

Social Services and Well-being (Wales) Bill Consultation

Introduction

- The Welsh NHS Confederation, on behalf of its members, welcomes the opportunity to respond to the Health and Social Care Committee's call for evidence on the Social Services and Well-being (Wales) Bill.
- By representing the seven Health Boards and three NHS Trusts in Wales, the Welsh NHS Confederation brings together the full range of organisations that make up the modern NHS in Wales. Our aim is to reflect the different perspectives as well as the common views of the organisations we represent.
- The Welsh NHS Confederation acts as an independent voice in the drive for better health and healthcare through our policy and influencing work and by supporting members with events, information and training. Member involvement underpins all of our various activities and we are pleased to have all Local Health Boards and NHS Trusts in Wales as our members.
- The Welsh NHS Confederation and its members are committed to working with the Welsh Government and its partners to ensure there is a strong NHS which delivers high quality services to the people of Wales.

Overview

- The Welsh NHS Confederation, on behalf of its members, welcomes the publication of the Social Services and Well-being (Wales) Bill and the opportunity of increased alignment of national strategy and policy aimed at supporting seamless integrated provision of assessment and delivery of care.
- The Welsh NHS Confederation and its members welcome a number of the Bill's requirements:
 - The duty to provide or arrange for preventative services. This complements the strengthening role of Public Health and establishes a robust platform for joint working.
 - The intention to drive person centred services and give citizens real voice and control. People can only be supported in managing their own health conditions in the context of accessing person centred services.
 - The promotion of integration, as this underpins locality working arrangements underway in a number of Health Boards.
 - Partnership with third sector services, as partnership working is a growing area which provides exciting opportunities to provide community support in a more flexible, creative way.
 - The clear recognition of the role and value of carers in delivering effective community care.

Consultation Questions

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 principles behind the Bill are to give the people who use social services, including carers, a strong voice and real control over the services they may receive by focusing on the personal outcomes that people wish to achieve. It will also enable earlier intervention and prevention for people who need care and support in order to improve their well-being, and for their carers.
- The current legislation in relation to local authorities' duties and functions has been built up over time through a range of legislation. Whilst partnership working and to some extent integration of public sector services should not require legislation in order to protect the most vulnerable and to improve the well-being of people who are in need of care and support, it can be complex



and challenging for organisations working in partnership to combine responsibilities and deliver cohesive integrated services.

- In addition, whilst the importance of improving well-being is increasingly being recognised by both local authorities and partners, it is still a relatively new concept in terms of service priority and delivery. We therefore welcome the intention to provide for a single Act for Wales that brings together local authorities' duties and frames partnership responsibilities in relation to improving well-being of people who need care and support and carers who need support.
- We do believe that it would be helpful if some aspects were considered in greater detail in order to ensure reliable interpretation.
- The fact that recognition, support, voice and equity for carers are central to the proposed Bill is encouraging. It has been argued consistently that carers need to be identified at an early stage in their caring journey so that they are better equipped to deal with the complexities and difficulties they are likely to face. Services need to be reconfigured towards earlier preventative support so that carers, and the people they look after, are able to maintain their health, well-being and sustain lives of their own.

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 Bill, as drafted, does address the objectives of addressing well-being, prevention and early intervention, promoting a stronger voice and control for people in need, and simplifying and clarifying duties alongside the development of nationally consistent systems.
- However, given that there is still much detailed work to be done through the drafting of Regulations, including the development of the national eligibility framework, the outcomes framework, Codes of Practice etc. it is difficult to assess at this stage whether the Bill will deliver its intended objectives.
- Whilst legislation can provide the statutory framework for further integration, it must be recognised that success will nevertheless depend on local leadership and drive to deliver, as well as the scale of the changes required and the complexities of addressing barriers, including financial risks.
- The development of integrated services does not necessarily depend on the existence of formal partnerships and pooled budgets. Rather they are dependent on a shared vision, agreed priorities, trust, and open and accountable partnership working. Formally imposed partnerships could undermine locally developed joint solutions and meeting the needs of local citizens through effective collaboration with the right partners. It is important to remember that pooled budgets and formal partnerships are tools to support the effective governance of joint working, rather than the route to delivering better integrated services.
- All public services in Wales are facing a number of challenges and going forward it will be essential for all public services to work together effectively. The delivery of effective integrated services and collaborative arrangements will be key to ensuring our public services are fit for purpose in the future. Although integration is particularly important for health and social care, this is not exclusively the case, and wider partners and other local authority services, such as housing and education, will also have a key role to play.
- Whilst health promotion and ill-health prevention are quite rightly a key focus for the NHS in Wales, local government also has a critical role in supporting and sustaining a healthy population and preventing escalating ill-health. Going forward, it will be crucial for local authority colleagues to recognise this role they play whilst also responding to all levels of need with their communities.
- In addition, the definition of 'well-being' for example is extremely broad and with regard to the duty to maintain and enhance the well-being of people in need, it will not be possible for any one agency alone, either in the statutory or third sector to achieve this. Contributions from



many organisations as well as communities themselves will be needed, which is not currently reflected in the drafting of the Bill.

