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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	24 January 2023	Agenda Item	6.1
Report Title	The Additional Learning Needs and Education Tribunal (Wales) Act 2018: Update Report November 2022		
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Presented by	Dr Luke Jones, Designated Education Clinical Lead Officer (DECLO)		
Freedom of Information	Open		
Purpose of the Report	This report provides an update to the Quality and Safety Committee regarding Health Board's activity in relation to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (hereafter, the ALN Act) and articulates key quality and safety opportunities, risks and mitigating actions.		
Key Issues	<ul style="list-style-type: none"> Activity to support implementation of the Act, including developments in collaborative working Breaches in statutory duties under the Act Risks to implementation work and ongoing compliance risks 		
Specific Action Required <i>(please choose one only)</i>	Information	Discussion	Assurance
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Recommendations	<p>Members are asked to:</p> <ul style="list-style-type: none"> Note <p>It is recommended that ALN will now report through the Patient Safety and Compliance Group and on to the Patient Quality and Safety Committee as appropriate aligning with the new Quality and Safety arrangements.</p>		

TITLE OF REPORT

1. INTRODUCTION

The ALN Act aims to transform the outcomes and experience to children and young people (up to age 25) with additional learning needs. Health Boards have a vital role to play in collaborating with Education to ensure effective implementation of the Act. The Act places new statutory duties on Health Boards to ensure collaboration.

The Act has been in implementation from September 2021. Implementation on phased basis continues through to summer 2024. Following this, the status of the Act becomes a 'business as usual', at which point a national assurance framework to monitor compliance with these duties will be put in place. Thrice-yearly updates are provided to the Committee. The last update was provided in July 2022.

Key work that has progressed during the last period includes establishing joint Health Board / Local Authority vision, principles and priorities for collaborative work, and development of improved operational processes to facilitate joint working. However, in a context of significant pressures on operational services, there continue to be significant challenges with the Health Board's compliance with its statutory duties and with progressing key implementation / preparedness work.

2. BACKGROUND

2.1 Key activity in the last period

In the last period:

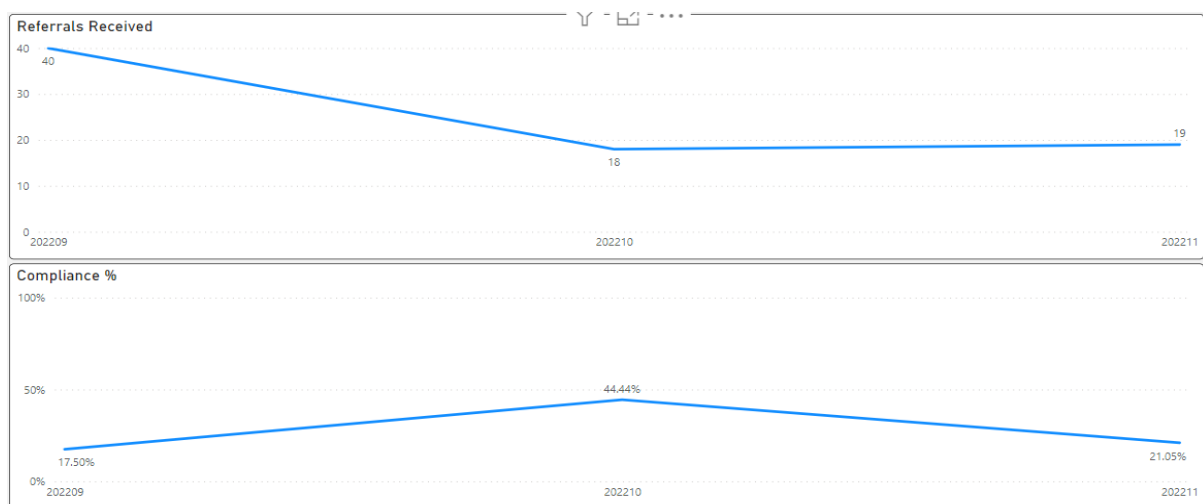
- SBUHB's ALN Operational Group has developed a workplan to support ALN implementation in the 2022/23 school year. A Senior Project Manager is now in post (currently fixed-term to March 2023) to support the workplan. However, the plan has not yet been formally approved by the ALN Steering Group who need to 'own' and sponsor the plan as the group has struggled to meet as planned due to multiple pressures. The group's next meeting is convened for late January, and the ALN workplan will be the main focus of the meeting. There have been significant challenges progressing key areas of implementation work within the workplan because of service-related demands on Operational Group members. This has led to delays in some areas of work and no progress in other areas.
- Work has been completed between senior Health Board and Local Authority officers to establish a shared vision and principles to underpin collaborative work for children and young people with ALN. At the heart of this vision is a 'one child, one approach, one life' way of working, aimed at ensuring truly integrated multi-agency practice for children and young people with ALN. It has been agreed that the Health Board's ALN Operational Group will be remodelled as a multi-agency group and that this will be the vehicle for progressing work on agreed priority areas. Priorities, which are currently being finalised, include:
 - Clarity between Health and Education regarding mutual roles and responsibilities within a whole-system approach that meets needs
 - A joint approach to supporting high-quality inclusive practice in Education settings
 - Continued work to improve operational processes
 - A joint approach to early resolution of concerns

