

## **Health and Social Care (Quality and Engagement) (Wales) Bill**

### **Social Care Wales written evidence**

1. Social Care Wales welcomes the opportunity to contribute to the Health, Social Care and Sport Committee's scrutiny work on the Bill. The written evidence provided below complements our evidence session with colleagues from WLGA and ADSS on 9 October.
2. We welcome the rationale behind the Bill and support its broad principles. Our particular interest in the Bill relates to how it adds value to the social care sector, how it helps ensure a level playing field between health and social care, and how it helps take forward the integration agenda and whole-system approach as outlined in *A Healthier Wales*.
3. The Bill is significantly health-focused with the emphasis very much on improving NHS performance. As illustrated through the emphasis on person-centred care in the Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (as referred to in the Explanatory Memorandum (EM), P13), the social care sector already has a strong legislative and regulatory footing. We welcome the Bill's aims to provide some of that foundation into the health arena.
4. We understand the need to legislate in order to address the continued disparity in the rights afforded to citizens accessing health and social care services in Wales when something goes wrong with their care or treatment (EM, P25). There are also some interesting proposals for the social care sector, most notably the establishment of a Citizen Voice Body for Health and Social Care in Wales (Part 4).

### **Citizen Voice Body for Health and Social Care in Wales**

5. In principle, Social Care Wales supports a Citizen Voice Body that will help to engage with the general public, provide a solid platform for people to bring forward complaints and raise concerns, and improve engagement and consultation with citizens. It will also help take forward *A Healthier Wales* by bringing the health and social care sectors closer together via a dedicated statutory body for citizen engagement. As highlighted by the NHS Confederation, the new body has the potential to provide better assurance and the impetus for health and social care organisations to improve the way they engage with the public.
6. Of course, it should be noted that Care Inspectorate Wales (CIW) has developed effective channels for citizens to bring forward concerns about

social care settings, and it should be an ambition that such existing mechanisms are not inadvertently encumbered through the new arrangements. Developing close relationships between HIW, CIW and the new body will be important in strengthening citizen voice and empowering the end user, and there is evidence that such approaches result in better quality care with the end user at the core of inspection and review processes.

7. Ensuring that complaints to a service provider in respect of a regulated service within the meaning of the Regulation and Inspection of Social Care (Wales) Act 2016 is noted and is something that we support. Promoting the new Body and ensuring that the general public understands its role and its ability to react to complaints and concerns will be a key priority going forward.
8. At a regional and local level there are already mechanisms to engage with citizens. With well-established Commissioners, Inspectorates and the Public Services Ombudsman in place, in addition to Information, Advice and Assistance services provided by Local Authorities, it will be crucial that the different functions and responsibilities of these organisations and the new body are clearly understood and that the general public know where and how to best raise complaints and share concerns. Potential confusion for individuals and families using care and support must be addressed with clarity about the working relationships between these bodies from the outset.
9. In this context, the EM (P32) reference to children and young people already having statutory rights to assistance under the Social Services and Well-being (Wales) Act and the need to avoid duplication is welcomed. The Act has also introduced Citizens' Panels to sit alongside the Regional Partnership Boards, and these may be perceived to be part of the citizen involvement and scrutiny function already in place. Again, clarity is needed to ensure that potential issues of duplication or confusion for citizens are addressed.
10. Furthermore, the new body should also be a platform to encourage the general public to share good practice and highlight examples of excellent care. The new body should not be confined to complaints; it should raise awareness of excellence across health and social care sectors too.
11. The rationale behind abolishing the Community Health Councils (CHCs) is understood. We understand that primary legislation is required to ensure that the new body can address health and social care concerns, and that amending the health-only remit of CHCs is not possible without legislation.
12. The EM (P33) states that the Body may recruit volunteer members to assist it in the performance of its functions, outside of the public appointments process. Whilst this is welcomed, it is crucial that volunteers receive sufficient training and support from the outset, in order to fulfil their duties effectively. The new body must ensure that volunteers receive ongoing support and have

a clear understanding of their role, expectations, and how to access training and support.

13. The EM (P33) also confirms that the Body will be a Welsh Government Sponsored Body, following the Social Care Wales model. We welcome this and becoming a sponsored body rather than part of the NHS will help ensure its independence and its legitimacy within the social care sector. As highlighted by BASW Cymru, it is crucial that the ability of current CHCs to scrutinise and challenge is not diluted in legislation.
  
14. The EM (P29) refers to a “widespread agreement as to the value and necessity of both (1) strengthening the citizen voice in modern social services and health care systems; and (2) closer integration of the two systems”. The evidence behind this statement is unclear and whilst both feature as recommendations in the Parliamentary Review, the claim regarding “widespread agreement” appears unsubstantiated. No evidence is provided that demonstrates significant weaknesses in the social care environment. Since Sustainable Social Services in 2011, the social care sector has been building a system around the citizen with numerous approaches and methodologies locally and nationally. These systems have been reinforced through the application of two major Acts of the National Assembly.
  
