

**National Assembly for Wales**  
Finance Committee

Report on the Financial Implications of the  
Proposed Mental Health (Wales) Measure

July 2010



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## Finance Committee

The Finance Committee's remit is to ensure that proper scrutiny is given to the budget and expenditure of the Welsh Assembly Government, the Assembly Commission, the Ombudsman, the Children's Commissioner, the Older People's Commissioner and various Assembly Government Sponsored Bodies and NHS Bodies.

The Committee has in broad terms three main functions:

- to consider and report on Assembly budget proposals;
- to consider and, where it sees fit, report on the financial information presented in support of Assembly Measures;
- to consider any other matter relating to, or affecting, expenditure by the Government or out of the Welsh Consolidated Fund.

## Powers

The Committee was established on 26 June 2007. Its powers are set out in the National Assembly for Wales' Standing Order 14. These are available at [www.assemblywales.org](http://www.assemblywales.org).

## Aelodau'r Pwyllgor



**Angela Burns (Cadeirydd)**  
Gorllewin Caerfyrddin a  
De Sir Benfro  
Plaid Geidwadol Cymru



**Lorraine Barrett**  
De Caerdydd a Phenarth  
Llafur



**Andrew Davies**  
Gorllewin Abertawe  
Llafur



**Chris Franks**  
Canol De Cymru  
Plaid Cymru



**Brian Gibbons**  
Aberafan  
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**Ann Jones**  
Dyffryn Clwyd  
Llafur



**Nick Ramsay**  
Plaid Geidwadol Cymru  
Sir Fynwy



**Janet Ryder**  
Gogledd Cymru  
Plaid Cymru



**Kirsty Williams**  
Brycheiniog a Sir Faesyfed  
Democratiaid Rhyddfrydol  
Cymru

# Report on Proposed Mental Health (Wales) Measure

## Introduction

1. Standing Order 14.2 states:

*The [Finance] Committee may also consider and, where it sees fit, report on:*

*financial information in explanatory memoranda accompanying proposed Assembly Measures;*

2. The Finance Committee considered the Proposed Mental Health (Wales) Measure at its meeting on 17 June 2010. It was presented to the Finance Committee by Edwina Hart AM the Minister for Health and Social Services and Member in charge of the proposed Measure who answered Members' questions. Members also had regard to the responses received by Legislation Committee 3 in their consultation on the proposed Measure.

## Background

3. The proposed Measure is the first legislation to be introduced using powers under the *National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010* (the 'Mental Health LCO').<sup>1</sup> The proposed Measure makes provision for the assessment and treatment of mental disorder. It also extends the provision of independent mental health advocacy for in-patients to all patients subject to the formal powers of the *Mental Health Act 1983*<sup>2</sup> and to informal in-patients.

4. A key aim of the proposed Measure is to address a perceived need to ensure that people experiencing mental health problems receive assessment and treatment at an earlier stage than at present. Although there are general duties on statutory bodies to provide mental health services, there are few requirements to provide specific services for

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<sup>1</sup> [National Assembly for Wales \(Legislative Competence\) \(Health and Health Services and Social Welfare\) Order 2010 \[accessed 03 June 2010\]](#)

<sup>2</sup> Primarily the [Mental Health Act 1983](#), as amended by the [Mental Health Act 2007](#) [accessed on 28 May 2010]

those not subject to compulsory powers under current mental health legislation.<sup>8.d</sup>

5. There is also no access as of right to independent, specialist advocacy services for those people who are not ‘qualifying patients’ by virtue of being subject to certain provisions of the *Mental Health Act 1983*.<sup>8.d</sup>

6. The proposed Measure seeks to strengthen joint working between local authorities and Local Health Boards which it names as ‘local mental health partners’ providing primary mental health support services (Section 1 of the proposed Measure).

7. The scope of the proposed Measure does **not** extend to children and young people (apart from advocacy provision). However, the legislative competence conferred as a result of the Mental Health LCO enables the Assembly to legislate on the assessment of mental health and treatment of mental disorder in respect of individuals **of all ages**.

