MHB031 – Cyngor Caerdydd

Senedd Cymru | Welsh Parliament

Bil arfaethedig – Datblygu'r Bil Safonau Gofal Iechyd Meddwl (Cymru) | Proposed Development of the Mental Health Standards of Care (Wales) Bill

Ymateb gan: Claire Ward Gweithiwr Cymdeithasol Ymgynghorol ar gyfer Gweithwyr Proffesiynol Iechyd Meddwl Cymeradwy / Trefniadau Diogelu rhag Colli Rhyddid, Cyngor Caerdydd | Evidence from: Claire Ward, Consultant Social Worker for Approved Mental Health Professionals / Deprivation of Liberty Safeguards, Cardiff Council

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Enshrining overarching principles in legislation

Question 1: Do you think there is a need for this legislation?

Can you provide reasons for your answer.

Considerable thought and effort went into the consultation for the proposed Mental Health Act Bill (England and Wales) following the publication of the White Paper Reforming the Mental Health Act 2021. From Cardiff Council's perspective, reform of the Mental Health Act is needed and overdue.

The four proposed changes in this Bill, seem to be taken from the Proposed White Paper, however, they are not yet well defined.

One notable omission is about giving patients more right to challenge their detentions, this would be in keeping with the overarching principles.

Should Wales make changes to the Mental Health Act 1983 revised 2007, MHA, with this Bill is both yes and no. One concern is on the grounds that it may cause significant problems when people from Wales are admitted to hospital in England or vice versa . Cross-border arrangements will need to be made to detail which admission criteria is applied, the English or Welsh.

Question 2: Do you agree or disagree with the overarching principles that the Bill seeks to enshrine?

The principles are in keeping with the existing Code of Practice for Wales and reinforce them. These principles are worthwhile, Cardiff Council support them.

Specific changes to existing legislation

A. Nearest Relative and Nominated Person

Question 3: Do you agree or disagree with the proposal to replace the Nearest Relative (NR) provisions in the Mental Health Act 1983 with a new role of Nominated Person?

Can you provide reasons for your answer.

The Nearest Relative, NR, rights and powers are important and should be kept. However, there has been a long-standing problem with the prescriptive hierarchical list that determines who is the NR. An Approved Mental Health Professional, AMHP, has to make this determination, often at a time of crisis for the patient and is therefore time pressured.

One example of this may be a parent who is a NR and also a perpetrator of abuse against the patient (the AMHP may not be aware of this, and the patient may not have disclosed this information, as can be the case of familial abuse). Patients who are assessed under the MHA may or may not be able to effectively convey this information. Where an AMHP is aware of this, they can determine that it is not 'practicable' as described in the Mental Health Act Code of Practice Wales Review (Revised 2016) 14:54.

Another example where a cousin has a close relationship with the patient but the uncle who appears to the NR has little or no contact with the patient. The AMHP has to consult with the uncle, the cousin although closest does not appear on the list of people who could be a NR. The safeguarding role of the NR is compromised.

The concept of a Nominated Person, NP, in terms of giving a patient more autonomy is valuable. There are a couple of points for concern. Firstly, it does not mention what to do if the person lacks capacity to select their NP, in the forementioned White Paper it stated the AMHP will appoint someone as an interim NP and the Code of Practice will set out how they determine.

B. Changing the criteria for detention, ensuring the prospect for therapeutic benefit

Question 4: Do you agree or disagree with the proposal to change in the criteria for detention to ensure that people can only be detained if they pose a risk of serious harm either to themselves or to others?

Can you provide reasons for your answer.

Definition of Therapeutic Benefit is required. There is a risk that if too narrowly defined this will exclude several people from inpatient care who would benefit from it.

Concerned that this will exclude the deteriorating patient, changing the nature and degree criteria. Leaving a non-consenting patient in the community to deteriorate significantly until they present a risk of serious harm to themselves or others before using the Mental Health Act would have an adverse effect on their recovery and rehabilitation potential, leading to a poorer quality of life. Whilst understanding the concept of least restrictive and working in a consensual way with a patient is ideal, it cannot be applied without acknowledging and mitigating its limitations.

How will the unintended consequences be managed – For example how will this affect an application to an English Hospital for admission if there are no beds available in Wales, would AMHPs be working to two different sets of criteria for admission? This will lead to errors.

Community Mental Health Teams and Crisis and Home Treatment Teams would require greater resources to enable more home treatment.

Question 5: Do you agree or disagree with the proposal to change in the criteria that there must be reasonable prospect of therapeutic benefit to the patient?

Can you provide reasons for your answer.

Treatment for Mental Health Conditions is often not linear nor predictable in the way that treatment for many health conditions is.

- What is the definition of Therapeutic Benefit and Over what time frame?
- Can there be a number of treatment options cited as possibilities?
- Reasonable Prospect? Is this defined?
- Is this criteria intended for Section 2 and/or Section 3 MHA?