- Work has been completed with Education partners to improve the operational processes through which the Health Board receives and responds to statutory requests / referrals from Education, and new operational processes are now in place. This will address an area that was causing significant challenges and supports prudent, person-centred practice.
- Work is underway, with the support of Informatics colleagues, to develop improved mechanisms for the capture of data relating to statutory compliance. This will enable key ALN data to be captured within the Health Board's Performance and its Quality and Safety dashboards.
 - This also includes work to ensure reliable data regarding the participation of NHS professionals in person-centred review meetings of children with ALN at which their Individual Development Plans are developed. Participation in these meetings is not a statutory requirement under the ALN Act but is in many cases critical in ensuring that these children have a robust, realistic and co-ordinated plan to meet their needs.

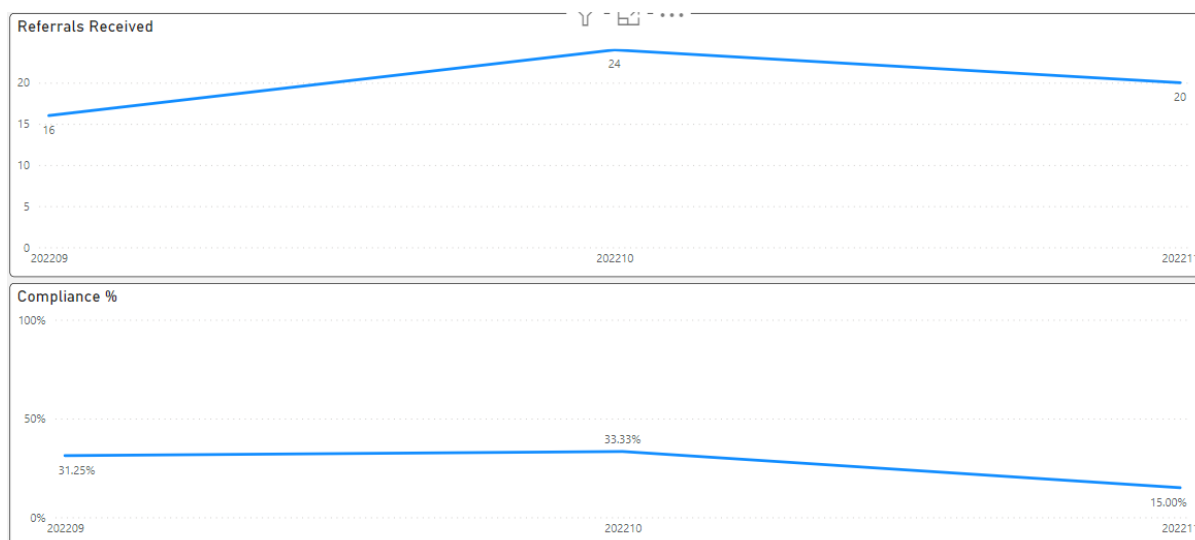
2.2 Compliance

Graphs 1-4 below show the number of statutory requests for information or help received from Local Authorities for the period September – November 2022, and the number of statutory referrals for a treatment or service likely to be of benefit in addressing the child or young person's ALN; and the percentage of requests / referrals where the Health Board has complied with its statutory duties. As Health Boards have 6 weeks to comply with statutory requests / referrals, more recent data (i.e. requests / referrals received in December and January) is not shown here.

Graphs 1 and 2: Section 65 statutory requests for information or help – Number of requests received and percentage complied with for the period September – November 2022



Graphs 3 and 4: Section 20 statutory referrals for a relevant treatment or service – Number of requests received and percentage complied with for the period September – November 2022



The graphs demonstrate significant ongoing issues with the Health Board's compliance with the legal requirements of the Act. Data shows no improvement in performance from the last report to Committee. The consequence of these breaches in the Health Board's legal duties on patient care is that children with complex needs are not being issued with timely plans that have the effective multi-agency co-ordination needed required to address their needs and to support them to achieve personally-meaningful outcomes.

As noted above, improved operational processes have now been put in place. Additionally, with improvements in ALN business intelligence, Service Leads will imminently have access to 'live' data that will support their ability to monitor their activity and performance. This may lead to an improvement in compliance.

3. GOVERNANCE AND RISK ISSUES

There continue to be significant risks to the Health Board's ability to meet its duties under the ALN Act. With limited progress in the ALN Operational Group's 22/23 workplan, there are also risks to the Health Board's ability to establish the collaborative arrangements required by the ALN Act. The main cause of this risk is around workforce capacity required to meet the additional demands associated with the Act in a context where services are experiencing significant pressure, both in terms of:

- Clinical staffing capacity to ensure day-to-day delivery of statutory duties (leading to poor compliance) and
- Senior staffing capacity to progress implementation / preparedness work (leading to limited progress with the operational workplan).