### **Proposals within the Measure**

8. The proposed Measure has five policy aims:
- a. To provide an assessment and any treatment necessary to individuals within primary care services through the development of local mental health support services. These would be delivered in partnership by local authorities and Local Health Boards (Part 1 of the proposed Measure);
  - b. To secure care and treatment planning and care co-ordination for people who are treated in secondary mental health services (Part 2 of the proposed Measure);
  - c. To ensure that previous service users can be re-assessed by secondary mental health services by self-referral (Part 3 of the proposed Measure);
  - d. To ensure that all patients who are subject to the formal powers of the *Mental Health Act 1983* are entitled to the support of an Independent Mental Health Advocate (IMHA) (Part 4 of the proposed Measure);

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<sup>3</sup> Primarily the [Mental Health Act 1983](#), as amended by the [Mental Health Act 2007](#) [accessed on 28 May 2010]

- e. To ensure that all patients treated for a mental disorder in hospital have access to independent mental health advocacy (Part 4 of the proposed Measure).

9. The Regulatory Impact Assessment included in the Explanatory Memorandum (EM) to the proposed Measure estimates:

- a. **The costs of the changes to primary mental health services as £3.0 million per year** recurring costs and £0.5 million leadership and capacity development costs for each of the first two years;
- b. Co-ordination of, and care planning for, secondary mental health services will require no additional funding beyond an initial allocation of **£0.75 million**;
- c. Assessment of former users of secondary mental health services will incur **no significant** extra costs;
- d. Mental health advocacy for compulsory patients will require an additional **£0.5 million annually** and additional one-off funding of £0.25 million to LHBs to allow service development;
- e. Mental health advocacy for informal patients will require an additional **£1 million of recurring funding** and an additional one-off £0.25 million for preparatory work by LHBs.

10. The Explanatory Memorandum states that the Welsh Government intends to stage the implementation of the proposed Measure over a period of three years.<sup>4</sup> Once steady state is reached (year 3) the Explanatory Memorandum states that the ongoing cost of the proposed Measure will be approximately £5 million per year.<sup>5</sup> Alongside this there are 'one-off' costs of £2.25 million for pre-implementation work.

### **Observations**

11. The Finance Committee welcomes the inclusion in the Explanatory Memorandum of a Regulatory Impact Assessment which included a detailed analysis of the costs involved with this proposed measure. The

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<sup>4</sup> [Mental Health \(Wales\) Measure 2010, Explanatory Memorandum](#), MS-LD8002-EM, [para 64] 22 March 2010 [accessed 28 May 2010]

<sup>5</sup> [Mental Health \(Wales\) Measure 2010, EM](#), MS-LD8002-EM, [para 209] 22 March 2010 [accessed 28 May 2010]

Government acknowledges that some of the figures are only estimates based on current assumptions and will inevitably change as the measure is implemented. The Finance Committee accepts these uncertainties which reinforce the importance of undertaking a detailed cost assessment so that there is a comprehensive understanding of where future cost and budgeting pressures might occur.

### **Overall costs**

12. The overall assessment in the Explanatory Memorandum is that the Measure will involve recurring costs of around £5 million per year when 'steady state' is reached with additional funding of around £2.1 million in the first year and £1.85 million in the second year to bring about the necessary changes. The Minister for Health and Social Services told the Finance Committee<sup>6</sup> that she thought there would be a 'spike' in demand when the new services first came in but that then they would level out. Asked whether they might level out at the 'peak' level the Minister said<sup>7</sup> she doubted this. She went on to say that they had conducted extensive consultations on the assumptions made and that the NHS and the voluntary sector were in agreement.

13. The Finance Committee noted that in evidence to the Legislation Committee a representative of the Local Health Boards stated that their own rough calculations suggested the costs would be nearer £8 million.<sup>8</sup> However, they had not presented the calculations behind these figures or the assumptions on which they were based. The Minister for Health and Social Services told the Finance Committee<sup>9</sup> that she was reviewing and revising the figures all the time and evaluating all comments made. She said she was fairly satisfied with them at the present. While she acknowledged the comments made by LHBs, she felt that they always made a case for additional resources and she considered<sup>10</sup> she had put adequate resources in for this measure. The Minister for Health and Social Services also referred to claims made by NHS Finance Directors in the 2009 budget round that at least 20% of the total NHS budget is not being used appropriately.<sup>11</sup> She noted<sup>12</sup> that the

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<sup>6</sup> RoP p165 et seq, 17 June 2010, Finance Committee

<sup>7</sup> RoP p169, 17 June 2010, Finance Committee

<sup>8</sup> RoP p89, 13 May 2010, Legislation Committee No 3

<sup>9</sup> RoP p180, 17 June 2010, Finance Committee

<sup>10</sup> RoP p185, 17 June 2010, Finance Committee

<sup>11</sup> RoP p154, 22 October 2009, Finance Committee

<sup>12</sup> RoP p191, 17 June 2010, Finance Committee

NHS also needed to look for efficiencies and economies of scale in delivery.