It is difficult to give a clear response when there are still these unanswered questions.

This tightening of the criteria could have a significant cost implication on Community Mental Health Teams who will require a greater workforce in order to support more people in mental distress who may not meet the criteria in the community.

C. Remote (Virtual) assessment

Question 6: Do you agree or disagree with the proposal to introduce remote (virtual) assessment under 'specific provisions' relating to Second Opinion Appointed Doctors (SOADs), and Independent Mental Health Advocates (IMHA)?

Can you provide reasons for your answer.

This proposal could be at the expense of patients' rights and denigrates the purpose of the Second Opinion Appointed Doctors SOAD and Independent Mental Health Advocates IMHA.

This amendment appears to be about the resourcing of LHBs and not about the patients' needs or rights.

Nuance is missed in online consultations and there is the potential for lots to be missed.

Assessment includes evoking the senses, odour or cleanliness indicating infection or self-neglect may be missed if a virtual consultation is made. Other forms of communication such as body language or atmosphere may be missed or misinterpreted. An understanding of the effect of other people present may also be missed, such as when someone is exerting a coercive control or influence on a person. Capacity is harder to assess and understand.

D. Amendments to the Mental Health (Wales) Measure 2010

Question 7: Do you agree or disagree with the proposal to amend the Measure to ensure that there is no age limit upon those who can request a re-assessment of their mental health?

Can you provide reasons for your answer.

This would bring the measure to be compliant with the Equality Act, children and young people should not be discriminated against, age being a protected characteristic, from requesting a reassessment.

Question 8: Do you agree or disagree with the proposal to amend the Measure to extend the ability to request a re-assessment to people specified by the patient?

Can you provide reasons for your answer.

Some extension in time would be valuable, but this has GDPR implications in terms of how long records on a person is kept. Historical Mental Health Records may be unrelated or irrelevant to the patient's current situation or presentation.

A suggested period could reasonably increase to 5 years to prevent patients and their families spending months asking for help from their GP if they are concerned.

Often when they get a GP appointment, they are not able to explain their relapse indicators and why they need secondary mental health services. An extended self-referral period would reduce the risk that a patient will have an avoidable mental health crisis, instead they may receive timely treatment needed.

General Views

Question 9: Do you have any views about how the impact the proposals would have across different population groups?

Has an equality and impact assessment been carried out?

Currently more people in England and Wales from ethnic minority groups are subject to detention under the MHA, some of them spending much longer, particularly those from Black African, Black Caribbean and Black British population. (UK Parliament Post – Postnote May 2022). This population group is more likely to be restrained. The causes are multifactorial but can include isolation; social; economic; cultural; linguistic; sexism; and trauma effects of

racism. (not an exhaustive list). Without additional funding and resources for Community Treatment this legislation is unlikely to redress this disparity.

Women are more likely than men to suffer from common Mental Health Conditions (Department of Health and Social Care 2018). Some women have expressed feeling at risk in inpatient settings, often inpatient wards are mixed sex. Greater emphasis on Community Treatment rather than inpatient treatment may help women feel safer, creating a better environment for recovery and improving outcomes. However, nationally women also complain of poor aftercare, adequately resourcing this is key to its success.

Transient population groups such as foreign students, people seeking asylum, refugees and lone migrants could benefit from the change from NR to NP, as many of these people may not have any or close family living in the UK. Being able to chose who can exercise those rights would enable more people to have that safeguard.

Some of the changes would help young people who transition to adults, if they needed to request a reassessment.

The right to request a reassessment for longer than 3 years may prove helpful to people diagnosed early with progressive and degenerative diseases who are able to manage their condition after diagnosis without assistance for many years. It would prevent the need to re-tell their story / history.

This right might reassure some people 20-65 with lifelong mental health conditions that being discharged from Secondary Mental Health Services when living well, that there is a safety net if or when relapse occurs.

Question 10: Do you have any views about the impact the proposals would have on children's rights?

Parents usually make decisions about health care on behalf of their children under 15. It could be positive for children who are able to express their request for reassessment, providing requests are additionally accepted by parents, when their young person is not able to do so.

Currently the Mental Health Measure only extends to self-referral. There are more questions than views.

- How would this affect children 15 and below?
- Does the parent assume this right jointly if child is under 15 or if the child lacks capacity at ages 16 & 17?

- How does this relate to the Zone of parental authority?

Question 11: Do you have any general views on the proposal, not covered by any of the previous questions contained in the consultation?

Whilst there are some worthwhile suggestions, this needs more consideration of the Wesley review of the Mental Health Act or a new review if it is to be a valuable contribution to people who require Mental Health Services in Wales.

If this became law, it would create practical difficulties for patients and professionals.

Further work and consultation is required to understand direct and indirect consequences of the proposals.

Significant additional funding will be required to implement initially and day to day, in order to provide the necessary health and social care these needs.