

Proposed regulations for direct payments in health and social care

Consultation response form

Name:

Jake Smith

Organisation (if applicable):

Carers Wales

Telephone number (optional):

Address:

C12 Business Centre, Cathedral Road, Cardiff, CF11 9LJ

If you want to receive a receipt of your response, please provide an email address:

jake.smith@carerswales.org

Responses should be returned by Wednesday, 8 October 2025 to:

Direct Payments Policy Team
Inclusion and Corporate Business Division
Social Services and Integration Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

or completed electronically and sent to:

email: HSC.DirectPaymentsConsultation@gov.wales

Where you have particular evidence to support your views, we would be grateful if you could provide such evidence in your response to each question.

Part 1: Proposed Amendment to the Local Health Boards (Directed Functions) (Wales) Regulations 2009

Question 1

What are your views on the proposal to amend the Local Health Boards (Directed Functions) (Wales) Regulations 2009 to delegate to local health boards the function of making direct payments?

Please explain your answer.

We support moves to delegate to local health boards the function of making direct payments. As expanded upon in our June 2024 [oral evidence session](#) with the Senedd Health and Social Care committee during their inquiry into the 2025 Act, we believe extending the option of direct payments to recipients of NHS continuing healthcare will enhance choice and control for people in need of care and support and their unpaid carers.

We would welcome clarity regarding whether additional resource is being provided by Welsh Government to health boards to equip them to effectively discharge these new functions.

Part 2: Proposed content of regulations for health care

Question 2

What are your views regarding the circumstances in which, and persons to whom, direct payments may be made? Please share any suggestions for any changes or additions you would like to see.

Please explain your answer.

Matters a local health board must have regard to when making a decision concerning direct payments

The regulations propose to set out the matters that will be used by a health board to determine whether a direct payment should be made. While we do not disagree with the matters proposed, we are concerned that the regulations do not appear to have considered how someone could object to and challenge the decision of the health board not to make direct payments.

Across health and social services in Wales there are longstanding procedures for individuals to challenge decisions, seek redress or complain. This can include internal processes, or escalation to an outside body such as an ombudsman. Similar provisions must be clearly outlined in these regulations. Without this, there would be a significant imbalance of power between the health board and individuals who would lack options they can utilise in other parts of the health and care system. Recipients of direct payments from a local authority can use their local authority's complaints process and escalate it to an independent actor if desired.

Persons in respect of whom there is no representative

With regards to appointing a person to manage direct payments when there is no representative for a person who lacks capacity, we would urge clarification on the type of professional who would be appointed by the health board and reassurance that they have received appropriate training to manage direct payments and understand the nature of relevant health conditions and caring relationships.

Nominated person who can receive a direct payment on behalf of a direct payment recipient with capacity

It is proposed that the regulations contain a number of requirements to be complied with by a nominee in order for a direct payment to be made to them. The requirements seem correct, but are substantial, including "the need to be responsible for all contractual arrangements entered into for the benefit of the person and secured by means of the direct payment" and "complying with all relevant provisions within the regulations". Under the existing system of local authority provided direct payments, it has often been found that unpaid carers and service users are reluctant to take up direct payments due to the additional work entailed, whereas some good practice can be seen where some local authorities provide administrative support to help individuals manage direct payments. In light of this, appropriate practical support must be offered to recipients of direct payments to enable them to meet these requirements. Without the offer of appropriate practical support, individuals may struggle to meet the requirements and may be reluctant to take up the offer of direct payments in the first place.

Question 3

What are your views regarding the consultation and assessment a local health board should undertake before deciding to make direct payments? Please share any suggestions for any changes or additions you would like to see.

Please explain your answer.

Decision to make a direct payment

While this proposal rightly concerns how health boards will undertake appropriate consultation and assessment before deciding to make direct payments, there is a noticeable gap regarding how someone who has requested direct payments could challenge the decision should the health board decline to offer them direct payments. An individual can use their local authority's complaints process to challenge decisions around direct payments and may also seek to escalate the matter to the Public Services Ombudsman for Wales. In line with existing similar practice, a clear mechanism must be established and communicated through which someone could challenge a refusal of direct payments, including how they could seek assistance from an independent actor and how the decision could be reviewed at a higher level.

