



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

Chartered Society of Physiotherapy  
Consultation response

To:

Health, Social Care and Sport Committee  
National Assembly for Wales  
Pierhead Street  
Cardiff  
CF99 1NA

By email: [SeneddHealth@assembly.wales](mailto:SeneddHealth@assembly.wales)

The Chartered Society of Physiotherapy is the professional, educational and trade union body for the UK's 58,000 chartered physiotherapists, physiotherapy students and support workers. The CSP represents 2,400 members in Wales.

Physiotherapists use manual therapy, therapeutic exercise and rehabilitative approaches to restore, maintain and improve movement and activity. Physiotherapists and their teams work with a wide range of population groups (including children, those of working age and older people); across sectors; and in hospital, community and workplace settings. Physiotherapists facilitate early intervention, support self management and promote independence, helping to prevent episodes of ill health and disability developing into chronic conditions.

Physiotherapy delivers high quality, innovative services in accessible, responsive and timely ways. It is founded on an increasingly strong evidence base, an evolving scope of practice, clinical leadership and person centred professionalism. As an adaptable, engaged workforce, physiotherapy teams have the skills to address healthcare priorities, meet individual needs and to develop and deliver services in clinically and cost effective ways. With a focus on quality and productivity, physiotherapy puts meeting patient and population needs, optimising clinical outcomes and the patient experience at the centre of all it does.

We welcome the opportunity to provide evidence to the Committee as it considers this Bill, and have addressed our comments under the terms of reference provided by the committee.

### **Summary of CSP recommendations**

- We agree with the general principles of the Bill.
- We believe the duty of candour should be applied across all health and social care services
- Resources should be committed to ensure the duty of candour is properly promoted to patients and the workforce, this includes training and awareness resources.

#### **1. The general principles of the Health and Social Care (Quality and Engagement) (Wales) Bill**

1.1 We agree with the general principles of the Bill, and particularly focus our response on Part 3, the duty of candour provisions in the Bill.

1.2 We agree to the principles outlined in the explanatory notes, including:

- placing quality considerations at the heart of all the NHS in Wales,
- strengthening the voice of citizens across health and social services,
- placing a duty of candour on NHS organisations, and
- strengthening the governance arrangements for NHS Trusts;

1.3 The Bill will trigger a statutory requirement for organisational candour disclosure for cases where a service user has ‘suffered an adverse outcome’ and the ‘provision of healthcare was, or may have, been a factor in the service user suffering that outcome’. We support the criteria being this wide and including cases where the service user ‘could experience’ an adverse outcome, the intention of which would be to cover for near miss situations.

1.4 Part 3 of the Bill, under s3(1), places the duty of NHS organisations and s11(3) defines this further as (a) a Local Health Board; (b) an NHS trust; (c) a Special Health Authority; (d) a primary care provider. This is a clear definition within the legislation of the NHS organisations that are covered by the duty.

1.5 Section 11(6) applies to the independent sector when services are provided ‘by a person other than an NHS body (the “provider”), on behalf of an NHS body’, and applies the duty to the independent sector when contracted by the NHS. We are unclear whether it is an unintended consequence or principle of the Bill not to apply the duty of candour to the independent sector providing healthcare outside of the NHS. Our view is that the duty should apply across all sectors delivering healthcare, and for the benefit of all patients regardless of the sector.

1.6 While we welcome the duty of candour provisions in this Bill, we are concerned that the proposal may be different to candour reporting in social care. While the Bill is titled the ‘Health and Social Care (Quality and Engagement) (Wales) Bill, it seems that Part 3 only applies to healthcare. We believe that the duty should apply in principle across Health and Social Care, and caution must be taken not to discriminate against the levels of care a particular patient group can reasonably expect to receive across health and social care. ALL patients, regardless of age or care setting should expect the same levels of candour disclosure regardless of the setting.

1.7 Clarity should be provided on how this legislation works with the Social Services and Wellbeing Act (Wales) 2014, particularly around the duty of candour and what settings the duty will apply to.

## **2. Any potential barriers to the implementation of the provisions and whether the Bill takes account of them**

2.1 The main barrier to implementation is for the potentially differing provisions between sectors and the possible confusion this could cause in practice. We are concerned that patients and the workforce will face different reporting thresholds for candour reporting between healthcare and adult social care. This would be a barrier to effective implementation and use by service users.

2.2 We believe that the healthcare definitions of harm can be transferrable to social care settings and there should be a common set of definitions and reporting duties for candour.

## **3. Any unintended consequences arising from the Bill**

- 3.1 An unintended consequence of the Bill may be the lack of parity of esteem between health and social care. The Regulations may disproportionately affect any person receiving social care due to the disparity between candour disclosure levels between health and social care. In the context of protected characteristics, there may be equality impacts on older people and those with physical and mental health conditions, resulting in defined disability, receiving social care.
- 3.2 A different duty in Health to Social care may cause some confusion to the public. They may think the same duty and procedures apply to all settings, and the impact of this lack of clarity could result in slower resolution of complaints in social care settings.
- 3.2 It may be unintended that the duty of candour doesn't apply to the independent sector acting outside the NHS, if not, we would consider it best practice that they are included in the duty.

#### **4. Any the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)**

- 3.1 We note the financial implications of the Bill as a whole, and our comments are focused on Part 3 of the Bill.
- 3.2 We believe financial resources will be needed for delivery of an effective duty of candour system. Resource will be needed to make service users and family members aware of the duty of candour and how they can use it. Resource is also needed for training and promotion within the workforce.

#### **5. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)**

- 5.1 We support the principle that the Minister must provide regulations containing the procedure for the duty of candour. We would welcome being consulted on the regulations under section 4 and guidance issued under section 10.

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For further information on anything contained in this response or any aspect of the Chartered Society of Physiotherapy's work, please contact:

Public Affairs and Policy Manger Wales.

Unite House, 1 Cathedral Road  
Cardiff  
CF11 9SD  
Website: [www.csp.org.uk](http://www.csp.org.uk)