### **Sources of funding**

14. The Finance committee was concerned that funding for this measure would come at the expense of other services and the Minister for Health and Social Services<sup>13</sup> told the Committee that she could confirm that the funds she intended to make available for this Measure **were not being diverted from other mental health programmes**. The Committee notes that they do nonetheless come from within the Government's (existing) mental health budget.

### **Risks and issues**

#### **Unmet need**

15. In considering the funding for this proposed measure the Finance Committee was conscious that chronic diseases had a reputation for underdiagnosis and, when diagnosis had been made, for 'undermanagement', and for people 'falling out of the system'. The Finance Committee welcomed the fact that the proposed measure recognised this but was concerned that improved performance in this regard would inevitably result in demand for more services and increased costs. Inevitably it is not possible to assess the level of unmet need for primary mental health support services and the Committee is concerned that there could be a large latent demand which could in turn lead to a significant unexpected funding requirement.

16. Responding to this<sup>14</sup> the Minister for Health and Social Services said the ring fenced budget for mental health, was some £570 million of the total health budget. She acknowledged the concerns raised by the Finance Committee but noted that in the current economic climate, and before responding to demands for extra funding, it was necessary for the NHS to demonstrate it was making the best use of the resources it had. Nonetheless,<sup>15</sup> she was not sanguine about these issues and would look into them.

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<sup>13</sup> Finance Committee paper FIN(3)-12-10 paper 3, 1 July 2010

<sup>14</sup> RoP p176-7, 17 June 2010, Finance Committee

<sup>15</sup> RoP p178, 17 June 2010, Finance Committee

17. The Committee was pleased to note the Minister's assurance that the workload implications would be subject to regular monitoring and that a comprehensive, formal review would take place in three years time. We would suggest that the outcome of such a review should be assessed by either a future Finance or Public Accounts Committee.

18. The Committee drew attention to the different way in which services were delivered by the health and social services and were concerned that the changes proposed by the Measure might lead to the introduction of eligibility criteria. Officials confirmed that these were not part of the proposals. The Minister provided a clear assurance that if the assessment process lead to treatment services, they would be delivered in line with national service frameworks.

### **Coordination of service delivery**

19. The Finance Committee noted the proposals in the proposed Measure that would lead to better coordination of primary and secondary mental health services. This will bring benefits to the individuals receiving those services but additionally, viewed from a financial perspective, should lead to a more efficient and effective use of resources. The Finance Committee very much welcomes this. The Committee nonetheless notes that this will not necessarily lead to direct cash savings elsewhere, such as in secondary care, because resources released in this way could well be consumed by demand arising from the 'unmet need' referred to previously.

### **Backfilling of staff**

20. The Explanatory Memorandum stated<sup>16</sup> that in order to deliver local primary mental health support services, staffing and professional expertise would be drawn from existing mental health services. The Finance Committee was concerned about the difficulties that might arise from the need for back filling. The Minister for Health and Social Services said<sup>17</sup> that she had looked into this and, while an element of back filling might be necessary she thought it would be minimal. She felt<sup>18</sup> LHBs had to consider that services needed to be reconfigured in order to deliver properly in relation to the proposed measure. Moving staff would not necessarily lead to vacancies elsewhere.

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<sup>16</sup> Proposed Mental Health (Wales) Measure, Explanatory Memorandum, p138

<sup>17</sup> RoP p202, 17 June 2010, Finance Committee

<sup>18</sup> RoP p203, 17 June 2010, Finance Committee

## **Delegated powers to modify the operation of part 1 of the proposed Measure**

21. The Finance Committee noted that Section 42 of the proposed Measure provides delegated powers to Ministers to modify the operation of part 1 of the proposed Measure in relation to local authorities. The Minister said<sup>19</sup> that this was an important part of the Measure because it would allow the Government to establish wider areas and, in turn, allow LHBs and local authorities from outside that region to become partners. While this might have an effect on the distribution of costs she did not think it would lead to an increase in overall costs.

