

**GUIDANCE FOR ENGAGEMENT AND CONSULTATION  
ON CHANGES TO HEALTH SERVICES 2022**

**SECTION 1: INTRODUCTION**

1. This document aims to provide guidance to the NHS in Wales on making changes to health services. The previous guidance is being replaced because the legal and policy landscape has changed over the intervening period. Subject to the outcome of this consultation, the final publication of this guidance will coincide with the establishment of the Citizen Voice Body for Health and Social Care, Wales, the organisation that replaces the network of Community Health Councils, in April 2023.
2. This new guidance has been developed following engagement with a range of stakeholders including the Board of Community Health Councils, the Citizen Voice Body and the NHS. That engagement highlighted that much of the previous guidance remained appropriate and has therefore been replicated in this document. This guidance should be read alongside any Statutory Guidance on Representations issued by the Welsh Government under section 15(4) of the Health and Social Services (Quality and Engagement) (Wales) Act 2020.
3. The NHS has evolved continually since its inception on 5 July 1948. The way in which people are cared for today would have been unimaginable when Aneurin Bevan established the health service. Thanks to advances in technology, medicines and clinical practice, the NHS is caring for, and treating, people that may have otherwise died many years ago. Changing and evolving to meet the latest clinical guidelines, feedback from patients and staff and the growing expectations of the public is a constant for the NHS. It is therefore essential that service change is done well and it is important that people using those services have a say in the way they receive them.
4. Since the previous guidance was published several Acts have been passed that have an impact on the delivery of health services. These include:
  - The NHS Finance (Wales) Act 2014 which made planning the bedrock of the health system in Wales – the change from a market driven commissioning approach to a planned system and introduced the need for the development of Integrated Medium-Term Plans;
  - The Social Services and Well-being (Wales) Act 2014 which promoted the integration of health and social care to support patients and service users;
  - The Well-being of Future Generations (Wales) Act 2015 which made public bodies, including the NHS, think more long term, work better with people and communities and each other, to prevent problems and take a more joined-up approach; and,
  - The Health and Social Care (Quality and Engagement) (Wales) Act 2020 which provided the legal framework for, among other things, the establishment of the Citizen Voice Body for Health and Social Care, Wales.

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5. In addition, there has been the publication of the *Independent Parliamentary Review of Health and Social Care* (2017, 2018) and *A Healthier Wales*, the Welsh Government's plan for health and social care (2018). The Welsh Government has also published the *National Clinical Framework* (2021), which was a key commitment in *A Healthier Wales*.
6. The overall aim of any service change must be to achieve the aims set out in *A Healthier Wales*:
  - Improved population health and well-being;
  - Better quality and more accessible health and social care services;
  - Higher value health and social care; and,
  - A motivated and sustainable health and social care workforce.
7. While in this guidance the term service change is used throughout, other terms are often used – and used interchangeably – to describe the same thing, such as reorganisation, reconfiguration or service redesign.
8. In addition to the above criteria numerous reports have highlighted challenges that the NHS faces exacerbating the need for change, including:
  - People living longer but not healthier with co-morbidities;
  - Increases in population and changing demographics;
  - Global recruitment difficulties for skilled health professional workforce;
  - Public health and health inequalities;
  - Changing clinical practice, increasing specialism and medical and technical advances to improve patient outcomes;
  - Resources (buildings, people and finance);
  - Legislative and public expectations; and,
  - Learn from experiences of responding to the pandemic.

## SECTION 2: THE LEGAL BACKGROUND

9. Section 183 of the National Health Service (Wales) Act 2006 requires Local Health Boards (LHBs), with regard to services they provide or procure, to involve and consult citizens in:
  - Planning to provide services for which they are responsible;
  - Developing and considering proposals for changes in the way those services are provided; and,
  - Making decisions that affect how those services operate.
10. Section 242 of the National Health Service Act 2006 extends this requirement to NHS Trusts.
11. The previous provisions in the Community Health Councils (Constitution, Memberships and Procedures) (Wales) Regulations 2010, which required health bodies to consult with Community Health Councils (CHCs) on service change matters, and also permitted the CHCs to make referrals to the Welsh Ministers in relation to service change matters in certain circumstances, are revoked and

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therefore no longer apply.