Decision to make direct payments to a nominee

We support the requirements in this section, in particular that a nominee would not be required to apply for an enhanced criminal record certificate if they live in the same household, are a family member or a friend involved in their care. Without this provision, unpaid carers would face significant and unnecessary barriers to arranging care for their loved one.

Rights to be informed

While we welcome that people will be informed in writing of any decision not to offer a direct payment, and the reasons for it, we refer to our earlier points that there must be a mechanism for people to challenge the decision, and this should be clearly outlined in the written communication proposed here.

Question 4

What are your views regarding the care and support plan, care co-ordinator and one-off direct payments? Please share any suggestions for any changes or additions you would like to see.

Please explain your answer.

Care and support plan and care co-ordinator

Families will face concerns about taking on direct payments and will benefit from any clarity that can be given about the role of relevant professionals, so we support the proposal to clearly outline the role and responsibilities of a care co-ordinator.

Additionally, we have heard from many carers, with regards to the system of social care direct payments, that ambiguity persists regarding what direct payments can and cannot be spent on. Indeed, Audit Wales, in their [investigation](#) into direct payments in social services, called for greater clarity regarding what direct payments can be spent on. As such, it is a much-needed step that these regulations propose to set out those services that must not be secured by means of a direct payment. This list, set out in the 'Excluded services' section, must be well-publicised and included in initial information provided to recipients of direct payments and any nominees they have so this is clear from the start.

Question 5

What are your views regarding our proposals about information, advice and support? Please share any suggestions for any changes or additions you would like to see.

Information, advice and other support

We welcome proposals to provide information and advice to direct payment recipients, representatives or nominees. However, this must be accompanied by the creation of information and advice targeted at those not currently receiving direct payments, including recipients of NHS continuing healthcare and those not in receipt of NHS continuing healthcare but who may be having their care funded by the local authority. This is the only way to ensure widespread understanding and publicity of this new development by informing others about this change and helping people to consider whether they wish to begin the process of exploring having NHS continuing healthcare delivered through direct payments. Otherwise, it may only be those who have already commenced the process of receiving these direct payments who receive materials on them.

There is a particularly pressing need to deliver communications to a wider audience when we consider the evident challenges in delivering information to people on caring and available support. In the Carers Wales [Track the Act 6 report](#), a national survey of unpaid carers to understand their experiences of key legal rights under the Social Services and Well-being (Wales) Act, we found that just 47% had seen any information, regardless of usefulness, on caring or available services in 2023/24. Against this backdrop, we must take steps to counter a situation where there is widespread lack of awareness of support, whether provided by health services or the local authority.

To assist in this endeavour, and to ensure information and advice on direct payments is as effective as possible for recipients of NHS CHC and those currently not receiving NHS CHC, we strongly recommend that information and advice resources should be co-produced with people in need of care and support, their unpaid carers and carer organisations. A number of organisations in Wales, including many in the third sector, already provide information and advice on direct payments and NHS CHC, so we would further recommend that a gap analysis is conducted to understand what resources currently exist and how these can be built upon. Information and advice must also be presented in accessible formats, such as easy-read, and should be provided in a number of languages. Our Carers Wales '[Looking after someone](#)' guides are available in a number of languages in addition to English and Welsh.

We endorse all of the proposed elements of the information, advice and other support listed in this section. While this rightfully includes how to request a review of the direct payment and care and support plan, it must also include information on redress and complaint mechanisms. Provision for employment related services is particularly welcome. This section also covers “where a person is transferring from social care to health care direct payments”. Though this is important, there is also a need for information, advice and support for a person transferring from health care direct payments to social care. The reviews within NHS CHC mean someone could, after a period of NHS CHC, be assessed as having a need best met by the local authority. There can also be cases where health boards and local authorities disagree over who is responsible for funding and arranging the care. Indeed, a carer based in Cardiff shared with us her experiences when the health board and council disagreed over who should fund her daughter’s care. As such, transitions are likely in both directions between social services and NHS CHC and support must be provided in all cases.

To deliver effective information, advice and support, relevant staff need to be trained to understand the legal rights and common challenges of people needing care and support and their carers, alongside an awareness of relevant organisations and sources of support. Existing good practice can be seen in the [Carer Aware project](#). Funded by Welsh Government and delivered by Carers Trust Wales and Carers Wales, this project provides training and resources to health and social care professionals across Wales to help them advise and support unpaid carers.