- The Welsh NHS Confederation and its members welcome the focus on empowering people that is highlighted in the Bill, as being enabled to have a stronger voice and greater control over their lives are core factors in improving well-being in everyone.
- It is important to note the significant contribution of providing independent advocacy in improving well-being and control. Although this is mentioned in relation to some aspects of the provision (i.e. in reference to complaints), this could be considerably strengthened as part of core service provision.
- In relation to the sections of the Bill giving Ministers powers to make regulations specifying partnership and integration arrangements (sections 147-150), we would welcome further clarity as to under what circumstances such action might be taken and to which service areas they might relate.
- In addition, it must be recognised that there is a need to avoid a nationally prescribed approach and that there will still be flexibility to meet local needs that will differ across Wales. From an LHB perspective, a diversity of local approaches amongst many local authority partners is not without challenge. As variations in approach may indeed be helpful at a local level, we do not think there should be conformity across the range of delivery methods. We do however think that common principles, as adopted through the Gwent Frailty Programme for example, would help.
- It is also important to recognise that partnership working in general is currently in a phase of change and consolidation. The Bill provides a useful direction for the unique contribution of social services for meeting the needs of vulnerable individuals, but also for the wider well-being of the population. However, it would be useful to be more explicit in defining social services' leadership role and accountability in relation to well-being, considering the contribution of other local authority services, and the wider health and third sector. For example, this could be described in the context of the remit of Local Service Boards, and the significant opportunities for more joint planning and commissioning which will exist as LSBs mature.
- There are many lessons which can be learned from innovative and sustainable models of social services provision. This is especially important for meeting the wider well-being needs of the population in general and vulnerable groups in particular, such as individuals whose needs don't meet eligibility criteria for accessing core services. There are numerous examples of such services delivered across Wales, often in partnership with third sector providers, linking with areas/themes such as ageing well, lifelong learning, volunteering, supporting access to the labour market, and social enterprises. It must be noted that social services would need to strengthen links with other local authority departments in order to access and maximise the available expertise and opportunities, such as European funding, which are available across the whole system.
- Throughout the Bill, but particularly in relation to Part 6, consideration needs to be given to linkages and alignment with other legal frameworks and legislation. The development of plans for 'Looked After Children', for example, should be viewed in collaboration with the Mental Health (Wales) Measure which has a requirement for children and adults who access secondary care to have a Care and Treatment Plan. In addition, there is also a need to ensure alignment with the proposed Sustainable Development Bill with regard to its proposals for LSBs.
- In relation to Part 7 of the Bill (Safeguarding), there is welcome legislation for the protection of vulnerable adults. More generally, however, the development within a legal framework of the National Independent Safeguarding Board that includes a remit to 'advise Ministers on the adequacy and effectiveness of safeguarding arrangements' does call into question the role that regulators/inspectors such as HIW and CSSIW will have in relation to review and assurance.
- Also in relation to Part 7 (Safeguarding and Protection Boards), the Bill does not give sufficient detail to deal adequately with governance mechanisms and the Regulations may provide this



level of detail. It is however important to recognise that the pace with which the current safeguarding arrangements are being steered to change in line with the general principles of the Bill does incur some risk regarding effective governance and scrutiny arrangements.

- The proposed National Outcomes Framework is a key provision in the Bill, and has the potential not only to provide robust assessment of the effectiveness of the provisions within the Bill, but also has the potential to be a powerful driver in its own right. Of particular importance is the opportunity for the development and implementation of Performance Indicators shared by all the partners who have a contribution to make to population well-being, along with social services providers themselves. Shared accountability for the achievement of shared Performance Indicators will be a powerful catalyst to partnership working.

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 Welsh NHS Confederation and its Members welcome the intention to deliver sustainable social services. In addition, we agree with the general proposals to base the legislation on the concept of promoting the well-being of people in need which builds on the work already underway.
- We believe that consideration should also be given to a requirement for delivering reliable services. In rural areas there are ongoing difficulties in recruiting care staff to private agencies as well as social care. This continues to impact on the viability of people remaining in their own homes. A requirement to confirm reliable access to services may lead to more creative and proactive solutions.
- Delivering preventative services in the context of eligibility and means testing may be challenging and we believe consideration may need to be given to the infrastructure for this area of responsibility. Free preventative services may lead to greater savings in the delivery of care costs than a preventative service with charges, which has a more limited uptake.

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

- Given the scope of the Bill and the number of proposed changes, there will be a range of implications for social services, for example the number of people who potentially will need to be supported to improve their well-being compared with the much smaller number of people with higher levels of assessed need.
- Local authority colleagues will be able to provide a more detailed response of how the Bill will change their existing provision, the impact and how far changes will assist in sustainability. Resource implications in terms of workforce and finance will remain key factors and the Explanatory Memorandum makes it clear that it is not yet possible to fully assess all of these issues.
- There are a number of areas that are open to interpretation and may risk causing tensions in providing joint agency services. For example, there is a lack of clarity in relation to equipment provision which is currently described for social services in the Chronically Sick and Disabled Persons Act 1970. Responsibilities relating to equipment are not described explicitly in the Social Services and Well-being (Wales) Bill.
- Both access to equipment and home adaptation impact on the capacity of vulnerable adults to remain in their own homes and function independently with dignity. Should these services be restricted further than the constraints of current provision, then the health and well-being of those people needing to access this type of support risk being compromised. Hospital services have historically been used as a safety net for the frail elderly who have breakdown of social



support. As LHBs look to modernise their services and provide strengthened health and social care community services, the provision of community equipment and home adaptation is part of this network of care.