Consequences of the risk, which is captured on the Health Board's Corporate Risk Register (score remains at 20), include children failing to access the multi-agency support that they need with their learning needs, leading to poor outcomes; breach of

legal duties; parent / carer and young peoples' dissatisfaction leading to complaints, Educational Tribunals and Judicial Reviews; and reputational impact. There is evidence nationally of an increase the numbers of concerns being taken to Education Tribunal as this new legislative framework is 'tested' by families.

The Health Board's ALN-related risks reflect multiple significant demands faced by impacted operational services, which is also reflected in gaps in the attendance at the ALN Steering Group. An issue that requires urgent attention is the prioritisation of the requirements of the ALN Act relative to the other priorities facing operational services. This will be considered by the ALN Steering Group when it convenes in January 2022.

Once work to establish improved mechanisms for data capture and reporting has been completed and more data is available, work to forecast and clearly articulate the demand / capacity implications of the ALN Act will need to be revisited and escalated as appropriate.

4. FINANCIAL IMPLICATIONS

In the Health Board's scheme of prioritisation in the IMTP, the resource requirements associated with the ALN Act are captured at Tier 3. On this basis, and given the relatively early stage of implementation, it has been agreed by the Steering Group that at this stage it would not be appropriate to produce a business case associated with the demand / capacity implications of the Act.

This means that the financial implications of the Act at this stage are limited to the risk of legal challenge and consequent financial impact on the Health Board. However, the 'cost' of this position is the risks as set out at section 3 of this paper, which cannot be fully mitigated.

5. RECOMMENDATION

The Committee is recommended to note the contents of this paper and to consider any actions that should be taken.

Governance and Assurance		
Link to Enabling Objectives (please choose)	Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities	
	Partnerships for Improving Health and Wellbeing	<input checked="" type="checkbox"/>
	Co-Production and Health Literacy	<input type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input type="checkbox"/>
	Deliver better care through excellent health and care services achieving the outcomes that matter most to people	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input checked="" type="checkbox"/>
	Excellent Staff	<input checked="" type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
Health and Care Standards		
(please choose)	Staying Healthy	<input checked="" type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>

	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
Quality, Safety and Patient Experience		
Effective implementation of the ALN Act has the potential to deliver better outcomes and experience for some of our most complex and vulnerable children and to enable needs to be met in a timely and proactive way. However, there are significant risks that children will fail to access the integrated support they need and that there will be poor experience for children, young people and their parents / carers.		
Financial Implications		
Financial Implications		
<p>The ALN Act was established by Welsh Government as 'resource neutral' for operational services. It has become increasingly clear that this is not realistic, and that additional staffing resource will be required to meet the additional demands associated with the Act. This recognised in the IMTP as a 'Tier 3' priority. Additional resource from Welsh Government to support the implementation of the Act is not anticipated at this stage.</p> <p>While there are financial risks to the Health Board associated with legal challenge, the financial implications of the Act are currently very limited, though implementation without additional resource is leading directly to quality, safety and patient experience risks.</p>		
Legal Implications (including equality and diversity assessment)		
The ALN Act is a legislative framework imposing a number of statutory duties on the Health Board. The Health Board's response to the requirements of the ALN Act may be subject to appeal to Educational Tribunal or Judicial Review. This is a new and untested legislative framework, the writing of which offers considerable latitude for interpretation, in a highly emotive and frequently contested area. As such, the likelihood of legal challenge is high.		
Staffing Implications		
Meeting the statutory requirements of the Act in a way that supports effective multi-agency collaboration and that mitigates legal risks (see section 3) will present additional infrastructure requirements and demand / capacity implications for impacted operational services, especially within the Primary, Community Services and Therapies Service Group.		
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)		
The Well-being of Future Generations Act's 5 ways of working align closely with the general principles underpinning the ALN Act:		

<ul style="list-style-type: none"> ○ Long Term – facilitating access to an effective education and promoting independence for some of our most vulnerable groups will maximise the life chances of these individuals, having considerable long-term implications. ○ Prevention – the early identification of additional learning needs and effective early help to prevent the escalation of needs is at the heart of the ALN Act ○ Integration and Collaboration – collaboration between Health Boards and Local Authorities is a key principle underpinning the Act. There is a local commitment to services working seamlessly to get it right for vulnerable children and young people: ‘one child, one service, one life’ ○ Involvement – Person-centered practice with the voice of the child at the heart of decision-making, both at a practice and a strategic level, is another key principle underpinning the ALN Act. 	
Report History	<p>28.03.2022 – ‘The Additional Learning Needs and Education Tribunal (Wales) Act 2018: Introductory Report’ (agenda item 7.3)</p> <p>26.07.2022 - The Additional Learning Needs and Education Tribunal (Wales) Act 2018: Update Report July 2022 (agenda item 5.1)</p>
Appendices	