at which health services or social services are provided for the purpose of seeking the views of individuals. The Code will be subject to statutory consultation before being issued so that all stakeholders have an opportunity to comment on its content.

The intention is that the Code will recognise the Body's function of seeking views while also recognising the need to safeguard the privacy of service users and service providers. The Code may, for example, recommend the factors the Body ought to take into account when requesting access to premises such as making requests at reasonable times. It may also make recommendations about the need for those conducting visits to have appropriate training and checks. As noted above, its content will be subject to consultation.

One of the principal benefits of the Code is that it will be able to reflect the variety of settings where health and social services are provided. Vastly different forms of care, support and treatment are delivered across these settings, responsive to individuals' needs and wishes. The Code will be a living document, capable of responding to changes in practice and experiences in applying the Code. It will carry the necessary weight to ensure all parties discharge their respective responsibilities.

It must also be remembered that, whilst important, accessing premises is only one way in which the Body can seek views. It has a duty under the Bill to set out in a statement of policy how it proposes to seek the views of the public (section 14). It will therefore be essential that the Body has a strategy to maximise its engagement with members of the public, using the resources that are available to it. It is our hope that this will enable the Body to reach large numbers of the public with a variety of means such as, for example, online activity, discussion groups and consultations. The Body may engage not only with current service users, but past users, prospective service users, their family members etc in order to ensure the views they hear are as representative as possible.

Similarly, NHS bodies and local authorities are required to make arrangements to bring the activities of the Citizen Voice Body to the awareness of people receiving health and social services (section 17). These new duties are intended to increase public involvement, awareness and engagement in the work of the Body and the shaping of services.

The purpose of accessing premises will be to seek views about health and social services in order to enable the Body to represent the public interest. Carrying out checks on the quality of health and social care services is undertaken against regulatory standards by the inspectorates, the Healthcare Inspectorate Wales and Care Inspectorate Wales. To give the new Body a role in carrying out checks on the care being provided would change its nature and would duplicate and blur the line of responsibility between the Body and the inspectorates.

As I have stated, and as the inspectorates themselves have stated, our expectation is that the Citizen Voice Body will work as an equal partner with the inspectorates as their functions, although different, are complementary in giving the overall picture.

Recommendation 13. We recommend that the Minister amends the Bill to include the Welsh Ministers on the list of persons to whom the Citizen Voice Body may make representations.

Welsh Government response: Reject

It is appropriate that the Citizen Voice Body has the ability to make representations to NHS bodies and local authorities, as they provide or commission health or social care and therefore will be in a position to make any changes to services on the ground as a result of consideration of the representations. As the Welsh Ministers do not commission or provide services, it is not considered appropriate to include them in the list of bodies to whom the Body can make representations.

However, the Welsh Ministers will be in receipt of and closely monitor the Body's annual plan and annual reports, therefore providing opportunities for the Body to shape national policy and highlight best practice. As with any other Welsh Government Sponsored Body, there will be a working relationship between the Body and the Welsh Government sponsor that will give the Body opportunity to raise issues with the Welsh Ministers.

Moreover, the Body may choose to make representations to NHS bodies and local authorities across Wales, for example, to those members of a Regional Partnership Board, presenting opportunities to influence their work in planning and commissioning health and social care services to meet the needs of their populations.

Recommendation 14. We recommend that the Minister amends the Bill to require a response from the appropriate organisation to any representation made by the Citizen Voice Body.

Welsh Government response: Reject - but on 2 December the Government tabled an amendment to place a duty on the Welsh Ministers to issue statutory guidance on how the duty to have regard to representations should work in practice.

I have noted the Committee's comments on the nature of the representations that the Citizen Voice Body may make and what can be done to ensure not only they are listened to, but that the Body and the public can see they are being listened to. Whilst the duty to have regard already carries considerable weight, I have taken account of what the Committee has

said and on 2 December 2019 tabled an amendment to require the Welsh Ministers to issue statutory guidance on how this will work in practice.

It is clear that the Body will need to be kept up to date with how a public authority is dealing with their representation, and, most importantly, the outcome of that representation. The publication of statutory guidance will enable us to set out how this should happen in a proportionate way that reflects the different types of representation that may be made.

NHS bodies and local authorities will have a duty to have regard to that guidance when considering the representations and in exercising any of their functions to which the representations relate.

I believe this is stronger than a bare duty to respond to a representation. The guidance will underpin the importance of advising the Body of the outcome of the representation. From the evidence we have heard during scrutiny to date it is knowing what difference a representation has made is what will be key to the Body's ability to demonstrate to the public that engaging with the Body and providing their views is meaningful, adds value and can be impactful.

Recommendation 15. We recommend that the Minister amends the Bill to require the Citizen Voice Body to make arrangements for internal local structures.

Welsh Government response: Accept in part

As the explanatory memorandum to the Bill shows, we are committed to the principle that the Citizen Voice Body is established to represent the views of the public across health and social care and therefore it needs to be able to exercise its functions at local, regional and national levels in order to be successful. I have consistently supported this view.

