

# Duty of Candour-

Consultation response, 13.12.22

## Response on behalf of Learning Disability Wales

Learning Disability Wales is a national charity representing the learning disability sector in Wales. We work with people with a learning disability and their families, Welsh Government, local authorities, disabled people's organisations and the voluntary sector to create a better Wales for all people with a learning disability.

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### Our response:

We very much welcome the proposal to establish a Duty of Candour within NHS Wales. Accountability is important when things go wrong and this new Duty can go a long way towards creating that accountability. The policy seems largely clear and appropriately defined. We do have some specific suggestions to make sure people with a learning disability are specifically protected by the Duty.

### “Minor” harm

The guidance could do a better job at explaining what level of harm an incidence must cause before the Duty of Candour comes into effect. The definition of “minor harm” is not very clear. You define it as harm that may require “first aid, additional therapies, medication or rehabilitation”. These are very vague terms and encompass a wide range of harms. It would be good to be a lot more specific here. You also define minor harm as harm that may require a hospital stay to be attended for up to three days. Three extra days in hospital could constitute significant harm in some situations. We urge you to consider any incident that results in longer hospital stays as at least medium harm.

### Communication needs

We believe it is appropriate to make sure people are told when the Duty has been triggered face to face as a default, but that it is especially important here to offer reasonable adjustments. Requiring that conversations be held

either by phone call, video call or in person should be an obligation on NHS Wales, not on the person who has been harmed.

We suggest that the guidance makes special provision for arranging meetings to discuss harms. There must be a duty on NHS Wales to approach service users in different ways. The guidance says that where someone has been called by phone the person making the call should not leave a message. We suggest adapting this to say that they should leave a message, saying that they tried to reach a service user and offering a number to call back. They should not be giving the apology as a voicemail message, but they should give service users the ability to prepare themselves for a call by being given information about who is trying to reach them. They should also be given the option to be contacted by letter, email and/or text message. Again, this is not so that the apology can be delivered through this medium but in order to arrange a phone call or other face to face meeting.

People should also be given the opportunity to receive an apology letter with all the information about what happened without having to talk to anyone face to face.

In point 8.51 you write about what should happen if the person who has been harmed cannot be reached. You say that if the NHS body has undertaken “reasonable steps” this should be noted without further action being taken. It is important to more closely define what “reasonable steps” mean here and in particular that it means attempting to reach a person in at least three different ways (eg by having left a voice message, a text message and having sent a letter). There is also provision about what to do if the person in question indicated that they do not wish to receive communication. Again, here it is important to clarify that people who have potentially been harmed have been offered information in whatever way is most accessible to them.

Finally, it is important that the letters sent out to people who have been harmed are accessible. They should generally be written in plain English or plain Welsh and there should be easy read versions of the letters available for those who need them.

## **Compensation and legal recourse**

Given that this document lays out potential courses of actions for what happens when a patient or service user of NHS Wales has been harmed, it is strange to see so few references to redress or compensation. For an apology to be truly meaningful it should include detailed information on what options are open to them in putting in a complaint and getting compensation.

We are grateful for this opportunity to give feedback on this important legislation. Please do not hesitate to contact us with any further questions, especially in terms of how to make communications more accessible.