

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

Bill Summary

March 2020



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Senedd Research

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Introduction

The Health and Social Care (Quality and Engagement) (Wales) Bill was introduced on 17 June 2019 by the Minister for Health and Social Services, who made a **statement in Plenary on 18 June 2019**.

The Bill proposes to introduce changes aiming to:

- Place quality considerations at the heart of the NHS in Wales;
- Strengthen the voice of citizens across health and social services, with a new Citizen Voice Body for health and social care (replacing Community Health Councils);
- Place a duty of candour on NHS organisations at an organisational level, requiring them to be open and honest when things go wrong; and
- Strengthen the governance arrangements for NHS Trusts, by introducing a formal Vice-Chair role for each Trust.

The Health, Social Care and Sport Committee considered the general principles of the Bill, took evidence between July – October 2019, and **published its Stage 1 report** on 15 November 2019. The Finance Committee and Constitutional and Legislative Affairs Committee also considered the Bill, **reporting on 15 November 2019**.

Background to the Bill

The Welsh Government first consulted on proposals between July and November 2015 in the **Green Paper, 'Our Health, Our Health Service'**, which sought views on matters relating to the quality of health services and its governance and functions. The Welsh Government published a **summary of the responses to the Green Paper in February 2016**.

In July 2017, the Welsh Government published a **White Paper consultation: 'Services fit for the future, quality and governance in health and care in Wales'**.

The White Paper contained a wide range of proposals including:

- Measures to promote stronger governance and leadership;
- Duties to promote cultural change across health and social care (quality and candour duties);
- Processes to underpin person-centred health and care and promote further integration (such as common standards and joint investigations of complaints);
- 'A strengthening of the voice of citizens' (replacing the current model of Community Health Councils), and;
- A 'future-proofed' single inspection and regulation service.

In July 2018, the then First Minister made a **statement** on the legislative programme, committing to bringing forward an NHS Quality Bill 'over the next year' focused on the four areas set out in the Bill (discussed below), which was then introduced in July 2019.

Main elements of the Bill

The Bill contains 5 Parts, including an **Overview of the Act in Part 1**.

Part 2 reframes the existing duty of quality to require NHS bodies and Welsh Ministers (in relation to health) to exercise their functions **with a view to securing improvements in the quality of services** they provide.

Part 3 introduces a **duty of candour on all NHS bodies at an organisational level**.

Part 4 establishes a **new independent Citizen Voice Body for health and social care** (replacing Community Health Councils).

Part 5 gives Welsh Ministers powers to appoint a **Vice-Chair on NHS Trust Boards** and contains other general provisions, including consequential amendments to other legislation and provision about when and how the Bill comes into force.

Duty of quality

The Bill introduces a broad duty to require the Welsh Ministers and NHS bodies to exercise their functions (in relation to health) 'with a view to securing improvement in the quality of health services' (replacing the existing quality duty).

The Welsh Ministers and NHS bodies must all publish separate annual reports detailing the steps they have taken to comply with the duty, and include an assessment of the extent of any improvement in outcomes achieved. The Welsh Ministers must lay a copy of the Welsh Government's report before the National Assembly for Wales.

The Bill states that "quality" includes, but is not limited to:

- The effectiveness of health services;
- The safety of health services; and
- The experience of individuals to whom health services are provided.

Duty of candour

The Bill places a new duty of candour on NHS bodies at an organisational level. The duty of candour is triggered if it appears to the NHS body that both of the following conditions are met:

- A service user has suffered an adverse outcome ('unexpected or unintended harm that is more than minimal'); and
- The provision of the health care was or may have been a factor in the outcome suffered by the service user.

The Bill then sets out details of "the candour procedure" which must be followed (section 4(2)). The Explanatory Memorandum (EM) clarifies that "the provisions will place a duty on NHS bodies at an organisational level, and not onto individual health care staff".

The Bill places duties on primary care providers to prepare an annual report for Local Health Boards (LHBs). NHS bodies must also prepare annual reports on whether the duty of candour has come into effect, and if it has, provide details and any steps taken to prevent the situation from happening again.

Citizen Voice Body for Health and Social Care

Sections 12 to 21 of the Bill establish a Citizen Voice Body for Health and Social Care in Wales. This new national body will represent the interests of the public in relation to health services and social services, It will abolish existing Community Health Councils (CHCs) which currently carry out these functions in relation to health services.

The functions of the new body will include: seeking the views of the public on health services and social services; providing assistance and advocacy services to individuals who wish to make a complaint; and making representations to local authorities and NHS bodies on anything it considers relevant to the provision of health or social services (which the local authority or NHS body must then give regard to).

The new body, unlike CHCs, will cover both health and social services. However, it will not have the power of entry and inspection currently held by CHCs, nor duties to scrutinise service change.

Vice-Chair roles in NHS Trusts

Section 22 of the Bill contains provisions for the appointment of Vice-Chairs of Boards of Directors of NHS Trusts.

The constitutional and membership arrangements for Trusts and LHBs are not currently consistent. Under existing legislation, Vice-Chairs can be appointed to the Board of LHBs where the Welsh Ministers consider it appropriate. However, there is no equivalent power for the Welsh Ministers to appoint a Vice-Chair to the Board of NHS Trusts, and the Bill rectifies this.

