



August 2019

Response to the consultation on the Health and Social Care (Quality and Engagement) (Wales) Bill

1. Healthcare Inspectorate Wales (HIW) welcomes the opportunity to contribute to discussion of the provisions in the above Bill.
2. HIW is the independent regulator of healthcare in Wales. Our core purpose is to check that patients are receiving good quality care. We aim to provide assurance on the quality of care being provided, to undertake our role in manner which supports improvement, and to use what we find to influence policy and standards in order to support better services in the future.
3. We carry out our functions on behalf of Welsh Ministers. Our independence is protected through a Memorandum of Understanding between the Chief inspector and the relevant Welsh Ministers.
4. In preparing this response HIW has worked closely with Care Inspectorate Wales.
5. Overall we support the objectives of the Bill. We note that a number of the elements of the Bill introduce new reporting requirements: specifically the Duty of Quality and the Duty of Candour. It is important that these are, as far as possible, integrated with existing planning and reported processes in order to avoid creating additional administrative burdens.

Part 2 Improvement in Health Services (Duty of Quality)

6. HIW supports the principle of a duty of quality which has a broad application to all matters that have an impact upon the outcomes for service users. We agree that
 - a. This should apply across all functions of health bodies not just to clinical functions
 - b. That quality should be widely drawn to encompass effectiveness, safety and quality of experience
 - c. That annual reporting, not just on what has been done under this duty, but also on what has been achieved, is required

7. We also agree that this duty should apply across the whole of the healthcare system. We therefore consider it appropriate to extend this duty to Ministers.
8. We welcome the aim of the Bill to ensure that bodies plan, improve and report on compliance with the duty – not just on the actions that have been taken, but also on the impact that these actions have had on patient outcomes.
9. However, we feel that there a number of matters will need to clarified to be sure that the Bill has the desired effect. Specifically
 - a. Who will judge whether the annual reports are accurate?
 - b. What are the consequences for poor reporting or lack of delivery against the duty?
 - c. The expressed intent to ensure that quality is pursued more broadly is clear, but it is difficult to see how the specifics in the Bill will achieve this. Will more guidance be provided?
 - d. There is an explicit responsibility for bodies to undertake planning to meet future population need. However, it is difficult to see how this Bill will encourage/ facilitate cross-border working in the broader interests of the Welsh population. It is not clear in what way the statutory duty of quality will support improved collaborative, regional and all-Wales working.
 - e. The Bill is not clear about what might happen where an organisation acting in the best interests of its population might compromise the interests of a neighbouring population. What is the role of Welsh Government/ NHS Wales in quality planning at an All-Wales level?
 - f. The Bill does not set out clearly how quality planning will be integrated with planning more generally. It will be important that quality considerations are properly integrated into overall planning and that trade-offs between, for example, cost, quality and accessibility are explicitly considered.
10. If the word 'health' was removed from the clauses of the Bill the duty could potentially be generalised to apply to any, or all, public services. Public services work together in many ways and it may be worthwhile to consider introducing a commonality of language into relevant legislation and guidance to support and encourage joined up working in support of the population of Wales.

Part 3 Duty of Candour

11. HIW supports the principle of a duty of candour, as the importance of openness and transparency cannot be underestimated in helping to build a culture focused on quality and learning.
12. We understand the need for a threshold for triggering a formal process and reporting. However, we would note that if we are serious about prudent healthcare and treating people as equal partners in their own care then there should be a presumption of full and open communication with them regardless of whether any specific threshold is reached.

13. We support the proposal for primary care providers to report to, and through, health boards but it will be important for the Bill and any supporting regulations not to overburden potentially small provider organisations. For example, where a primary care provides healthcare on behalf of more than one health board it may be appropriate to report separately for each health board within a single overarching report rather than provide separate reports. Reporting in this way would also provide an overview of the application for the duty within that provider.
14. We are unclear what is meant by the term primary care provider. Specifically the Bill refers to 'a person is a primary care provider'. It would be helpful to clarify whether this is intended to apply to an individual GP, dentist, optician ... or whether this is intended to apply to the practice or organisation they work for.
15. Part 3 paragraph 3 sets out the conditions under which the Duty of Candour would apply. We feel that the second condition is potentially too narrow since it refers to an adverse outcome as a result of the 'provision of care'. This may be interpreted to exclude those circumstance in which a service user may suffer an adverse outcome due to their inability to access care. For example, due to the length of time waiting. We feel that instances such as this should also be covered under the duty.
16. The explanatory memorandum is clear that compliance with the Duty will be part of the matters considered by HIW as part of its routine intelligence gathering and will potentially be covered when we undertake governance reviews. It is clear that there will not be an explicit programme of work to consider compliance with the Duty of Candour on a routine basis. We consider this to be a proportionate approach.

Part 4 The Citizen Voice Body for Health and Social care

17. HIW supports the proposal to establish a new body to strengthen the voice of the citizen in regard to health and social care in Wales. We agree that the new body
 - a. Should have a high public profile and feel that this will be assisted by having a clarity of purpose
 - b. Should use range of IT and other mechanisms to ensure that they are truly representative of the citizen voice and can evidence the basis for the views expressed
 - c. Should support individuals across Health and Social care when bringing forward a complaint
 - d. Should be able to represent the interests of citizens across the interface of health and social care, particularly as services become more integrated.
 - e. Should operate at both a national and a local level

- f. Should work closely and collaboratively with services providers, regulators, inspectorate and scrutiny bodies, third sector bodies with a citizen perspective
 - g. Should analyse the information they received from service users and refer concerning information to the inspectorates to consider
 - h. Should respond to matters of citizen interest referred to them by the inspectorates
 - i. Should work collaboratively with the inspectorates to assist with gathering patient perspectives to inform their work
18. Although not explicit within the Bill we believe that the culture and operating style of the new body will be critical. As services transform themselves following the Parliamentary Review and 'A Healthier Wales' the new body will need to act as a bridge between service providers and service users. They should have an explicit responsibility to help citizens understand the nature of any changes being proposed and the anticipated impact on individuals: they should then help services understand the real and practical concerns being highlighted by those affected. Therefore the support that the new body provides needs to be responsive to future needs, changing services and flexible across boundaries.
19. With regard to the functions of the new body:
- a. We support the objective that they should represent the interests of the public by seeking views. In matters of innovation and service change we think that they should have an additional responsibility to assist the service providers in communicating clearly to the public the rationale for any proposed changes in order that the public can put forward informed views in full understanding of potential implications for them.
 - b. We support the need identified in the Bill for the new body to ensure that there is public awareness of its role. It also needs to ensure that there is public awareness of how it is working with other structures who also represent the public such as the Commissioners, third sector organisations and local authority scrutiny arrangements. It will be essential that the new body works in co-operation not competition with these bodies.
 - c. We support the function to make representations about 'anything it considers relevant to the provision of a health service or provision of social services'. However, it is unclear whether this extends to wider services. For example it could be interpreted that housing or public transport are relevant to the provision of such services.
 - d. We support the proposal to provide advice and assistance with complaints. However, there will be a need to map out the different forms of advocacy and support that are available to the public such as mental health advocacy and support for children. The variety of services available may make it challenging for the new body to clearly communicate its role, but it could usefully act in a signposting role to ensure that the public can be directed to the most appropriate form of support available.

20. We agree that the new body should not have the power of inspection. This is not a core function of the new body and would lead to a lack of clarity for the public potentially undermining attempts to raise public awareness and recognition of their role.