12. Instead, linked to the main aims of the Citizen Voice Body, including to listen to and represent the interests of the public, in all parts of Wales, in matters related to health and social services; and to provide an effective mechanism to raise people's experiences to drive improvement in services, representations may be made to NHS bodies about a range of matters, including those relating to changes in NHS services. More information on this, including NHS bodies' duties to have regard to these representations, is included in the Statutory Guidance on Representations to be issued under section 15(4) of the Health and Social Services (Quality and Engagement) (Wales) Act 2020.

### **SECTION 3: GENERAL PRINCIPLES IN MANAGING SERVICE CHANGES**

13. The NHS is responsible for ensuring that safe and sustainable services are available for the citizens of Wales, within the resources made available by the Welsh Government.
14. The NHS must continue to strive to maintain safe, sustainable services regardless of the demand pressure, financial challenges and expectations.
15. The NHS must be more innovative and be able to transform services quickly as it has demonstrated very effectively during the pandemic. Service change must be evidence-based, aim to achieve the best levels of performance and be supported and led by clinicians. It should also follow the principles of value based health care which seeks to achieve world leading health outcomes for the people of Wales by looking at whether the resources we have are being used fairly and in the best way.
16. The Citizen Voice Body represents the interests of the public in relation to health and social services in Wales. The need to secure safe and sustainable services and access for all to best practice within available resources is equally of concern to the NHS and its users and something which the NHS in Wales must work with the Citizen Voice Body to achieve. NHS bodies must therefore engage with the Citizen Voice Body as it works to improve services.
17. Reducing health inequalities remains an important driver of service delivery and service change.
18. It is important that NHS organisations work in partnership with their communities and develop proposals in a genuinely co-productive way. If proposals are developed and planned through co-production, they are more likely to be supported and deliver improvements in care and respond to the needs of the patients and communities that the NHS is there to serve.

### **Continuous engagement – building relationships, trust and leadership**

19. Continuous engagement on services must be part of core business of the NHS in Wales. The NHS must establish and sustain continuing engagement with citizens, the Citizen Voice Body, staff, staff representatives and professional

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bodies, third sector and voluntary sector organisations as well as partners not only when changes are being proposed but on a routine basis. That engagement should give people the opportunity to understand the NHS body's aspirations and achievements and the challenges it faces so they can influence and inform decisions about service changes.

20. By such ongoing and regular engagement – and analysis of feedback – NHS bodies can build effective, constructive relationships with their stakeholders and the public. It is important for NHS bodies to demonstrate that they are listening and taking appropriate action on the feedback they receive. In doing so, NHS bodies should follow best practice set out in the *National Principles for Public Engagement in Wales* (2022). NHS bodies should undertake stakeholder mapping to help identify stakeholders and those who can help the NHS engagement with them. This should inform the development of an engagement plan.
21. The NHS should only seek to implement planned changes when it is satisfied that it has explored the issues first through effective engagement. Resourcing and supporting this process along the various stages should be viewed as an integral part of the work of the NHS in Wales.
22. All NHS bodies should develop a strong public information and engagement approach, based on transparency, evidence, and positive leadership. A lead officer for citizen engagement should be identified by each NHS organisation to support service change. NHS organisations dealing with Wales-England or UK-wide services will need to consider how best to manage such issues.
23. Services will be better designed when citizens' and patients' views are understood and taken into account. Listening and responding is the key to improving and developing healthcare services. NHS bodies should routinely:
  - Listen to views and lived experiences of all stakeholders;
  - Work with citizens, patients, stakeholders and partner organisations to plan any changes;
  - Recognise that the Citizen Voice Body is a key stakeholder and that by engaging with and providing the Citizen Voice Body with relevant information on proposed changes it can discharge its role in making representations on behalf of citizens;
  - Take an inclusive approach which promotes equality of opportunity and recognises the diversity of the communities they serve, when explaining and communicating issues or opportunities;
  - Produce a full range of easily accessible information on services and possible future developments, bilingually and in a range of formats and appropriate languages, taking into account the opportunities offered by social media and also utilising engagement avenues provided by other agencies; and,
  - Embody the values and expectations of Welsh life including the Well-being of Future Generations Act 2015.

