

General principles of the Bill

1. What are your views on the general principles of the Health and Social Care (Wales) Bill?

(we would be grateful if you could keep your answer to around 500 words)

Profiteering, the practice of making or seeking to make an excessive or unfair profit, especially illegally or in a black market, is condemnable. However, if the Welsh government were to adopt the 'eliminate' agenda, it would cause concerns, as it has in other parts of the social care sector. Aggressive profiteering is not comparable to a small business running a necessary operational surplus. Fear that work will be unavailable for private sector businesses will restrict investment and may see businesses close. Working and operating conditions are not necessarily better in the not-for-profit sector. The social care sector needs investment from somewhere in order to maintain services (if not shareholders, then elsewhere).

We agree Direct Payments can be a valuable option for people receiving Continuing Health Care (CHC). Direct payments are only truly effective where there is a thriving market for care provision that provides choice. Currently, homecare services are underfunded and are thus having difficulty retaining staff. Public bodies usually buy homecare services on a 'time and task' basis, limiting providers' flexibility to meet people's needs. The government must address this if we are truly to promote voice and control.

2. Is there a need for legislation to deliver the Welsh Government's stated policy intention?

Yes

Please outline your reasons for your answer to question 2

(we would be grateful if you could keep your answer to around 500 words)

Most of these provisions amend existing legislation.

3. What are your views on Part 1, Chapter 1 of the Bill (sections 1-13), which makes provision intended to restrict the extraction of profit by providers of children's care home services, secure accommodation services and fostering services

(we would be grateful if you could keep your answer to around 500 words)

The Explanatory Memorandum at 7.44 clearly states that "The Welsh Government does not believe there should be a market for care for children, or that profits should be made from caring for children".

We understand this position came partly out of feedback from the children themselves.

Most of our members are not involved in caring for looked after children, so these provisions won't directly affect them. There is a concern amongst providers that the Welsh government may later apply these principles to other parts of the social care sector.

Profiteering is condemnable. However, most (85%) of the independent homecare sector comprises small enterprises with fewer than 50 employees. Consolidation of the market often arises in response to commissioning styles. It is true that, as recognised in these provisions, even public and not-for-profit organisations need to generate some surplus and use other mechanisms to raise capital in order to operate so that they have reserves to sustain shocks (like the pandemic) and resources to invest and keep up with a changing market.

As a principle for wider social care services, a vibrant market can provide people with a choice about what care they receive, and how and where they receive it. It can also offer potential for innovation. This can require private investment: for example, shares are one way to raise funding for service developments. The sector needs mechanisms that allow finance to be raised. Commissioners must prioritise quality and suitability of services, rather than just governance and financing.

4. What are your views on Part 1, Chapter 2 of the Bill (sections 14-22 and schedule 1), which makes a number of amendments in relation to social care services, social care workers and local authority social services, intended to ensure that the 2014 and 2016 Acts can operate fully and effectively

(we would be grateful if you could keep your answer to around 500 words)

Publication of Annual Returns – whilst the Welsh Government has clearly considered our previous concerns about the fact that not all providers have websites, we remain concerned about whether: a) providers separately publishing their annual returns provides appropriate and easy access to reports for members of the public; b) it is realistic for the authorities to track publication of returns on over 4000 care provider websites; and c) well-

intentioned providers may receive fines if they, for example, experience technical issues with their websites. There must be a fair process for following up apparent breaches with rights to explain and appeal. Could CIW use its civil enforcement powers rather than creating an offence/fine? Or incentivise submissions?

Interim orders - Delays may sometimes be necessary to fitness to practise processes and we do not necessarily oppose the powers proposed here. As we have said previously, interim orders affect a person's prospects and day-to-day employment and the registering body should make every effort to resolve issues quickly. It would be better to address increasing delays by reviewing resources and approach, not just resorting to an easy delay process.

At this stage, we foresee no issues with the other sections included here. CIW should be able to request information from unregulated services that are being investigated for not registering. We welcome the ability for individuals with capacity to nominate a third party to receive their direct payment.

5. What are your views on Part 2 of the Bill (sections 23-26 and schedule 2), which relates to health care, and makes amendments to the National Health Service (Wales) Act 2006 in order to enable the introduction of direct payments within NHS Continuing Healthcare

(we would be grateful if you could keep your answer to around 500 words)

We fully support people in receipt of NHS Continuing Healthcare having Direct Payments as an option.

Direct Payments are most effective when there is a vibrant care market and people have high-quality choices within that.

Our Homecare Deficit report 2023 shows that in 2023/24 only two Councils in Wales were paying rates for homecare that cover minimum necessary costs of delivery. While Direct Payment rates will differ from the rates that Councils use to purchase homecare, it is vital that these are high enough to purchase good quality services and pay workers fairly.

Paragraph 7.162 of the Explanatory Memorandum suggests the government expects to save money by moving people to Direct Payments. The government must be assuming people will choose unregulated care, which is cheaper than regulated care. Some Direct Payment users prefer unregulated personal assistants. Others, though, opt for regulated managed services or a 'conventional home care package'. Councils sometimes set a single Direct Payment rate that restricts choice for those who want regulated homecare. Health Boards should not emulate this. A separate rate for homecare provision allows

people more options. People with complex needs may need higher rates because their careworkers will need a higher level of training.

With unregulated care, such as Personal Assistants (PAs) and micro-care providers, individual workers may not have training or support from more experienced staff and may need to undertake tasks which pose risks to themselves or others, such as moving and handling or contact with bodily fluids. The Explanatory Memorandum mentions training. Will this be equal to training requirements for care workers registered with Social Care Wales, and, if not, why not? Is it appropriate to train a PA to undertake delegated healthcare tasks (as referred to in table 7.35) without supervision?