22. The Committee welcomed the innovative flexibility that this option provided as a means to deliver better outcomes for patients and better value for money.

## **Advocacy services**

23. The Finance Committee noted that concerns had been raised by advocacy providers that extending independent mental health advocacy to out-of-hours and emergency cases would have a huge impact on the capacity of those organisations. The Minister for Health and Social Services<sup>20</sup> acknowledged the concerns and said that the existing service provision, which covered office hours, from Monday to Friday was not satisfactory. She said she would be considering these. She said that new money was being put in for pre-implementation and ongoing delivery and for the provision of appropriate training as well as office support'. She was also able to draw upon the independent mental health advocate funding that currently exists in this area. She said the Government intended to add £1.5 million to help providers deliver support to patients in hospitals, whether detained or not and this would bring the total annual support for advocacy to £2.1 million. The Minister for Health and Social Services said that Advocacy Wales had commented to the legislation committee that it felt that this sum was adequate for the purpose.<sup>21</sup>

## **Children and Young people**

24. The Finance Committee was aware that the legislation Committee had considered the issue of extending the proposed

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<sup>19</sup> RoP p224, 17 June 2010, Finance Committee

<sup>20</sup> RoP p248-9, 17 June 2010, Finance Committee

<sup>21</sup> RoP p159, 13 May 2010, Legislation Committee No 3

measure to include children and young people, however providing services to children & young people is not currently included within the costings.

25. The Minister for Health and Social Services<sup>22</sup> told the Finance Committee that she was aware of the consideration of the Legislation Committee and awaited a possible recommendation with interest. She said she had already asked officials to look into the financial implications of including provision for children and young people within the Measure. In the event that the proposed measure were amended she would update the regulatory impact assessment.<sup>23</sup>

26. Officials indicated<sup>24</sup> that they had have taken professional advice on this from child and adolescent mental health services professional advisers and adult mental health service providers, and as a result felt that the costs of extending the proposed Measure in this way could be funded from within existing services.

## **Conclusion**

27. The Finance Committee notes the analysis of the costs of this proposed measure and the uncertainties attached to them. It welcomes the detailed analysis that has been prepared which enables the figures, and the uncertainties, to be examined and decisions taken in the full light of them.

28. The assumptions and calculations published indicate that implementing the Measure will involve ongoing costs of around £5 million a year. Alongside this there are 'one-off' costs of £2.25 million for pre-implementation work.

29. However, there is a degree of uncertainty, particularly from currently unidentified and unmet demand, which makes accurate forecasting extremely difficult. There are also uncertainties arising directly from the fact that the proposed measure will fundamentally change the way in which services are provided and that it is not always possible to predict how quickly changes and savings elsewhere will be achieved.

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<sup>22</sup> RoP p155, 17 June 2010, Finance Committee

<sup>23</sup> RoP p156, 17 June 2010, Finance Committee

<sup>24</sup> RoP, p157, 17 June 2010, Finance Committee

30. The Minister is committed to monitoring these issues and will also undertake a formal review in three years time. We welcome this and would recommend that the results to the review should be assessed by the appropriate National Assembly Committee(s) when known.

31. On the other hand, the mental health budget is substantial and the Finance Committee notes the Minister for Health and Social Services' assurance that in order to deliver the proposed Measure it is not her intention to divert funds from other mental health programmes, although it does nonetheless come from within the existing mental health budget. The Finance Committee is also conscious of the very substantial level of funds that could be redeployed within the NHS if services were configured appropriately and made more efficient. The Finance Committee very much welcomes the proposals in the proposed Measure that will result in better coordination of primary and secondary mental health services and to a more efficient and effective use of resources.

32. The Finance Committee is inclined to the opinion that funding the proposed Measure will prove rather more complex than is suggested in the Explanatory Memorandum, and the Minister for Health and Social Services' evidence, and welcomes the careful work that has been done on the costings for this proposed Measure. This will enable the Assembly to take decisions on it with a clear understanding of the uncertainties. The Finance Committee sees no objection, from a financial perspective, to the proposed Measure.

**Angela Burns**  
**Chair, Finance Committee**