- For integrated services, even minor changes in social services eligibility criteria can have a significant impact on the balance of care available. We believe guidance regarding eligibility should be developed in partnership with the NHS to support the establishment of reciprocal/integrated community support systems.

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

- As outlined above, evidence of successful health and social care integration schemes to date shows that whilst legislation can provide the statutory framework for further integration, successful integration depends on local leadership and drive to deliver. In addition, financial, legal, governance and employment regulations can be key barriers to integration which will not be addressed by the proposed legislation.
- The additional clarity and action of simplifying and streamlining arrangements including a single set of powers will be helpful to ensure consistency and a national standard. However, national guidance and parameters must not stifle local initiatives and flexibility where appropriate but rather provide a constructive framework. The overall objective of strengthening partnership working and keeping the citizen at the centre of service delivery must guide the arrangements, keeping them less onerous and bureaucratic.
- In the current economic climate, costs continue to be a challenge. This challenge is particularly acute for the health service in Wales in the context of limited financial flexibility and when service change is required, which may require up front capital investment and double running of services.
- We also have concerns about the lack of clarity regarding some responsibilities between local authorities and their partners which is likely to generate dispute between agencies and could delay effective implementation.
- The Explanatory Memorandum gives considerable consideration to the financial implications and training requirements for social services. However, no consideration seems to have been given to the training and resources needs of the health service and other partners, and we would urge urgent consideration to be given to these areas.
- Impact assessment methodologies may be useful in informing elements of the legislation, and its implementation, going forward. This is especially true in engaging all stakeholders around the wider issues that impact on health, well-being, and equity.

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.

- Whilst recognising that flexibility and ‘future-proofing’ of the legislation is required, clearly a significant amount of detail will be defined by Regulations. This makes it difficult to analyse the practical implications of the Bill and give a clear view on its efficacy and the extent to which it will deliver the intended vision and impact.
- Clearly the successful implementation of the Bill will be heavily dependent on the drafting of the Regulations, a key element of which will be to ensure that there is rationalisation of other existing arrangements which contribute to both population health and well-being and the provision of service to those most in need, whether these are provided by social services or other service providers.
- Key to delivering the improvement and expected outcomes is the extent to which the Regulations are:
 - Clear and accessible to service users and the wider community
 - Understood and owned by social services and partners



- Clear in terms of accountability and fit with the wider strategic well-being landscape
- Building on the development of the Regulations will require continued engagement with all stakeholders, including the workforce and, first and foremost, those who need and experience services.
- We also have concerns that a significant proportion of the Regulations will be subject to the negative resolution in the National Assembly which raises concern about the amount of scrutiny and debate which will be afforded to these important pieces of secondary legislation. We believe further consideration should be given to whether the affirmative resolution would be a more appropriate mechanism to ensure there is an opportunity to enable challenge and scrutiny in any further developments to ensure the best development of the legal framework into practice.

Powers to make subordinate legislation

7. 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)?

Please see above.

Financial Implications

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

- We welcome the opportunity of the Bill to simplify the legislative and regulatory framework. However concern remains about the financial implications of the Bill on all partners and we have concerns as to whether the proposed approach will be cost neutral. Clearly the challenging financial situation across the public sector requires a clear commitment to partnership working to protect the vulnerable and those at risk to ensure the public can achieve the best value for money.
- Due to changing demographics, local evidence shows that there is increasing demand for social care services. In addition, as a result of the Bill's proposed requirements to undertake a local needs assessment, encourage integrated provision of services and provide information and advice etc., it is likely that demands for social care services will increase.
- There will be a need for a clear lead partner and recognition that it could take some time before additional costs are mitigated. Costs saved for some agencies, for example preventative measures resulting in fewer intensive services being needed, can lead to additional cost pressures on another service. Whilst recognising the importance of investment in the preventative agenda to reduce costs in targeted services, resources may need to be invested differently within and between agencies to avoid additional pressures being felt disproportionately.
- The ability to develop and provide early intervention and preventative services, in a context of increasing demand and reducing resources, provides a particular challenge. This will require political and professional leadership, at a national and local level, to divert resources from traditional health and social care services to develop new models of care.
- In relation to the integration of health and social care services, evidence from schemes already in place shows that different organisational arrangements and different approaches to commissioning, purchasing and providing services can make working together and the flexible use of resources more difficult, and can be key barriers to further integration. It seems unlikely that the Bill, as drafted, will offer any mechanisms to address these important areas of concern and we would like to see further consideration given to this area.

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