



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

### **Royal College of Nursing Wales Position Statement and Suggested Amendments**

#### **Summary**

The Royal College of Nursing is supportive of the aims of this Bill. However, we believe the Bill should be strengthened by including as part of the definition of 'quality' the need for a skilled and valued workforce.

The powers of the proposed citizen's voice body need to be strengthened to include the promotion of equality, right of access to healthcare premises and the duty of health and social care bodies to respond to representations.

#### **Part 2 - Duty of Quality – A Proposed Amendment**

To amend the duty of securing improvement in the quality of services for Health Boards, Trusts and Welsh Ministers by broadening the definition of quality as follows:

"quality" includes, but is not limited to, quality in terms of—

- (a) the effectiveness of health services,
- (b) the safety of health services, and
- (c) the experience of individuals to whom health services are provided
- (d) the employment of a workforce of suitably qualified and competent individuals, from such a range of professional disciplines as necessary, are working in such numbers as are appropriate for—**

- (i) the nature of the particular kind of health care provision,**
- (ii) the local context in which it is being provided,**
- iii) the number of patients being provided it,**
- iv) the needs of patients being provided it, and**
- (v) appropriate clinical advice.**

The Royal College of Nursing believes this fits with the ambition and policy intent of the Bill as laid out in the Explanatory Memorandum and it will significantly strengthen the duty of quality in a way that will increase the benefits and positive impact of the Bill.

## **The amendment fits with the expressed Policy Intent**

The explanatory memorandum describes (para.21) how the duty of making arrangements for improving the quality of healthcare has hitherto been interpreted narrowly by NHS Bodies and focused on the establishment of quality assurance or control mechanisms and also in monitoring the implementation of service standards. The policy objective of the Bill is for health bodies to consider how they can improve the quality of services and outcomes for patients on an ongoing basis.

Services provided to the public by health bodies are provided by the workforce. No health service can be provided without healthcare staff, whether health care support worker, doctor, nurse, pharmacist, biomedical scientist, occupational therapist or any other health care team member.

The workforce is explicitly part of the Quadruple Aim outlined by the Parliamentary Review against which health and social care should deliver. This is referenced on the first page of the explanatory memorandum: **“enrich the wellbeing, capability and engagement of the health and social care workforce”**.

The explanatory memorandum sets the Bill in the context of the core values outlined by Together for Health in 2011. One of the quoted values (para 6.) reads:

**“Investing in our staff through training and development, enabling them to influence decisions and providing them with the tools, systems and environment to work safely and effectively.”**

Health Education Improvement Wales (HEIW) has been established by the Welsh Government to have a leading role in the education, training, development, and shaping of the healthcare workforce in Wales. In partnership with Social Care Wales they are producing the first national workforce strategy for health and social care this year (2019).

The consultation document states the ambitions of this strategy:

“By 2030 we will have the right number of engaged, motivated and valued people including volunteers and carers, able to deliver flexible and agile health and social care that meets the needs of the people of Wales. Our workforce will be reflective of the population’s diversity, Welsh language and cultural identity, with the right values, behaviours, skill and confidence to deliver care and support people’s wellbeing as close to home a possible.

By 2025 we will make working in health and social care the sector of choice, through excellent people and employment offer and practices, to attract the right people into our workforce.

By 2022 we will have aligned recruitment, education, training and development of staff to our future ambition, and will have accelerated cross sector workforce intelligence, to inform scenario planning and workforce modelling to deliver our medium and long term plans”

Including workforce planning as an additional factor in the legislative definition of quality will provide an excellent foundation for the work of HEIW.

In 2016, the Assembly passed the Nurse Staffing Levels (Wales) Act. This places a general duty on health organisations to ensure sufficient nurses to provide sensitive patient care. There is also a duty to calculate the level of nursing according to a specified methodology in adult acute medical and surgical wards. Wales was the first country in the UK to adopt this statutory based approach to the provision of safe and effective patient care, which has now been followed in Scotland.

This Bill provides an ideal opportunity for the Welsh Government to progress with the principles of the Nurse Staffing Levels (Wales) Act 2016 and broaden their applicability. It is particularly relevant to Section 25D of the Act which states that the Welsh Government may **“make provision about workforce planning that Local Health Boards and NHS Trusts may undertake in order to enable them to comply with their duties under sections 25B and 25C.”**

The suggested text of this amendment is drawn from the Health and Care (Staffing) (Scotland) Act 2019. This Act in Scotland was passed by a cross party consensus in the Scottish parliament. The policy objective of the Bill was to provide a statutory basis for the provision of appropriate staffing in health and care service settings “thereby enabling safe and high quality care and improved outcomes for service users.” (Policy Memorandum)

### **The case for change**

Health bodies in Wales have not historically undertaken workforce planning as a duty. The Integrated Medium Term Plans (IMTPS) now used as an approach are still relatively new and vary considerably in quality. In March 2019 3 Health Boards were unable to submit plans at all. Although the expectations of the Welsh Government are clear in terms of content for the IMTPs (e.g. asking for the Welsh language needs of the population or the needs of the care home sector to be taken into account), Health Boards appear struggle to achieve this. Demographic data and analysis do not seem to be deployed in the planning process. This means that the national education commissioning process of HEIW has limited evidence on which to base its decision-making on. What skills are required? What courses and how many places should be commissioned? The work of HEIW would clearly benefit from an increased emphasis on workforce planning at a Health Board level.