However, the written and oral evidence received by the Health, Social Care and Sport Committee makes clear that it is important to stakeholders that this principle is enshrined. Therefore, on 2 December 2019, a Government amendment was tabled to require the Citizen Voice Body, when preparing its statement of policy (under section 14), to specify how it proposes to ensure it will represent the interests of and be accessible to people in all parts of Wales.

This strikes an appropriate balance between allowing the Body to determine for itself, based on its own assessment of need, operational matters such as where its offices should be based and on requiring the Body to ensure it is accessible to and able to represent the views of all people across Wales.

Recommendation 16. We recommend that the Minister amends the Bill to make provision for volunteers to be recruited to the Citizen Voice Body. This should include a requirement to build a diverse volunteer base that represents all sectors of society.

Welsh Government response: Reject

The Citizen Voice Body is established as an independent body corporate. Consequently, it has the power to recruit volunteers without the need for a specific provision on the face of the Bill and this will enable it to build a diverse volunteer base that represents all sectors of

society. Estimated costs for training volunteers and paying expenses etc are set out in the Regulatory Impact Assessment. The recruitment of volunteers have therefore been factored into the costings.

Anecdotal evidence from the CHCs suggests that many would-be applicants for CHC membership are currently deterred from applying because of the very formal application and interview process. The fact that the Citizen Voice Body will have the flexibility to determine its own volunteer model therefore has real potential to increase both the number and diversity of volunteers.

Officials have had an initial conversation with the Wales Council for Voluntary Action who have indicated they would be happy to share their experience of recruiting and retaining volunteers with the Implementation Board that will be set up to facilitate the establishment of the new Body.

Recommendation 17. We recommend that the Minister amends the Bill to include a duty on health bodies and local authorities to co-operate with the Citizen Voice Body.

Welsh Government response: Reject

The Bill already provides that NHS bodies and local authorities must promote awareness of the activities of the Citizen Voice Body (section 17) and provide it with information that it reasonably requests (section 18). Stage 2 Government amendments have also been tabled which, if passed, will further strengthen the relationship between the Citizen Voice Body and NHS bodies and local authorities:

- (i) the code of practice relating to access to premises for the purpose of seeking people's views; and
- (ii) statutory guidance will address the handling of representations made by the Citizen Voice Body regarding health and social services, ensuring the Body is kept up to date and informed of the outcome of their representations.

When taken together, these provisions set a strong framework for cooperation between the Citizen Voice Body and NHS bodies and local authorities. I expect the new Body and its partners in the NHS and local government to build on these statutory arrangements as their relationships develop.

Recommendation 18. We recommend that the Minister reconsiders the resources set aside for the establishment and operation of the Citizen Voice Body, with a view to increasing them. Any changes in this area will need to be reflected in the Regulatory Impact Assessment.

Welsh Government response: Reject

The Regulatory Impact Assessment presents a best estimate of the costs of the Bill, based upon the available evidence at this time. It is important to recognise that the Citizen Voice Body will be an independent Welsh Government Sponsored Body, with the discretion to use its funding in different ways to that envisaged in the RIA. It will, however, have to operate within its financial envelope to deliver its functions.

The funding that will be provided to the new Body compares very favourably with that available to similar bodies in the other parts of the UK that exercise broadly comparable functions. On the basis of an annual budget of £4.7 million for the new Body, this will mean a funding per head of population figure of £1.52. In 2017/18 this was £0.54 for Health Watch in England and £0.84 for the Patient and Client Council in Northern Ireland.

I am satisfied that this is a sufficient level of funding which balances competing pressures on the public purse whilst ensuring investment in strengthening the citizen voice and delivering value for money. As stated in response to some of the recommendations made by the Finance Committee, any unforeseen financial implications will be managed within the existing budget allocated for this legislation, over the budget planning period as set out in the RIA. Any additional costs beyond that will be incorporated into future budget plans.

Recommendation 19. We recommend that the Minister reports back to us on progress with work to reform the system of regulation and inspection across the health and social care services. He should do this within 12 months.

Welsh Government response: Accept

I will be content to update the Committee on this matter in the coming year.

Recommendation 20. We recommend that the Welsh Government brings forward proposals in the future to address the regulatory imbalance between clinical staff and non-clinical managers in the NHS. This is not a matter for this Bill.

Welsh Government response: Reject

I agree with the Committee view this is not a matter for this Bill.

I am not proposing to address the matter in regulation. However, we are planning during 2020 to undertake a review on the appointment process, contracts and performance systems in place for NHS Executives and senior leaders. This will consider what further improvements are needed. Furthermore, we will be reviewing the 'Codes of Conduct and Accountability for NHS Boards' and the 'Code of Conduct for NHS Managers Directions', published in January 2007, to ensure they reflect the current regulatory and governance landscape. We are also engaging with NHS England on how the central database of directors it is creating will ensure that movement of individuals between the four UK countries, as well as from abroad, can be monitored and mitigated.

I am content to report back to the Committee on progress on these matters in the coming year.

Recommendation 21. We recommend that the Minister reports back to us on the work being undertaken to improve the quality of leadership and management within the health service. He should do this within 6 months.

I am content to update the Committee on the work being undertaken to improve the quality of leadership and management within the health service within the coming year.