15. There is a danger that in identifying a weakness in existing health systems, and seeking to meet the aspirations of greater integration, an assumption is made that existing social care provision in citizen engagement is not sufficient. The case remains to be made for a new structural creation within a social care environment that has a legal complaints process, local accountability through local authority elected members, two regulators and a legal framework that requires the sector to engage meaningfully with citizens. There may be solid evidence for such a case, but it is important that integration is not seen simply as decisions taken to tackle issues in health automatically lead to the social care sector following or having additional requirements. It is also important that the establishment of a new body considers the engagement approaches already in place by the Regional Partnership Boards, examples where social care and health are already working together.

#### Role of and consistency between Inspectorates

16. One concern is how the Bill helps to achieve parity between Healthcare Inspectorate Wales (HIW) and Care Inspectorate Wales (CIW). By not addressing the legal and regulatory framework of HIW, the Bill may be a missed opportunity to examine and strengthen these functions (as recommended in the 2014 Marks Review of the work of HIW).

17. The distinction between regulation and inspection between the two sectors is becoming increasingly unclear, as the work of the sectors becomes ever closer and more integrated. The Bill appears to offer no progress in reducing the legal and resource gap between HIW and CIW, leaving a critical impediment to a shared approach across the health and social care sectors.
18. The Citizen Voice Body will not have the power of inspection as these functions should rest with HIW and CIW (EM, P35). We would suggest that Welsh Government revisits this decision. There is evidence that enhancing the capacity of citizens to participate in regulatory processes can help to overcome two common failures in regulation:
- The problem of ‘capture’, either through provider or through ‘situational’ capture. Provider capture is where the power in the relationship is tilted in favour of the provider rather than the inspector. Situational capture happens if inspectors feel they cannot recommend the closure of consistently poorly-performing providers because of a shortage of beds in the geographical area<sup>1</sup>.
  - The problems of gaming and ritual compliance, where providers find ways of meeting specific regulatory standards at the expense of delivering better outcomes for the people who use their services.
19. Research in regulation highlights the potential of the enhanced role of citizens in regulation to overcome both these issues<sup>2 3</sup>. In parallel, contemporary discussions about regulation stress the importance of having approaches to quality which are multi-layered and include multiple stakeholders<sup>4</sup>. One tool for this is to include inspection powers for citizens. We would therefore suggest that Welsh Government uses inspection by citizens to introduce checks and balances into the system to support and strengthen the regulatory system.

#### Duty of Candour; Duty of Quality

20. These duties are welcomed and should help improve the quality of NHS services whilst strengthening transparency and accountability. We agree with the NHS Confederation assessment that if we are to ensure that we put the needs of people at the centre of our services, then a duty of quality is fundamental and integral.

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<sup>1</sup> Makkai, T. & Braithwaite, J. 1992. In and out of the Revolving Door: Making Sense of Regulatory Capture. *Journal of Public Policy*, 12, 61-78.

<sup>2</sup> Schwarcz, D. 2013. Preventing Capture Through Consumer Empowerment Programs: Some Evidence from Insurance Regulation. *In: CARPENTER, D. & MOSS, D. A. (eds.) Preventing Regulatory Capture*. Cambridge University Press.

<sup>3</sup> Braithwaite, J., Makkai, T. & Braithwaite, V. A. 2007. *Regulating aged care: Ritualism and the new pyramid*, Cheltenham; Northampton, MA, Edward Elgar Publishing.

<sup>4</sup> Trigg L. *Improving the quality of residential care for older people: a study of government approaches in England and Australia*. London: Social Policy, London School of Economics and Political Science; 2018.

21. The focus on reframing and broadening the current duty of quality to ensure quality becomes a system-wide way of working and that focus is placed on outcomes is supported and reflects our approach. However, establishing common quality standards and goals across health and social care must consider the range of different quality and performance requirements currently set by Welsh Government, Inspectorates, and individual organisations.
22. The EM (P17) refers to a duty of candour that already exists for social care providers and responsible individuals of regulated services courtesy of the 2017 Regulations, and this is welcomed. We also welcome the recognition that there is an existing duty requiring the providers of social care to be open and honest (EM, P23). We have a professional duty of candour that applies to regulated approaches and supports the move towards a fully regulated workforce in social care<sup>5</sup>. It is hoped that the Bill will help embed a similar duty in NHS working practices.
23. The EM (P22) also details the reporting requirements for NHS bodies around the duty of candour. Any reporting should consider the impact on NHS bodies and ensure that the duty retains its focus on the individual/end user, rather than the reporting requirements.
24. The EM (P16) also refers to the reporting requirement that will require the Welsh Ministers and NHS bodies to assess the improvement in outcomes achieved during the reporting year. With a wide range of reporting requirements already in place by relevant public sector organisations, it is important that any new requirements complement existing reporting arrangements and timelines.

#### Social Care Wales

25. We welcome the EM references to Social Care Wales. We confirm our support to work with the new Body (P30) and help raise awareness and make the connections with individual citizens and demographic groups, particularly when a complaint is made regarding a e.g. care home, adoption service, or a domiciliary support service (P32). We are also happy to see reference to our cost estimation for bespoke training for advocates (P140).

#### Conclusion

26. We hope that the Committee finds these comments helpful, and we look forward to discussing these issues in further detail with partners at the oral evidence session in October.

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<sup>5</sup> [https://socialcare.wales/cms\\_assets/file-uploads/SCW-DutyofCandour-ENG-V01.pdf](https://socialcare.wales/cms_assets/file-uploads/SCW-DutyofCandour-ENG-V01.pdf)