Financial implications

The **Regulatory Impact Assessment (RIA), published as part of the EM**, reports that the overall net cost of the Bill falls within the range of £11 - £11.5 million. The majority of estimated costs are associated with the establishment of the new Citizen Advice Body (£6.1 million). An additional £3.7 million is identified for the introduction of a duty of candour.

The costs will fall on the Welsh Government (£6.3 million) and NHS bodies (ranging from £4.8 million to £5.2 million). Apart from the cost of the Vice Chair posts for NHS Trusts (ranging from £164k to £630k) and the additional legal costs arising from the duty of candour (£21k), the rest of the costs on NHS bodies are described in the EM as 'opportunity costs', suggesting that the cost will be absorbed by them.

The RIA suggests that the Bill is expected to lead to a range of benefits, such as improving the quality of services, having a stronger voice and, potentially, reducing the number of complaints about services. However, it reports such benefits "cannot be quantified due to a high degree of variability or a lack of available data".

Response to the Bill

The majority of evidence received by the HSCS Committee was broadly supportive of the aims of the Bill; particularly of the moves to improve quality and candour; to allow Vice Chairs to be appointed by NHS Trusts and for the new Citizen Voice Body to cover both health and social care.

However the majority of stakeholders also felt that the duties of quality and candour in the Bill should be strengthened (and suggested a number of ways to do so, including sanctions). They also expressed concerns about aspects of the new Citizen Voice Body. Many stakeholders strongly felt that action should be taken to ensure that the new body will have local representation across Wales, and sufficient powers and 'teeth' (including powers of entry for unannounced visits and a right to a response from public bodies).

Key themes in evidence received include the view that:

- There is a lack of clarity in duty of quality provisions, with many questioning what will be measured, and how compliance will be monitored given the lack of sanctions in the Bill;
- Quality of staff training and the definitions developed for the duty of candour will be crucial to the success of the duty (with many noting that legislation alone will not change the culture of the NHS). Many also feel sanctions are required for breaches/non-compliance;
- It is unclear how the duties will align with social care. Some also questioned the logic of the duties of quality and candour only applying to the health service given the increasing integration of health and social care systems; and
- The new Citizen Voice Body must be sufficiently resourced; clearly independent from the Welsh Government; have a local/regional presence across Wales; a power of entry and ability to make unannounced visits; and a right to a response to representations.

Assembly Committees

The HSCS Committee recommends that the National Assembly for Wales agrees the general principles of the Bill. The Committee also makes 19 other recommendations to the Welsh Government, mainly calling for amendments to the Bill to strengthen the provisions, reflecting on the evidence heard.

The HSCS Committee makes a number of recommendations to amend the provisions of the Bill relating to the Citizen Voice Body. For example, it recommends that members of the Citizen Voice Body should be appointed by the National Assembly for Wales (rather than the Welsh Government). It also proposes that the body should have a qualified right of access to health and social care settings for the purpose of speaking to service users, and carrying out reasonable and proportionate checks on the care being provided. The Committee reasons that specific conditions or restrictions on the use of this power could be set out in detail in accompanying regulations or statutory guidance. It also recommends that a formal response be required from the appropriate organisation to any representation made by the Citizen Voice Body.

The Finance Committee makes nine recommendations, including for the Welsh Government to undertake further work analysing and estimating the benefits of the Bill, which are identified as key drivers for implementing the legislation, and to produce a revised RIA. The Committee also recommends that the Welsh Government reconsiders the levels of costs for awareness and training for the duties of quality and candour, and undertakes further work and provides further detail on the costs in a number of areas, including legal costs.

The Constitutional and Legislative Affairs (CLA) Committee makes three recommendations including for the Minister to explain during the Stage 1 debate why a definition of the duty of candour does not appear on the face of the Bill and where the public can find information about its meaning. It also recommends that the Minister sets out clearly and in detail how he intends to use the powers contained in section 26 of the Bill (on the 'power to make transitional etc. provision'). The CLA Committee is concerned at the breadth of powers being taken by the Welsh Ministers under this section, and recommends an amendment to change the wording of section 26.

Summary of Stage 2 changes

The HSCS Committee carried out Stage 2 consideration of the Bill on 23 January 2020.

The Welsh Government tabled 18 amendments. These included an amendment to introduce a Code of Practice on access to premises for the Citizen Voice Body, and amendments to enable the Welsh Ministers to issue statutory guidance in relation to the quality duty provided for in the Bill.

67 opposition amendments were tabled. These related to the HSCS Committee's Stage 1 recommendations which aimed to strengthen the provisions on the face of the Bill, including the duty of quality provisions, and the independence and powers of the Citizen Voice Body.

Only three amendments were agreed. These were tabled in the name of the Minister and were technical in nature:

- a minor wording change in Section 2;
- replacing the word 'expedient' with 'appropriate' in Section 26 (relating to a recommendation by the CLA Committee); and
- a change to Schedule 1 to ensure the validity of any proceedings or acts of the Citizen Voice Body are not affected due to membership matters.

The Bill therefore remains largely unchanged after Stage 2. The Minister did however agree to meet with opposition Members to discuss areas where they might be able to work together on amendments at Stage 3, including strengthening guidance about the duty of quality and ensuring that the Citizen Voice Body is accessible and has a local presence.