THE WELSH NHS CONFEDERATION
CONFFEDERASIWN GIG CYMRU

	The Welsh NHS Confederation's response to the Welsh Language Standards (Health Sector) Regulations.
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1. Introduction.

The Welsh NHS Confederation, which represents the seven Health Boards and three NHS Trusts in Wales, welcomes the opportunity to respond to the Welsh Language Standards (Health Sector) Regulations consultation.

The Welsh NHS Confederation supports our members to improve health and well-being by working with them to deliver high standards of care for patients and best value for taxpayers' money. We act as a driving force for positive change through strong representation and our policy, influencing and engagement work.

The Welsh NHS Confederation and its members are committed to working with the Welsh Government and its partners to ensure there is a strong NHS which delivers high quality, person-centred services to the people of Wales.

2. Summary.

Our response to the consultation seeks to gather the collective views on the extent to which the standards provide an appropriate baseline of Welsh language services actively offered by Health Boards and Trusts in Wales. In our response to the consultation we will not be providing specific answers to all of the questions posed but will be reflecting more closely the key issues and priorities highlighted by our members.

Following extensive consultation with our members, it is clear that there is support for providing Welsh language provision across the health sector. The Welsh NHS Confederation and our members recognise the importance of providing Welsh language services to patient and our Policy Forum recently published *'One Workforce: Ten actions to support the health and social care workforce in Wales'*[i]. This document highlights the importance of investing in Welsh language provision across the health and social care workforce to ensure that patients and their families receive individual, person-centred care in their chosen language.

While there is support for providing Welsh language provision there are some reservations about how the Welsh Language standards for the NHS can be achieved in practical terms. These concerns may be summarised as follows;

- **How the standards are applied:** Our members have highlighted that the standards will need to be applied differently depending on the service provided by individual organisations and the needs of the public within their area. It is important that when considering the range of standards that need to be applied that a realistic, proportionate and affordable set of standards are introduced over a long timeframe;
- **The associated financial implications:** This relates specifically to the translation of written correspondence between staff members and the public and the designing, producing, servicing and maintaining of a bilingual IT system. In addition, the training of an overwhelmingly non-Welsh speaking workforce into a workforce that is professionally competent in Welsh will lead to increase financial costs. During a time of austerity our members would recommend that the Welsh Government provides direction in relation to what Welsh language services need to be prioritised by Health Boards and Trusts;
- **Recruiting and staffing implications:** Members have highlighted the willingness and ability of the existing workforce and labour market to provide Welsh language services at the levels envisaged in the future. However the NHS in Wales is facing many recruitment and retention challenges, including the recruitment and retention of Welsh language professionals. The solutions to these challenges often goes beyond the remit of Health Boards and Trusts, with the importance of having a truly bilingual education system at the core of the issue;
- **Further clarity required:** There are a number of areas where the standards fail to provide the necessary clarity in relation to some definitions and terminology provided;
- **Are the standards achievable:** The vast majority of our members consider the standards to be both immeasurable and very difficult to achieve and monitor within the organisation;
- **Flexibility to implement the standards:** Our members feel that the standards are so compliance and regulatory driven that they do not allow for flexibility of purpose. For example, one of our members highlighted that the proposal that Welsh be used in case conferences regardless of whether or not the patient in question is in attendance, as well as implying that only healthcare staff attend such conferences, demonstrates a lack of understanding on the part of the standards' authors of what actually takes place at such meetings; and
- **Implementing the standards:** The new Welsh Language standards place a statutory obligation on Health Boards and Trusts to implement these standards consistently across Wales, however it is clear by the wording of the standards that they are not intended as one-dimensional policy recommendations to be implemented uniformly – in other words, it is significant that the standards fall short of advising Health Boards and Trusts how they are to be implemented. This suggests that the Welsh Government and the Welsh Language Commissioner will welcome innovative, unique and effective implementation strategies providing that they fulfil the Health Board and Trust's legislative obligations under these standards. The concentration of Welsh speakers within a handful of areas across Wales is only the most obvious reason why our members' strategies for ensuring that their actions are in accordance with the Welsh Language standards are likely to differ in their method and approach.

