

Programme and Legislative Implementation Team  
Social Services and Integration Directorate  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

7 November 2022

Dear Programme and Legislative Implementation Team,

**Proposals for primary legislation in relation to children’s social care, Continuing Health Care, mandatory reporting and regulation and inspection**

Thank you for the opportunity to respond to the Welsh Government [consultation](#) on proposed changes to legislation on social care and continuing health care. Mindful of the scope of this consultation, we are better placed to comment on some issues than others.

Our response focuses on aspects of the consultation that we view as particularly relevant to nursing and midwifery professionals, and where we can best offer our experience and support in our role as regulator. We will only be responding to two areas and have therefore set out our response in a letter rather than using the response template.

We are the UK’s independent, statutory regulator of nursing and midwifery professions. We regulate [758,303](#) nursing and midwifery professionals, including [38,268](#) nurses and midwives in Wales. Our purpose is to promote and uphold the highest professional standards in order to protect the public and inspire confidence in the professions.

We welcome the aim to improve the quality of experience for everyone who uses social care services in Wales. We are committed to working with the Welsh Government to support this aim through our unique perspective as the regulator of nursing and midwifery professionals in Wales.

**Introducing direct payments for continuing health care**

We welcome the focus on person-centred care for Continuing Health Care (CHC). We support the introduction of direct payments for continuing health care. We would seek

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We’re the independent regulator for nurses and midwives in the UK, and nursing associates in England. Our vision is safe, effective and kind nursing and midwifery that improves everyone’s health and wellbeing.

Registered charity in England and Wales (1091434) and in Scotland (SC038362)

to work together with the Welsh Government on plans to develop the process, governance and guidance on CHC, as nurse assessors make a vital contribution.

It is important to recognise the difficult experiences of people who apply for CHC. We have analysed the concerns to us on CHC, where nurses have been involved in the assessment. The main themes were listening to the views of individuals and families, financial impact and the implications of self-funding, the need for issues to be addressed locally and lack of transparency in decision-making. It is important for the Welsh Government to take these issues into consideration as it moves forward with implementation.

We have made a commitment to continue to share our findings with other key stakeholders, to influence policy and process changes for people to have an improved experience of applying for CHC funding. We would be happy to share further information with you.

We are developing online supporting information for professionals to ensure they take a person-centred approach to CHC assessments, and we would value the opportunity to discuss our insights with you in more detail.

### **Extending mandatory reporting of children and adults at risk**

Public protection is our central concern as a regulator of individual healthcare professionals. We are acutely aware of the impact of abuse on people, as outlined in the recent publication of the [final report](#) of the Independent Inquiry into Child Sexual Abuse.

Our [Code](#) and [Standards](#) make clear that professionals on our register have a responsibility to report concerns of children and adults at risk.

[Section 17](#) of our Code requires nursing and midwifery professionals to raise concerns immediately where they believe a person is vulnerable or at risk and needs extra protection. To achieve this, they must take all reasonable steps to protect people who are vulnerable or at risk of harm, neglect and abuse. They must also share information if they believe someone may be at risk of harm, in line with the laws relating to the disclosure of information. Moreover, they must have knowledge of and work within the relevant laws and policies about protecting and caring for vulnerable people.

We acknowledge the concerns identified about the effectiveness of the existing system and we are committed to working with the Welsh Government to further strengthen the system.

However, we do not advocate the introduction of an individual statutory duty for mandatory reporting with either criminal sanctions or offences. This would be contrary to an open cultures approach. It would also expose professionals in Wales to criminal sanctions that they are not exposed to elsewhere in the United Kingdom, which has workforce risks for Wales.

This could add to existing workforce pressures that have increased with the pandemic. Workforce pressures is one of the top reasons for nursing and midwifery professionals leaving the NMC register in our most recent [annual leavers' survey](#). In Wales, this was cited by 18 percent of respondents.

We are keen to understand if analysis has taken place on how this new duty would interact with other existing statutory and reporting duties. This would help avoid discrepancies in approach and different standards of obligation and sanctions being placed on professionals.

Reporting should be driven by the needs of individuals rather than process. The primary duty of professionals is to patients and service users. In constructing any new duty, nurses, midwives and other regulated professionals should be able to maintain their professional discretion so that they can take account of individual circumstances. We would welcome further clarification on the Welsh Government's intentions to ensure that a mandatory approach will not have the effect of diminishing individual professional discretion.

If mandatory reporting is introduced, there needs to be clarity on the timescales for reporting. This raises the question as to whether any duty should be qualified by a specific time period given that there needs to be discretion to defer reporting so as to take account of the circumstances of each case. It might be best to require a reasonable time period to report rather than immediately. The needs of people using services must come first and it may not be practical to report immediately.

We would like to understand more about how the Welsh Government will monitor this new duty and share information with us as a regulator. Any sanctions imposed on professionals considering this new duty should be proportionate.

We would be keen to feedback on the legislative draft of this new duty. We would also like to see more evidence of the impact of this proposed change before changes are introduced.

We thank you again for the opportunity to respond to this consultation and please do not hesitate to contact us to discuss this further.

Yours sincerely,

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