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Health and Social Care Committee
National Assembly for Wales
Cardiff Bay
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Dear Chair of Committee and Health and Social Care Committee Members

Consultation on the Social Services and Well-being (Wales) Bill – Response from the Chartered Society of Physiotherapy (CSP) in Wales

Introduction

The Chartered Society of Physiotherapy (CSP) in Wales is pleased to provide a response to this committee led consultation and is also pleased to be playing an active part in the Social Services and Well-being Bill Advisory Group. Whilst physiotherapy staff in the main are not directly employed by social services, increasingly they are working as part of inter-agency teams planning and delivering services across health and social care.

As more services are delivered at home/closer to home, integration of health and social care will become increasingly important and physiotherapy services will be integral to keeping people independent and in their own homes for as long as possible. It will also mean providing ever more complex care for children, young people and adults in their communities.

The CSP welcomes much of the Bill's content, in particular the focus on well-being with a strong definition encapsulating work, play and leisure. The CSP also welcomes the intention of the Bill to ensure well-being is enhanced and services respond to the developing needs of individuals but also the needs of carers.

The CSP welcomes the Bill's focus on prevention and applauds the more 'preventative' approach being taken by Government to the delivery of social care.

Consultation Questions

1. Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.

The CSP considers there is a need for a Bill to provide a single Act for Wales that simplifies current legislation and provides clarity on the duties and functions of local authorities and their partners in improving the well-being of people who need care and support and carers who need support.

The physiotherapy profession does have concerns around a few areas which we urge the Committee to seek clarification over, and where necessary call for amendments.

Clarification is required with regard to repeal of existing legislation and assurance is needed that duties and functions contained in current legislation will be replicated within the Social Services and Well-being (Wales) Bill. Examples include:

- 1) Chronically Sick and Disabled Person's Act 1970 (particularly regarding the duty to assess the needs of a disabled person and a duty to provide equipment and adaptations)
- 2) Definition of a disabled child – there are some concerns that the Bill, as currently worded, could potentially be seen to dilute the rights of disabled children to assessment and services.
- 3) Social Care Charges (Wales) Measure. Part 5 of the Bill on charging and financial assessment does not state explicitly that the £50.00 cap on charges for domiciliary care and support will be retained.

2. Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum? Please explain your answer.

The CSP considers the Bill is positive with regard to its stated objectives and fully supports the principle of a person centred approach. There remains, however, an over-riding interpretation that the Bill presents a service driven model that matches services to people rather than an 'individual outcome' focused model that looks at what people need and develops solutions to meet those needs. A tension exists between working with someone to agree the best way to support them, meet their needs and achieve their outcomes and determining whether someone is entitled (eligible) to receive services.

In order to provide people with 'voice and control', the Bill must include measures that require local authorities to actively involve people in assessment, planning and provision. This should not just be restricted to the use of direct payments. The CSP believes this will need to be clarified on the face of the Bill.

The CSP remains concerned about eligibility. Whilst welcoming a national eligibility framework in principle, the Society would welcome more detail on the Welsh Government's intentions, as without this, it is difficult to know how the Bill will work in practice. The CSP supports universal access to preventative initiatives that includes reablement, falls prevention, and provision of aids, appliances and adaptations free of charge before eligibility criteria are applied. There remains a concern about how the Bill addresses the needs of people with low to moderate needs that might not be eligible for

support or who do not pass the financial assessment but choose not to self-fund. What is the local authorities' responsibility in these cases?

Clarification is required in relation to charging with a concern around the potential charge for information and advice. This may have unintentional consequences which could undermine the Government's stated objectives. In addition, clarification is required around how assessment of need, application of eligibility and financial assessment will work in relation to providing preventative services, promoting well-being and managing needs. There is a lack of clarity about who would have access to preventative services and around the difference between when a person requires on-going care and support needs but may need short-term targeted intervention to prevent them needing care and support.

The CSP welcomes the intentions of the Bill in relation to well-being which reflects the idea of a more 'individual outcome' focused model.

3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.

The CSP considers that there are issues around charging for information and advice and for preventative services that will need to be addressed. Sharper definitions will need to be provided and clarity around what is included in each. Facing charges for such services may deter people from accessing them and could result in them accessing care and support services far later than appropriate with a potential greater expense. Currently, the profession fails to see how the Bill will incentivise early intervention. The profession supports the model proposed by John Bolton¹ with universal services, targeted interventions for lower level needs and eligible services for those who have on-going needs although this will have financial implications which will need to be met by Welsh Government.