Question 6

What are your views regarding conditions to be complied with by those in receipt of direct payments? Please share any suggestions for any changes or additions you would like to see.

Please explain your answer.

Use of direct payments

If, as proposed, a health board may impose additional conditions we believe these should be set out in writing with a clear rationale provided.

Due diligence in securing services

We welcome that a health board will assist with undertaking the enquiries outlined in this section if requested.

Question 7

What are your views regarding amount, monitoring and review of direct payments? Please share any suggestions for any changes or additions you would like to see.

Please explain your answer.

Monitoring and review of direct payments

Audit Wales, in their [investigation](#) into direct payments for adult social care, found that pay rates varied between local authorities. As a result, in many areas the rates can be insufficient, causing families to struggle to procure services or feel forced to top up direct payments out of their own funds. We therefore welcome that, when conducting a review, a health board will be required to consider whether the amount of the payments remains sufficient to cover the full cost of services. Health boards should be transparent about the pay rates they set for direct payments and recipients should have a mechanism to query and challenge these amounts if they are finding, in their experience, that they are proving insufficient to procure services.

Review at the request of the person, representative or nominee

If the health board declines the request for a review they should set out their reasons for doing this in writing to the direct payment recipient. They should also set out how the recipient can seek to challenge the decision to decline a review.

Further review upon request

We note the proposal that regulations would outline that a health board is not required to undertake more than one further review following a review to reduce or cease direct payments. No rationale is provided as to why the health board is not required to undertake any further reviews. Recipients must have the ability to query and challenge the review beyond this point. They should be provided with advice and information of relevant bodies, such as the Public Services Ombudsman and Llais who can continue to assist them.

Question 8

What are your views regarding repayment and recovery of direct payments, cessation and repayment of direct payments? Please share any suggestions for any changes or additions you would like to see.

Please explain your answer.

Cessation of direct payments

If the health board is seeking to stop making direct payments and the recipient asks them to reconsider their decision, there should be an element of externality to the process. We are aware of a case whereby a local authority in Wales, seeking to recover significant sums in direct payments, sought the advice of a different local authority. Support from a different health board or another suitable external authority would enhance trust in this process.

While recipients will be informed in writing of the outcome of the reconsideration, we again question why regard does not appear at this stage to be given to how recipients can challenge the decision further using an external body, such as the Ombudsman, and how external organisations, whether they are statutory or third sector, can provide useful advice and support to a recipients facing this potentially worrying situation.

Part 3: Proposed Amendment to the Social Services and Well-being (Wales) Act 2014

Question 9

What are your views regarding making provision in regulations (and, where necessary, in a code of practice) for a direct payment in relation to social care to be made to a nominated third party? Please share any suggestions for any specific points which would need to be addressed.

Please explain your answer.

We support this proposal.

Question 10

We will work to ensure that the regulations as proposed in this consultation document are supported by guidance to help both direct payment recipients and practitioners understand how the system should operate. What specific topics or issues should the guidance cover to further support the proposed regulations?

Please explain your answer.

Question 11

What are your views on the likely impact of the proposed content of the regulations on particular groups of people, particularly those with protected characteristics under the Equality Act 2010? What effects do you think there would be?

Please explain your answer.

Question 12

What, in your opinion, would be the likely effects of the proposed content of the Regulations on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English.

Please explain your answer.

Question 13

In your opinion, could the proposals be formulated or changed so as to:

- have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English
- mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English

Please explain your answer.

Additional comments**Question 14**

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, including other impacts of these proposals such as cost which you would like to share your views on, please use this space to let us know.

Our organisation gave evidence to the Senedd's Health and Social Care committee in June 2024 on the direct payment provisions of the Health and Social Care (Wales) Bill. The [committee chair asked](#) the panel of witnesses from varied organisations whether we felt the Welsh Government had co-produced the Bill with relevant organisations. Broadly, we did not feel this had been the case, but we expressed hope that third sector organisations working across the disabilities and carers sectors could be meaningfully involved in co-producing the guidance accompanying this change and any resulting information, advice and support.

As a membership charity for unpaid carers, we regularly consult our members on topical issues and conduct large scale research to understand their concerns and hopes for health and care services. We stand ready and are eager to support, in a co-productive manner, both the refinement of these regulations and the production of resulting information, guidance and support for professionals, people in need of care and support and their unpaid carers.