Betsi Cadwaladr Health Board is not unusual in that the Board received their first workforce strategy in November 2018. Examination of all Health Board agendas for 2018 and 2019 reveals no discussion at Board level of workforce recruitment or retention strategies. As a result of the Nurse Staffing (Levels) Wales Act 2016 papers on compliance with this legislation are regularly presented to Boards but it is notable that these papers rarely reference any wider recruitment or retention plans. High vacancy levels are instead presented as an unalterable fact.

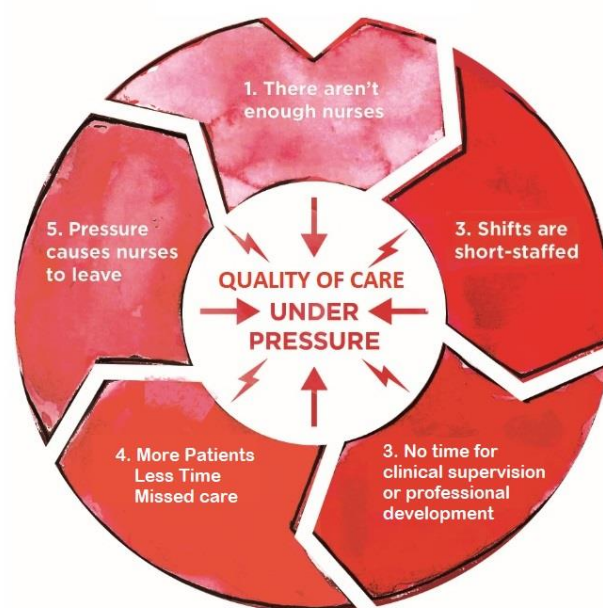
NHS Wales is clearly facing a workforce crisis. The examination of any restructure consultation from any Health Board in the last year will show that services are being redesigned *because of this crisis*.

**The Royal College of Nursing estimates that some 1600 registered nurse posts are currently vacant in NHS Wales. This is not the number of nursing posts needed clinically – it is simply the number currently vacant.**

With some Boards having nursing vacancies of over 500 nursing posts the potential impact on patient care is concerning. Reports into poor care from Tawel Fan to Cwm Taf cite poor staffing as a factor.

The Royal College of Nursing believes that many actions could be taken to ameliorate this crisis and eventually move beyond this situation. These actions include developing retention strategies, prioritising the development of flexible working arrangements, professional development and clinical supervision for professional staff.

*Train Work Live Wales* provides a clear national brand for NHS recruitment in Wales but examination of health Board papers reveals that Health Boards still tend to think of recruitment as a series of self-contained activities such as attending a recruitment fair or putting an advert on Facebook, rather than a strategic driver for the organisation.



## Reporting

It would be helpful to clarify the relationship between the proposed quality report and the existing annual quality statement process. The reporting is proposed as annual in the legislation but the reporting on the Nurse Staffing Levels (Wales) Act 2016 was set at 3 years. There was considerable discussion during the passage of that Act that re reporting requirements should fit with the already existing reporting 3 year framework for the NHS. Perhaps all statutory reports should be annual?

## Commissioning/Providing

Many health care services are commissioned by Boards/Trusts. It is not always clear whether the duty of quality applies to commissioned services in this Bill. The language of the explanatory memorandum could be made more consistent on this point.

## Safe and effective patient care at the heart of quality

Having a workforce, recruitment and retaining a workforce and professionally developing the skills and capabilities of the workforce is critical to providing high quality patient care.

In order to achieve this ambition every opportunity must be taken to strengthen the capability of focus of health bodies on developing a workforce that can provide high quality care and outcomes for the public.

Assembly Members have raised many important areas of patient care that need improvement such as responding to the needs of people with dementia, providing services in Welsh language, providing diagnostic tests or processes such as endoscopies, timely services for children with mental health concerns or needing speech and language therapy. Healthcare professionals support all of these aims but struggle to improve services without a strategic focus on development the workforce. HEIW now provides a national level focus and this is an opportunity to align the core values and strategic aims of NHS Wales to the national ambition.

By embedding the workforce as an essential part of the performance and duty of quality the bill will then achieve its ambition improve care and outcomes of care for the public.

### **Part 3 – Duty of Candour**

The Royal College of Nursing supports this proposed duty and welcomes the commitment expressed in the explanatory memorandum to involve clinicians in the development of the guidance.