3. Achieving a truly bilingual healthcare system.

Overall, our members welcome the growing recognition of the importance of meeting language need and the impact this can have on the delivery of safe, high quality care and a positive patient experience. In particular, our members support the concept of the 'active offer' in relation to Welsh

services and agree that the move from Welsh Language schemes to a workable set of Welsh Language standards has the potential to bring about the positive change required. Moreover, our members believe that the Welsh Language standards should provide greater clarity for both organisations and members of the public on what provision they can expect to be provided in Welsh upon the standards entering into force over time.

The Welsh Language standards are also sufficiently clear in terms of their purpose in delivering the new legislative framework for NHS Wales. They provide the certain regulatory factors required to ensure that the Welsh language is not treated any less favourably than English. In this regard at least, our members are fully supportive of the policy intent and the direction of travel towards a truly bilingual NHS for Wales. However, due to the significant challenges and pressures on the NHS in Wales, it is important that the Welsh Government and the Welsh Language Commissioner support and direct Health Boards and Trusts to prioritise the services that must be provided in Welsh and that there must be a pragmatic approach about what is achievable and practical for our members to implement during a time of austerity and rising demand on services.

4. Financial costs of implementing the Welsh Language standards.

Of overwhelming concern for our members are the financial costs associated with implementing the Welsh Language standards in their current form. Our members share the view that while they support the general principle of achieving a truly bilingual NHS in the long term, and while they remain committed to doing all they can to support and encourage the improvement of the Welsh language in all matters of service provision, this must only be considered a priority to the extent that it is financially feasible to do so. There is the inherent assumption among our members that the costs involved would be so great that they simply could not be met without a massive financial and human resource investment that is out of the control of the Health Board or Trust, or even the wider health sector either in the short or long term. More specifically, our members highlight a number of areas where they consider the costs involved to be excessive and subsequently unfeasible.

Firstly, our members are unanimous in their affirmations that they do not possess the sufficient translation resource provision within their organisation to ensure that every piece of correspondence with patients would be produced and distributed in both Welsh and English. While our members confirm that letters and emails received in Welsh would be responded to in Welsh and would be subject to the same target response time that is true for English correspondence, the vast majority of this work is contracted to external agencies. While the target response times for Welsh correspondence are identical to those in English therefore, in practice our members are only able to respond to Welsh correspondence upon receiving the translated text from the external agency, which in turn raises a number of questions relating to a poor market supply of Welsh translators. Thus there is often an unavoidable delay in turnarounds for patients seeking to correspond with their Health Board or Trust in Welsh. While digital translation services are available, it is unlikely that such services would be particularly useful for our members given that individual correspondences between Health Boards and Trusts are likely to be of a technical nature and the limitations of such translation services are likely to be exposed.

It must be remembered that while the requirement to hire external contractors to translate all correspondence between Health Boards/Trusts and patients brings with it huge financial implications, this problem is brought about in the first instance by the fact that very few staff members within Health Boards and Trusts are professionally competent in Welsh. To train and support the existing non-Welsh-speaking workforce into a workforce that is professionally competent in Welsh to provide professional medical advice is simply not feasible given the tight financial restrictions Health Boards and Trusts are already experiencing on a daily basis. Even if funds were available, our members point out that the willingness and aptitude of staff members to undertake an extensive and thorough Welsh language teaching programme, whether it takes place at staff members' usual place of work or not, is likely to be extremely diverse. Investment is required not only for the purposes of improving care for patients, but also for ensuring that those who work within the health and social care sectors are adequately supported, thereby making a career in health and social care an attractive prospect for young people.

Our members also note that the implementation of these standards has the potential to cause added conflict and give rise to an unconscious bias between staff members. While our members are committed to doing all they can to consider the linguistic requirements of staff wherever possible, our members wonder why these standards place such a heavy obligation on their daily activities when private businesses in Wales, who also deal with the public on a daily basis, are immune to the standards and may have the capacity to cover the increased costs that would follow as a result of these standards being enforced. Needless to say, the financial implications of transforming the current workforce into a workforce that is thoroughly bilingual would be huge and well beyond the financial remit of our members' budgets, especially during a time of austerity and increase in service demand. Moreover, such is the existing pressure on healthcare services within both acute and primary settings, it is likely that such training programmes would take place (to some extent at least) outside normal working hours, thereby further reducing the likely willingness of staff members to attend them.