There is also potentially a risk of double standards where small homecare companies who are just above the micro-care threshold will have to comply with regulations, inspection, registration of workers etc. (all with attendant costs) and those below the threshold will not. We are calling on the Welsh Government to introduce a clear policy position on micro-care and how this fits into the regulatory regime. To ensure safety and fairness, we suggest setting minimum training and registration requirements for personal assistants and micro-care providers.

The Explanatory Memorandum suggests that people who receive Direct Payments have more control over their care than those who depend on councils to arrange it for them. The reason for this is the way public bodies commission homecare. They could and should commission homecare in a more flexible manner. Outcomes-based commissioning can offer person-led approaches that respond to a person's changing needs. Most commissioning in Wales is, however, still based on a time and task model and is prescriptive for the person being supported. The Government must address this.

6. What are your views on Part 3 of the Bill (sections 27-30) which contains a number of general provisions, including in relation to regulations, interpretation, consequential and transitional provisions, and coming into force provisions

(we would be grateful if you could keep your answer to around 500 words)

No comment on these general provisions.

Implementation and impact of the Bill

7. Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?

(we would be grateful if you could keep your answer to around 500 words)

Local Authority commissioning teams may need additional capacity to support the transition as these changes come into force. We are concerned about the timing of these

changes, given there are already pressures on staff with the adoption of the National Commissioning Framework. Is it feasible to deliver both at once?

8. Are any unintended consequences likely to arise from the Bill?

(we would be grateful if you could keep your answer to around 500 words)

Eliminating profit from children's care - Concern about commissioning teams' availability to deal with other arising issues and implementation of the National Care Service whilst also thinking about the 'eliminate' agenda. This could mean that one or the other of these workstreams gets effectively deprioritised.

Childcare workers - 7.310 of the Explanatory Memorandum says, "The shape and extent of that support is to be determined by Welsh Government in partnership with relevant sector partners and within available funding." It is vital that the expanded remit of Social Care Wales is adequately resourced so that its function supporting other parts of the social care sector is not impaired. It is also important that any data collected allows for the clear distinction between childcare and social care workers.

9. What are your views on 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?)

(we would be grateful if you could keep your answer to around 500 words)

No comment on these specific provisions.

10. What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum?

(we would be grateful if you could keep your answer to around 500 words)

We have two main comments:

We question whether Direct Payments should provide a cost saving compared to 'conventional homecare services'. If they can be used by a person to purchase homecare services as well as hire personal assistants, then the cost of delivery should be the same. If personal assistants were registered, trained and supported to the level that homecare staff are and if users of PAs were supported with human resources and other functions adequately, then this form of care delivery would most likely not, on balance, be cheaper. This raises questions about whether unregulated care really represents value for money and what the appropriate level of regulation is.

Is there not a cost for Care Inspectorate Wales to enforce the publication of annual reports? Or is it anticipated that income from the fines will cover this cost?

11. What are your views on the Welsh Government’s integrated impact assessments (set out in Part 2 of the Explanatory Memorandum), including the Children’s Rights Impact Assessment

(we would be grateful if you could keep your answer to around 500 words)

A few comments on the Impact Assessment:

Workers in the not-for-profit sector do not necessarily have better pay, terms and conditions of employment compared to the private sector (para 9.10).

The section on CHC assumes Direct Payments will be used primarily for personal assistants. It also assumes that the use of PAs will mean more ‘locally based’ services and ‘greater spend of LHB budgets within local communities’. This is questionable on two levels. One that the workforce of available PAs overlaps with the homecare workforce. Some careworkers work part time in homecare jobs and are also PAs. This means that increased demand for PAs might just mean fewer careworkers applying for jobs in homecare businesses locally (a displacement rather than increase of the social care workforce). Secondly, that if the CHC spend wasn’t on Direct Payments it would be on commissioned services within local communities – many of whom are local businesses, so the funding is not all new.

9.31 the assumption that Direct Payments will ‘reduce strain on domiciliary care services’ is not necessarily sound. The strain on homecare services largely comes from recruitment and retention difficulties and budgetary constraints. Having more demand for Personal Assistants in an area and less demand for homecare services may just see the people who would have worked in a homecare provider taking work as a PA – i.e. displacement of the workforce and a weakening of local homecare offerings and not expansion. This has happened in England, for example, in Somerset, where regulated providers have lost over 2000 care workers to become PAs.

Development of the policy and legislative proposals

12. What are your views on the approach taken by the Welsh Government to the development of the policy and legislative proposals reflected in the Bill.

Among any other issues, please consider in particular the approach to engaging and consulting with stakeholders

(we would be grateful if you could keep your answer to around 500 words)

We have been engaged and took part in the earlier consultation on these legislative proposals.

One area the Welsh Government could consider is how to ensure greater coherence in the different areas of policy development within social care reform and how these relate to each other. Alongside this legislation, the Welsh Government has been progressing the National Care Service proposals, a domiciliary care strategy group that came out of the 'Further, Faster' workstream, a research project into micro-care and other initiatives; Care Inspectorate Wales are introducing Silent Ratings; the WLGA and Welsh Government have been undertaking a franchising feasibility study – the list could go on. It is good to see so much happening, but it is also important that all of these strands come together in a clear way and address the issues which are most urgent. The most urgent issues are availability of the right care for those who need it (which is genuinely outcomes focused/focused on what matters to them); recruitment and retention of the workforce; and the funding of social care services in the context of an ageing demographic. Some of those working in the sector are frustrated at the lack of urgency in addressing these issues.

Any other issues

13. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?

(we would be grateful if you could keep your answer to around 500 words)

There are no further issues we wish to raise.