It needs to be clear how this legislative duty differs from, or relates to, the already existing duty of candour on the complaints process. We would suggest the regulations proposed for this duty should also make clear the relationship with the professional duty of candour on individuals.

The provisions on reporting year and financial year are unclear and we would welcome some clarity here as to the intent and specifically the expectation as to which financial year should be reported on.

There do not appear to be any proposals for how breaches of this duty or failure to comply with this duty shall be dealt with in the Bill. We suggest two options for consideration:

Could the legislation states there would be an automatic escalation in the health organisation status in monitoring/intervention form the Welsh Government? A breach of the duty of candour would seem serious enough to promote a governance review.

Alternatively could regulations be explicitly made that in the appointment of Chairs and Vice Charis of organisations any breaches of the duty of candour that had occurred during candidate's previous appointments would be taken into account?

Finally many health care services are commissioned by Boards/Trusts. It is not always clear whether the duty of candour applies to commissioned services in this Bill. The language of the explanatory memorandum could be made more consistent on this point.

## Part 4 – Citizens Voice Body (CVB)

The Royal College of Nursing believes that a strong independent body with knowledge of local community issues and the confidence of local communities should represent the public in Wales. The RCN believes that the proposals in this section need to be significantly strengthened to achieve this.

### 15 representations to Public Bodies – Suggested Amendments

(2) The persons are—

(a) a local authority;

(b) an NHS body

#### **(c) Welsh Ministers (insofar as the exercise of their functions relates to the provision of health and social services)**

This follows the example of Part 2 of the Bill where an equal duty of quality is laid on Welsh Ministers, as on health bodies, because of the impact of their functions on health and social care. The decisions of the Welsh Government and other bodies influence the provision of health services e.g., the commission of education for medical students therefore it is logical for CVB to be able to comment on this.

In addition, it needs to be clarified whether bodies such as Social Care Wales and HEIW fall under the definition of ‘an NHS body’ for the purposes of this Bill. If they do not then they need to be added to this section. Indeed there is a rationale for adding regulatory bodies more generally.

#### **(3) A person to whom representations under subsection (1) are made must have regard to the representations in exercising any function to which the representations relate and is required to respond in writing and publish the response setting out how they have had regard to the representations.**

In order to build public confidence and trust in the CVB and in health bodies it is important the health bodies are required to respond to the CVB and this response is made public. This transparency will assist expectations and ensure that the CVB is taken seriously as a public key stakeholder in decision-making around health and social care policy.

### **Proposed Additional Rights and Duties for the new body**

**A right of access to NHS premises:** The RCN believes the CVB should be able to visit health premises to observe and understand the physical locations and their impact on health care. This right could be worded to restrict its applicability to NHS premises to avoid the objection that health and social care is delivered in people’s homes. NHS hospitals are a distinct location for the provision of care and *because* people are “living in them”, (however transitory the planned stay) they require effective scrutiny.

**Promotion of Equality:** The RCN believes the new body should have a specific purpose to promote equality of access and equity of outcomes for marginalized groups in health and social care. There are communities and demographic groups that continue to struggle to



access health and social care services and there is clear evidence that certain groups do not receive the same level of care or outcomes as others. Examples of these include but are not limited to: Veterans, Welsh speakers, the deaf and hard of hearing community, people who are homeless, refugees and asylum-seekers, the LGBT+ community, people with dementia, people with learning disabilities etc.

### 13 General objective

(1) The Citizen Voice Body's general objective, in exercising its functions, is to represent the interests of the public in respect of health services and social services.

(2) For the purposes of achieving that objective, the Citizen Voice Body must seek the views of the public, in whatever way it thinks appropriate, in respect of health services and social services.

**(3) In achieving that objective the Citizen Voice Body must have regard to the promotion of equality of access to health services and social services for individuals and communities and parity of outcomes**

### CVB – Schedule 1 – Suggested Amendments

**2** – Specifies the appointment of members and Chair by the Welsh Ministers. Given the important of the body being seen to be able to represent the communities of Wales the RCN suggests an amendment is considered to this Schedule that the Welsh Ministers have in appointing members, due regard to the geographical residence of the applicants and other diversity criteria.

**9** – Allows the creation of Committees. The RCN suggests that specifying the need to create regional or locally based committees is considered. The great strength of the current CHC system is this local approach and local knowledge. There is a very real danger that the new body will lack local knowledge, be unable to form local connections or inspire trust in all localities without a specific effort to build such connections. The health Boards in Wales are large organisations covering huge geographical areas. It is vital that the knowledge of services in the community is not lost.

**19** – Provides for an annual plan. There should be a specific requirement to consult the public as well “those persons it considers appropriate”. There should be a requirement to publish this plan on a publically available website. The consultation and plan should be available in the Welsh language.

**20** – Annual report. There should be a requirement to publish this report on a publically available website. The report should be available in the Welsh language.