



Jonathan Morgan AM
Chair, The Proposed NHS Redress (Wales) Measure Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Mr Morgan,

Consultation – Proposed NHS Redress (Wales) Measure Committee

The Welsh NHS Confederation is pleased to submit a response to your letter of July 20 2007 regarding the proposed NHS Redress (Wales) Measure and to set out below the views of our members in relation to the questions posed therein.

Our member organisations have already made significant changes to their structures, processes and ways of working in order to bring about an integrated approach to dealing with risk, incidents, complaints and claims. However, there is acknowledgement from amongst NHS bodies in Wales that there is still scope for further developments to be made to provide patients and their families with better access to redress and minimises their distress at often difficult times.

The driver for many of these changes has been the desire on the part of the NHS in Wales to be more proactive and open in its actions and processes. It is accepted that the NHS in Wales should, in future, seek out issues through thorough investigation and clinical audit, at the earliest possible point in time, of any healthcare event where it is considered that something may have gone wrong and for remedial action to be instigated regardless of whether the patient takes matters further.

Furthermore, any investigation undertaken must be part and parcel of a “healthy culture” of openness and transparency that ensures that the complaint is dealt with thoroughly and that the complainant is kept informed at every stage of the process and where it is deemed that an individual has suffered harm as a result of the health care they have received that individual must receive an apology, a clear explanation of what went wrong, treatment and care and, where appropriate, financial compensation.

Staff and clinicians must also be thoroughly trained and supported through any changes to ensure that the measures are seen as being fair to everyone involved in the process.

Why is a Redress Scheme required?

The Welsh NHS Confederation believes that the proposed Measure and a Redress Scheme is required to further build upon the positive achievements of the NHS in Wales and to address some of the difficulties inherent in current systems and processes for incident reporting and management, complaints and claims.

Wales should have a speedier, less adversarial system for both patients and staff involved. There will always be the need for recourse to legal counsel when dealing with highly complex or contested claims that may involve the payment of large sums of money. However, the insurance industry manages to make decisions on liability in law under its policies and pay the vast number of claims without the need to refer to costly, formal legal advice at every stage of the compensation process. Patients need a system that engenders confidence that fair redress will be made available, where due, without having to resort to costly legal processes.

Healthcare professionals also need a system that allows for early identification of a problem and deals with it appropriately so that individuals and NHS organisations can reflect, learn and move on, rather than having to face lengthy and protracted litigation.

These comments are made acknowledging the investment in knowledge and competence at a local level that is required to conduct quality investigations that allow a decision to be made as to whether a qualifying tort has occurred and the cultural changes that will need to accompany this.

Does the proposed Measure achieve the policy objective?

The proposed Measure delivers an excellent macro overview of arrangements that could improve the means for patients to access and secure redress for any sub-standard care that they receive that gives rise to a liability in tort, without the need to instigate formal legal proceedings.

It is important to note that consideration will have to be given to whether the regulations should focus on simply helping patients to know what their rights are under the system or whether they should go much further and require the body to make a patient aware that a right of action in tort is considered to exist and that a potential redress package is under consideration.

It is the view of the Welsh NHS Confederation that the regulations would be best served by placing a requirement to investigate any adverse event that could result in a potential liability in tort. If an investigation produces evidence that there is a liability in tort, the report should proactively consider what redress may be appropriate and to open communication with the patient accordingly – ensuring that the complainant is offered an apology, a clear explanation of what went wrong, an explanation of what measures will be put in place to ensure the incident is not repeated, treatment and care and, where appropriate, financial compensation.

It could be viewed that the onus remains unfairly placed on patients to know when there may be a potential right of action and to pursue it, if future regulations do not require these steps,

What will be the practicalities of making the system work and does the proposed Measure make provision for these?

Patients must be fully involved in the process and a thorough plan of communications must be implemented. This will ensure that any future process moves forward in a consensual and well informed manner

Clinical engagement will be of paramount importance in any process that seeks to openly scrutinise and critically appraise clinical practice at an individual practitioner level. The Measure, as set out, covers all key issues but at a macro level. There will still be a number of practicalities to work through in the implementation of the system even when the final regulations are determined, . There will also need to be consideration of how to deal with guidance, questions from the service etc., whilst ensuring local ownership of the process.

A proportion of our members have queried whether each NHS organisation needs to have dedicated staff to undertake this work. It is anticipated that the complaints function will need to continue at each organisation to directly support patients and provide information and it is important that organizations have the capacity to analyse the root causes of incidents from within the organization itself. However, in terms of assessing whether financial redress applies and whether payments should be made could be undertaken by a dedicated overseeing body, This would maintain a critical mass of individuals with expertise in this field, allowing for consistency of decision making and provide mutual support

Sufficient time must be allowed to achieve quality– time to investigate; time to work with and support individual clinicians who may demonstrate an initial defensive reaction and bring them on board; time to

engage effectively with patients. If sufficient time is not allowed, patient and public expectation might not be met immediately due to the service being less than fully prepared to respond as proposed. A clear set of competencies are key. Clear competencies, which staff must meet, identifying the right people, building their skills and knowledge and ensuring that organisations have adequate additional funding to support this approach both in terms of expected claims, but also in relation to the training of staff, potential employment of new staff and the new systems and processes, which will need to be put in place.

The Welsh NHS Confederation believes that there is currently a significant shortfall across the board in the availability of those with the knowledge, skills and competence to make these measures a success and an investment programme in this regard is a critical success factor.

Up-front information provision will be essential to helping patients understand specific steps in the process. As an example from our own experience, patients can view legitimate and necessary steps, such as obtaining a certificate from the Compensation Recovery Unit, as suspicious and a stalling tactic.

Financial costs are currently uncertain and the measures as currently laid out recognises that there will be significant costs associated with the training and development of staff and that they have yet to be quantified. It is particularly important that in developing this approach nationally that the potential financial implications are clearly understood. Furthermore it is stated that additional costs under these new arrangements must be met from within future budget settlements, however, it does not make clear whether when these costs have been quantified if the settlements for NHS organisations will be increased to take into consideration the new costs that will be incurred especially for potential additional staff and specific training. This will be important to understand in relation to the potential impact on services if funding has to be found from existing settlements to support the initiative

Is it appropriate that so much be done by regulations i.e. the details of any scheme or schemes will be decided by Welsh Ministers?

The Welsh NHS Confederation believes that it is likely to be reasonable for Welsh Ministers to create regulations as set out.

The Measure relates to redress in relation to liability in tort i.e. where some fault is established without recourse to the Courts. Would it be better for the Assembly to seek the power from Westminster to introduce a 'no-fault scheme'?

Given that there are potential limitations and some necessary conditions placed on cases that may qualify for compensation under any no-fault scheme, the argument could be put forward that compensation levels could prove inadequate in certain circumstances. More importantly, the way in which such a scheme would provide incentives to improve patient safety should be carefully considered using learning and best practice from around the World.

Yours sincerely,



MIKE PONTON
DIRECTOR
WELSH NHS CONFEDERATION



SIMON JONES
CHAIR
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