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24. The third sector and voluntary organisations can make a particularly important contribution to effective engagement. Services provided by illness/condition-specific organisations help people to engage with their care on a better-informed basis. Self-help groups, such as carers groups, and support groups for people who may have a rare condition and feel isolated from mainstream services, address health issues in communities. Many third sector and voluntary organisations are therefore able to identify and represent the views and priorities of users and carers and provide a direct link with service users across a range of conditions.
25. Equally, the Children's Commissioner, Older People's Commissioner, Well-being of Future Generations Commissioner and the Veteran's Commissioner may have insights and potential engagement mechanisms that may be helpful.
26. NHS organisations and the Citizen Voice Body should share good practice, assessment tools and performance measures to help improve the effectiveness of continuous engagement. Every service change, no matter how large or small, will provide learning opportunities.

## **SECTION 4: SUBSTANTIAL CHANGE**

### **Considering changes**

27. Section 3 outlines the continuous engagement that must take place whether or not any changes are being proposed, and sets out the expectation that this will be the normal mechanism through which service changes are taken forward. It is important to differentiate between small changes and substantial or significant service change either at a local, regional or national level. The level of engagement and consultation should be proportionate to the type of change being considered or proposed. As part of its underpinning impact assessments of proposals and through working with its stakeholders, the NHS can determine the nature and scale of change and whether it could be considered substantial. It is important for NHS organisations to remember that all the evidence gathered as part of the engagement and / or consultation process is valuable to provide support for any necessary business cases – and may even form some of the chapters required in such business cases - that need to be developed for investment in new buildings and other major developments.
28. NHS organisations are required to have a clinical services strategy, approved by their Board. It should clearly set out their long-term vision for how they will meet the needs of the communities they serve. A longer term strategy of each organisation is critical for setting the direction of travel and providing the context within which key strategic decisions about the shape of services and the use of resources can be taken. These include population projections and analysis to inform decisions about service models, pathways, workforce planning, finance and infrastructure investment.
29. Each NHS organisation must ensure their integrated plans are consistent with its longer-term vision, reflects the progress expected during the term of the three-year-plan and how the transition to future service models will be realised.

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30. The expectation would be that service changes should be dealt with as public business on the Board agenda of the relevant NHS body where a report on the change and its impact should be given and on any actions planned to mitigate any potential adverse impact.

### **Service change across multiple organisations**

31. Where more than one NHS organisation needs to work together to engage, plan and deliver regional or national changes to services, they should work together to ensure clear governance arrangements are in place from the outset that clarify the respective responsibilities of individual organisations and how decisions will be made.
32. This may be through existing mechanisms such as Regional Planning Committees, the Welsh Health Specialised Services Committee or the Emergency Ambulance Services Committee or through other specific arrangements. This will help ensure:
- Clinical and professional leadership from different organisations;
  - Effective service user and public engagement across communities;
  - Consideration by all decision makers; and,
  - Strategic alignment at local, regional and national level including professional networks and Royal Colleges.
33. The jointly owned process should include an indicative timetable for planning and implementation and all organisations must continue to work to timescales, unless there is consensus among all organisations to change pace.
34. In such circumstances, service change spanning a number of NHS organisational boundary areas would also have to be underpinned and evidenced by an impact assessment, which considers the relative benefits or risks of the proposed change.
35. Both for continuous engagement and in regard to specific consultations, NHS bodies must ensure that local interests are addressed, and that responsibilities with regard to equality and diversity and the Welsh Language are met, including impact assessments. Arrangements should address the geographical areas, cultural and linguistic needs of the communities they serve.

### **Formal consultation**

36. There may be some cases where, exceptionally, the view is that a more formal consultation is required. A key issue to be determined as to whether formal consultation is required is whether the change is substantial or not. In general, substantial change should be the subject of formal consultation though it may not be appropriate where the proposal is not controversial. It may also be appropriate that a change, although not substantial, ought to be the subject of formal consultation. The Citizen Voice Body may make representations either

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as part of the engagement or formal consultation period (if any) and the NHS body must have due regard to those representations, as set out in the guidance on representations.