The CSP believes it is imperative that community based intermediate care services, which are currently provided by NHS services must remain free at the point of need, funded by general taxation. These services must be included in the regulations as care which must always be provided free. If these services are transferred to be the responsibility of local government they must not become subject to means testing. More clarity is needed on the role of Local Health Boards in providing preventative services.

The profession welcomes the intention in the Bill for greater collaboration between health and social care but requires more detail from the Welsh Government about their intentions and how they envisage it working in practice. There remains a tension around charging for services in social care and those services provided by health being free at the point of delivery. Where health and social care integrate, these tensions will need to be addressed. The CSP also notes the importance of housing departments and would expect them to play a part in partnership arrangements. The Bill does not elaborate on specific geographical areas for partnerships. The profession would welcome clarity in this area.

The CSP has some serious concerns about the Regulatory Impact Assessment. (See also response to Q7b).

¹ SSIA (2011) Better Support at Lower Cost www.ssiacymru.org.uk/olderpeople

4. How will the Bill change existing social services provision and what impact will such changes have, if any?

The Bill has the potential to change the way social services are provided, particularly if more focus is placed on preventative 'enabling' services which reduce the need for care and support.

However, it is not clear what is meant by 'preventative' services and the CSP is concerned that as the Bill stands currently, 'preventative' services is open to misinterpretation. The profession considers that preventative services must include access to aids, adaptations and equipment and secondary prevention services, such as falls prevention. At present, this is not clear on the face of the Bill.

The Bill contains a list of purposes for services which are not person centred. The CSP wishes to see reference to 'enablement' on the face of the Bill to ensure social services have a duty to provide reablement services.

5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

The CSP considers cost will be a barrier to implementing a Social Services and Well-being (Wales) Bill that meets all aspirations. The profession has concerns about the costing provided in the Explanatory Memorandum, in particular costs for training being restricted to staff in social services. With an intention in the Bill to facilitate closer working between health and social care it will be essential for joint training to be provided across the sectors.

6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.

The CSP does not consider there is an adequate balance between the powers on the face of the Bill and details to be left to regulations. The profession is concerned that much of the detail on regulations is not publicly available and the CSP does not consider that Assembly Members should vote on the Bill's 'General Principles' at the end of stage one of the passage of the Bill without sight of the draft regulations.

Definitions, in particular, need to be tightened up and included on the face of the Bill. What exactly is 'a care and support' need? What is covered in the term 'preventative services'? What exactly is included within 'information and advice'?

The CSP considers more is needed on the face of the Bill to demonstrate that it is 'outcome focused' not service driven. To that end, the profession supports the suggestion by the Law Commission² that the statute should set out a checklist of factors that must be considered before a decision is made in relation to an individual's needs.

The Society notes that in some places where regulations are to be applied the Bill states services 'may' rather than 'must'. This needs to be strengthened as 'may' allows that the service could not be provided, which will potentially lead to a postcode lottery across Wales.

² Adult Social Care, Law Commission, 2011

Powers to make subordinate legislation

7a) What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

In answering this question, you may wish to consider Chapter 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

The profession is content that there will be areas that are appropriate for subordinate legislation; however it is difficult to be wholly comfortable about what appears on the face of the Bill prior to sight of any statutory instruments such as regulations, orders and directions. As highlighted earlier, the profession would expect these to be published prior to Assembly Members being required to vote on the Bill's general principles at the end of stage one.

The CSP considers there will need to be a review of some of the subordinate legislation that is to be left to negative procedure. Particularly in relation to financial matters, there will need to be an appropriate level of scrutiny of these measures.

Financial Implications

7b) What are your views on the financial implications of the Bill?

In answering this question you may wish to consider Chapter 8 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

The CSP has serious concerns about the Regulatory Impact Assessment and considers that costs will be much greater than that predicted. As already mentioned, the cost of training should extend to the wider social care workforce and partners across other sectors, not just social workers.

There are also likely to be other costs such as for the establishment of new safeguarding boards and for operating 'partnership boards' between health and social care.

Other comments

8. Are there any other comments you wish to make about specific sections of the Bill?

The CSP notes there is no detail about paying for care in the Bill even though the Dilnot Commission report *Fairer Care Funding* was published back in July 2011. Welsh Government decisions on funding/paying for care will help in the overall assessment of whether the social care and support system is adequately resourced presently. Further detail is urgently required on this.

Concluding comments

The CSP has been pleased to contribute to this consultation and looks forward to continuing to play an active part in the next stages of the legislative scrutiny. If you have any questions about this response please do not hesitate to contact the CSP.

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In association with:
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About the CSP and Physiotherapy

The Chartered Society of Physiotherapy is the professional, educational and trade union body for the UK's 51,500 chartered physiotherapists, physiotherapy students and support workers. The CSP represents 2,000 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.