Our members also point out that the standards relating to increasing the number of Welsh-speaking staff within their specific Health Board or Trust is not solely an organisational or recruitment challenge – making the ability to correspond in Welsh an essential job requirement, for example, will have little or no effect if there is not a sufficiently sizeable Welsh-speaking population within the relevant geographical area in the first place. Achieving this involves sustained, targeted and multidisciplinary Welsh Government approaches that extend far beyond the remit of Health Boards and Trusts and have at their core a truly bilingual education system in Wales. This in itself represents an altogether new policy debate beyond the mandate of our members.

5. Clarity required around the technical language.

Referring collectively to the standards and the regulations, our members feel that these documents are difficult to interpret and understand in accordance with the general objectives of the standards.

Firstly, there are far too many draft standards which are often repetitive in nature, thereby leading to potential in confusion in ascertaining which version is the most recent. The fact that all of these draft documents are readily available via the Welsh Government, National Assembly and Welsh Language Commissioner's websites, with little guidance on their publication date, elucidates this problem

further. One of our members emphasised that while they would not encounter difficulty in explaining to staff the general thrust of the standards, they would find it extremely challenging to provide their staff members with detailed notes on the precise meanings of the more technical terms used throughout the standards and regulations without further support.

Secondly, our members felt that the regulations also causes difficulty because the regulations themselves reveal inconsistency and confusion over a number of legal definitions and explanatory notes. Given that the primary responsibility of enforcing such standards is to ensure consistency across NHS Wales, our members feel that the lack of clear, unambiguous language may discourage staff members within Health Boards and Trusts from engaging with the standards.

Our members also referred to a number of specific instances where the uncertainty surrounding the precise meaning of some legal terms was particularly problematic. For example, no definition is given to the phrase 'clinical consultation' at standard 25 – clearly, if this was to be interpreted in its broadest sense, this could involve a range of activity. Moreover, clear definitions are lacking for 'case conferences' and 'health-related provision' thereby making it increasingly difficult for our members to consider the extent to which they are capable of implementing the relevant standard. A number of our members also made specific reference to the list of healthcare organisations under standard 38 which, although comprehensive, may not capture everyone who may be involved in a case conference or meeting that involves only healthcare professionals as new roles are constantly being developed and amended.

Finally, our members voice concerns over how standard 138, which deals with ensuring there are appropriate measures taken to ensure that recruiting and training delegates is carried out in both English and Welsh, would operate in practice. Does this standard simply place an obligation on the relevant public body to ask the delegates before the commencement of their training whether or not they would like to receive their training in Welsh and make suitable arrangements from that point on? or does this standard require a public body to formally schedule a date, produce materials and arrange simultaneous translation if the trainer is non-Welsh speaking in the event that a person wishes to receive their training in Welsh? The situation remains unclear and is not clarified by the regulations.

6. Monitoring the standards.

Our members note that these standards are immeasurable, which means that it is extremely difficult for Health Boards and Trusts to monitor the extent to which the standards are being implemented across such a large, diverse and multidisciplinary organisation. Countless numbers of interactions between staff members, patients, administrators and various others take place every day across a variety of healthcare settings, all of which would require an altogether new and extensive level of bureaucracy to police and monitor. Thus it would be an almost impossible task for our members to ensure that every one of these interactions complied with the standards at all times. Indeed, the only way our members would become aware of any potential breach of the standards would be as the result of a complaint or feedback stating so, whereupon an official investigation and possible penalty would follow. Given that the total NHS Wales workforce currently stands at approximately 86,500, such an undertaking would inevitably incur significant financial costs as well as being extremely time-consuming.

7. Comments around specific standards.

Our members have dedicated specific attention to standard 25, which deals with the provision of Welsh in clinical consultations. Our members suggested that were this standard to be implemented in its current form, this could lead to vital information being lost in translation, perhaps in terms of the outcome of the consultation or the severity of what was being discussed. Not only does this risk vital information remaining unknown to the consultant but also risks depriving the patient of a full understanding of their diagnosis and future plans for treatment or care. Even in instances where there are Welsh-speaking members of staff working within Health Boards and Trusts, it is likely that a number of these individuals would not feel comfortable in delivering this service for fear that their own Welsh language capabilities are not good enough.