37. Where it appears likely that a formal consultation could take place, it is proposed that this should be conducted on a two-stage basis. The first stage is for NHS organisations to undertake extensive discussion with all the key stakeholders, to include, as appropriate:

- Stakeholder Reference Group;
- Health Professionals' Forum;
- Local Partnership Forum;
- Citizen Voice Body;
- Public Service Board;
- Regional Partnership Board;
- staff and their representative bodies; and,
- other key partners such as other healthcare commissioners or providers who may be impacted by a change, for example, the Welsh Ambulance Services NHS Trust or a neighbouring health board/Trust.

38. The purpose of these discussions will be to explore all the potential issues, to refine the options and to decide and agree on which questions will be set out in the consultation. When it is satisfied that this first stage has been properly conducted, the NHS body should proceed to formal consultation.

39. Following the first stage described above, a formal consultation period of a minimum of 6 weeks should be sufficient in most cases if the issues have already been fully explored during the first stage but it will strongly depend upon all the circumstances of the particular matter. LHBs and NHS Trusts should seek their own independent legal advice about whether the consultation is lawful, which will include whether the timescale given for consultation and response is adequate and fair.

40. Any consultation should comply with the four Gunning Principles (1985) which provide that:

- The consultation must take place when the proposal is at a formative stage. Public authorities must have an open mind during consultation and must not have already made the decision, but may have some ideas about the proposal;
- Sufficient reasons must be put forward for the proposal so as to allow for intelligent consideration and response. Consultees must have enough information to be able to make an informed input to the process;
- Adequate time must be given for consideration and response. The timing and environment of the consultation must be appropriate, sufficient time must be given for people to develop an informed opinion and then provide feedback, and sufficient time must be given for the results to be analysed; and,

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- The product of the consultation must be conscientiously taken into account.

41. A number of factors should be considered right at the start, because they will impact on decisions to be taken at various stages throughout the formal consultation process. These include:

- What is the respective responsibility of each of the local NHS organisations?
- Has there been any previous consultation carried out on the same or a previous related or similar issue, e.g. for local authority services?
- Have there been any representations from the Citizen Voice Body or former Community Health Councils on the same or a related/similar issue previously?
- Who should be consulted, on what and how?
- Will these issues affect users of other NHS services in particular those with sensory loss and disabilities?
- Are there issues affecting other Welsh or English areas?
- What resources are needed and available?
- How will any conflict/complaints be dealt with?
- How will the outcome feed into the decision making process?
- When and how will decisions be made?
- How will results be fed back to patients, staff and citizens who have been involved, either directly or indirectly? will they be published through the media to inform a wider public?
- What evaluation of the consultation is going to be undertaken, and how?
- When to complete impact assessments – will the proposed change have a disproportionate impact on any particular community or communities?
- What is the timetable for both the involvement and consultation process?
- What is the impact on associated services?

42. In managing the process, the Welsh Government expects:

- Senior clinicians will take a lead role in presenting and supporting the proposed change;
- The NHS body leading the consultation will work in partnership with its counterparts in other local NHS bodies;
- NHS bodies will invest sufficient resources to manage the process from start to end effectively, openly and transparently;
- NHS bodies will keep the Citizen Voice Body informed of their proposals, provide any necessary information and have dealt with any resultant representations in line with the relevant Statutory Guidance; and,
- Where appropriate, the Public Service Board and Regional Partnership Board partners will be involved to ensure that proposals are seen and addressed within the context of the “whole system” of public service provision.

