Comisiynydd Pobl Hŷn Cymru
Older People's Commissioner for Wales

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

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Rydym yn croesawu galwadau yn Gymraeg

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Dear Dai,

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

Thank you for the opportunity to respond to your consultation on the Health and Social Care (Quality and Engagement) (Wales) Bill.

Citizen Voice Body

Health and social care

Many older people using both health and social care services face significant barriers to articulating their concerns, and ensuring their voices are heard by service providers; some may need assistance to make decisions that they are comfortable with or raise concerns where necessary. When there is harm, older people need to feel that the concerns they raise are valid, will be taken seriously and will be responded to effectively.

I am supportive of the proposal to create a new national body that will be able to exercise its functions across health and social care, including on service change. This is reflective of the drive towards closer integration and would better reflect the fluid nature in which older people experience health and care services.

When older people and their families contact my casework team, they describe the challenges they face in resolving issues and making complaints about both health and social care services. Issues frequently arise when transitioning between services, such as when being discharged from hospital, and when things do go

wrong, there is often insufficient clarity around who is responsible and who older people should complain to, especially for self-funders in care homes.

I therefore see the potential for a new 'citizen voice body' to respond to the needs of older people across both sectors, provide support throughout a complaint, represent the views of older people and use their experiences to drive improvement.

However, it should be recognised that extending this remit into social care, whilst welcome, would be a large undertaking. The social care sector is broad and the provision of care, its interaction with health and the way it is commissioned can be complex.

It is essential that the proposed new Citizen Voice Body has sufficient resources to develop its functions and to operate smoothly across both sectors, and co-operation and support from health and care bodies to enable the new body to carry out its activities.

It will be important that the role of the new body is clearly set out and communicated to the public, and as part of this I would suggest reviewing what it is called, specifically referencing that it is a body for health and care.

Right of Access / 'Inspection' function

The creation of the new body proposed in the Bill would result in the abolition of Community Health Councils (CHCs), and I am concerned over the loss of the right of access / 'inspection' function currently that is currently held by CHCs. It is my view that this function of the CHCs can be flexible, responsive and act as an 'early warning system' where concerns may be identified before an inspection by Healthcare Inspectorate Wales (HIW), alongside providing invaluable 'lay' insight.

If this function is not going to be retained by the new body, it is essential that lay assessors continue to feature prominently in the work of HIW. Furthermore, to ensure a consistent approach to inspection processes across health and social care, lay assessors should also feature within the inspections of Care Inspectorate Wales (CIW).

In light of growing recognition that individuals use and depend on health and social care services in an integrated and fluid manner, and the creation of a new 'citizen voice body', I believe it is now the right time to consider whether HIW and CIW should continue as separate bodies, or whether it is more appropriate to create an independent, and integrated health and care inspectorate.

Duty to supply information

The Bill proposes that local authorities and NHS bodies must supply the Citizen Voice Body with information that it reasonably requests for the purposes of carrying out its functions.

However, given the nature of social care provision and the existence of 'self-funding' individuals (individuals living in care homes, for example), there may be instances where an individual is in receipt of social care from a private provider without the involvement of a local authority.

I am therefore concerned that there would be a gap in the ability of the new body to request information, in cases where they are seeking to support an individual who is self-funding social care from a private provider.

Local representation

I understand that the new body will be established as a national body with a 'board' and staff, and that the Bill allows for the creation of committees. When the structure of the new body is developed, it is essential that effective local and regional functions are established, and that there is an efficient method to gather local and regional experiences and represent them at a national level.

Duty of Quality

The introduction of a Duty of Quality should encourage a broad, system wide focus on improving the quality of health.

I welcome the proposal to introduce a requirement for Welsh Ministers and NHS bodies to report annually on the steps they have taken to improve quality, which I hope will ensure that the focus of reporting is not on processes, but on assessing the extent of any improvement in outcomes.

Health boards need to have an accurate picture of the quality of care being provided, both directly and through commissioning and contracting arrangements, and have in place timely and effective mechanisms to identify poor care and manage risk and rectify things should they go wrong.

I recognise that questions have been about whether primary legislation is needed. However, the critical factor for me is how, in an integrated health and social care environment, the Duty of Quality will interact with the understanding of quality across social care. For example, this duty must include an understanding by an NHS body of the quality of services commissioned by health from the social care sector, such as 'nursing' homes.

Our health and social care systems need to be working towards a shared view of quality that also reflects the views of the people of Wales. Further detail is therefore needed on how this new duty will interact with existing duties and standards in social care.

Duty of Candour

I support the proposal to introduce a Duty of Candour at an organisational level within the NHS and the alignment this will create with the existing duty in social care. However, I do recognise that the ongoing need for personal and professional responsibility, and a continued focus on positive cultural change, will not be diminished by this duty.

It is not just the individual who is affected by a 'harm' within the context of the Duty of Candour, their family and friends may also feel the impact of the event and its aftermath, as may staff members. Older people and their families tell me that important factors when they have experienced harm through the provision of health are:

- an acknowledgement of that harm by the provider;
- a sincere apology; and
- clear and tangible action to ensure others do not experience the same harm.

They also need to have their issues dealt with in a timely, genuine and personalised manner.

The key to success will therefore be in the sensitive delivery of the Duty, the training and support that is available to NHS staff to enact the new candour process (in particular when relating to an apology) and the extent to which NHS bodies stop, reflect and learn from events.

The Bill sets out that the Duty of Candour will apply where: a 'service user' has suffered an adverse outcome; where the provision of health care may have been a factor; and where the unexpected or unintended harm is more than minimal.

The definition of 'harm which is more than minimal' will also be critical and it will be important for the Welsh Government to engage with older people and their families and/or carers in a meaningful way as this definition is developed.

Conclusion

I recognise that a number of my comments may not be addressed in primary legislation, but through subordinate legislation. However, the intent behind this legislation will not be achieved unless:

- the view of quality is shared across health and social care;
- the candour process (and associated apology) is delivered sensitively;
- older people, their families and carers are involved in the development of the definition of 'harm which is more than minimal';
- the new 'citizen voice body' is given sufficient resource and support to operate across both health and social care;
- the input of 'lay assessors' is maintained; and
- the future structure of health and social care inspection is addressed.

I hope that these comments are helpful. If I can be of any further assistance, please do not hesitate to contact my office on 03442 640 670.

Yours sincerely,

Heléna Herklots

Heléna Herklots CBE
Older People's Commissioner for Wales