Similarly, standards 131 – 136 were also specifically cited by our members as being particularly problematic. These standards specify that an organisation's intranet systems must be entirely bilingual. Purely from a functionality viewpoint, a new wireframe would have to be designed, produced and installed across every Health Board and Trust in Wales to ensure that all IT systems were thoroughly bilingual. Associated costs would relate not only to the setting up of an entirely new IT network itself, but also the employing of managers and technicians to service and maintain the new system. Even if such a system was possible to develop, the costs involved would far outstrip our members' financial budgets, rendering them both impractical and unfeasible. Moreover, some of our members employ over 200 devolved editors with full access to uploading content to their individual sites – this reflects the sheer volume of content that is uploaded to these pages on an hourly basis. Thus the implementation of such standards would not only put immense pressure on our members' IT and Communication teams, but also limit the pace at which new content could be uploaded.

Standards 109 – 121 relate specifically to the provision of the Welsh language within internal administrative processes. It is not within our members' current practice to produce contracts of employment or any paper correspondence relating to their employment in Welsh. This is also true for document that outline staff training needs, performance objectives or HR policies. Again our members emphasised the massive cost implications that would be incurred should the standards be imposed in this way, as well as the more practical difficulties that would arise in instances where senior staff members with responsibility for a number of individuals working across various departments and teams, such as managers, do not speak Welsh. While our members felt that they would be able to provide some basic correspondence in Welsh, such as letters informing staff members of changes to their working hours and annual leave application forms, translating more complex letters would incur considerable costs given the fact that each piece of correspondence is likely to be highly individual and specific for each employee, thereby leading to considerable delays in responses.

Despite these concerns however, our members are positive about adopting a central approach to the implementation of a revised version of the operational standards if this was to be co-ordinated by the NWSSP (NHS Wales Shared Service Partnership). Our members believe that ensuring compliance with the standards would be made considerably more achievable if they were encouraged to work collaboratively with the NWSSP to suggest a number of innovative implementation strategies e.g. using All Wales recruitment templates.

8. Implications for primary care services and other third party organisations.

We recognise the need for Welsh language provision within primary care and welcome the flexibility that the consultation is showing. Our members acknowledged and supported the recommendations put forward by the Welsh Language Commissioner in her report 'My Language, My Health: The Welsh Language Commissioner's Inquiry into the Welsh Language in Primary Care' and our members have taken forward a number of these recommendations.

While the NHS Confederation recognises that the Welsh Language standards do not apply to independent primary care providers on the grounds that this process, particularly for small scale primary care providers, would be impossible to achieve given their limited financial and administrative resources. Moreover, the level of bureaucracy that would be involved in producing individual compliance notices for all independent primary care providers across Wales would be unfeasible. However, as a number of our members' highlighted, these standards do apply to providers working directly with Health Boards. Thus as far as these providers are concerned, it may be more practical, and significantly more achievable, in the long term if these services were subjected to another set of less restrictive standards to facilitate a positive transition.

As well as primary care services, our members are also concerned that the standards would be applied to any third party that they contract with for provision of services to patients, from small third sector organisations to multinational organisations. This would in practice be unworkable; it would add huge costs to procurement contracts and could impact on third party willingness to work with the NHS in Wales.

9. Conclusion.

On behalf of our members, the Welsh NHS Confederation welcomes the growing recognition of the importance of meeting language need in the Welsh NHS and the impact this can have on the delivery of safe, high quality healthcare for patients. The Welsh NHS Confederation also welcomes the draft Welsh Language standards for demonstrating a positive step towards ensuring that healthcare in Wales is person-centred and places the experiences of the patient as a priority.

However, while our members welcome these positive steps and agree wholeheartedly with the wider objectives of the Welsh Language standards, it is evident that our members' have a number of serious reservations about the practical application of these standards and their impact on other areas of service provision within their Health Board or Trust given the current financial and political climate.

There exists a strong consensus among our members that a number of these standards are unachievable or unaffordable. A more pragmatic approach would be welcomed by our members which involves working towards a more realistic, proportionate and affordable set of standards over a longer timeframe. Our members are also concerned that there will now be considerable investment into the standards themselves rather than promoting and sustaining the Welsh Language more generally through an array of policies.

To this end, the Welsh NHS Confederation will continue to work closely with the Welsh Government and Welsh Language Commissioner to encourage meaningful dialogue about the provision of Welsh

language services within the Welsh NHS and the best way that we can implement the Welsh Language standards once they are finalised.

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[i] The Welsh NHS Confederation, September 2016. One Workforce: Ten actions to support the health and social care workforce in Wales.