**Consultation documents should:**



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- Explain the case for change, why change is necessary and provide clear evidence;
  - Include a clear vision of the future service;
  - Explain the consequences of change or of maintaining the status quo, on quality, safety, accessibility and proximity of services;
  - Include information on outcomes for patients and service users;
  - In the case of changes relating to hospitals, demonstrate how services will in future be provided within an integrated service model;
  - Set out clearly evidence for any proposal to concentrate services on a single site;
  - Include the evidence of support from clinicians for any proposed change;
  - In the case of changes prompted by clinical governance issues, show how these have been tested through independent review;
  - Show which options were considered during the engagement phase - the NHS needs to ensure that, if a preferred option is specified, this will not be seen as a 'fait accompli';
  - Explain any risks and how they will be managed;
  - Give a clear picture of the financial implications of the different proposals;
  - Spell out who will be affected by the proposed changes and how their interests are being protected;
  - Explain how any change and benefit will be evaluated after implementation;
  - Be bilingual and in a range of formats, appropriate for the needs of the affected patients and communities; and,
  - Be agreed by the Board.
43. The NHS body should develop media contacts and work with them to explain the changes and their impact in ways in which citizens will understand. The process of consultation must be genuine and transparent. There should be an open discussion with citizens, NHS staff, staff representative and professional bodies, stakeholders, Citizen Voice Body, third sector and partner organisations throughout the process.
44. The NHS body planning consultation should seek the views of opinion formers and the leaders within the community such as politicians at local, regional and national level, patient groups, professional organisations and relevant voluntary groups and those who may be affected by possible changes.
45. At the end of the consultation period, where consensus has been reached or no concerns raised, the NHS body may proceed to implement its proposals subject to any other approvals or consents that may be required.
46. NHS bodies should consider how well the consultation process worked and whether it met the expectations of those who participated in it. It should assess this against the measures identified at the planning stage and should give feedback to stakeholders involved about the results of consultation.

## SECTION 6: URGENT SERVICE CHANGES

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47. Special arrangements apply where an NHS body believes that a decision has to be taken on an issue immediately in the interests of the health service or because of a risk to the safety or welfare of patients or staff. In such a case, the relevant NHS body may not be able either to engage or consult formally but if they have strong ongoing engagement such changes shouldn't be a surprise to stakeholders as they will be aware of the challenges in delivering some services.

### **Good practice is that:**

- The NHS body must make every attempt to inform all relevant interests of the new arrangements prior to the change;
  - The NHS body must provide information to the Citizen Voice Body about how patients and carers have been informed about the change to the service, and what alternative arrangements have been put in place to meet their needs; and,
  - The NHS organisation should indicate what action it is taking to return the service to normal or to provide a better alternative.
48. To avoid difficulties arising over such emergency decisions, NHS bodies should take precautionary action and contingency plans should be prepared for services viewed as at high risk and shared at an early stage with relevant NHS organisations, the Citizen Voice Body and other relevant stakeholders. All contingency plans should have a risk assessment and impact assessment undertaken for options.
49. The NHS body should take urgent steps to bring the change process in line with the requirements that normally apply and put in place a comprehensive engagement and consultation process, if the NHS organisation wish to make the emergency change permanent.

## **SECTIONS 7: WHERE THERE IS DISAGREEMENT**

50. The aim of this document is to provide advice and support to enable NHS organisations make necessary changes to services. However, despite the extensive guidance, there may be times where people or organisations are not happy with the outcome. The role of the CHCs to refer such concerns to the Minister to determine will no longer apply and does not transfer to the Citizen Voice Body. However, the Citizen Voice Body can draw to the attention of Welsh Ministers any issues related to health and social services, including changes to services and their management.
51. In such circumstances, Welsh Ministers will expect the Citizen Voice Body to explain why they have concerns. Welsh Ministers will seek a view from the relevant NHS organisations including evidence of any engagement / consultation it has undertaken.
52. Welsh Ministers could direct the NHS organisation to commission an Independent Multidisciplinary Panel to provide advice. The panel could consider the clinical case, the geographical, environmental, social, travel and patient flow

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issues and recommend a way forward. It will be important to establish and agree Terms of Reference for any review and ensure these are clearly communicated. Welsh Ministers could direct the NHS organisation to implement the recommendations of the Independent Panel.

### **SECTION 8: NEXT STEPS**

53. In addition to consideration of formal responses to this consultation, Welsh Government officials will continue to engage with the Citizen Voice Body and NHS colleagues to further refine this guidance. The final guidance will be published on 1 April 2023. It is expected that the final guidance will be reviewed after being in place for a year.