DRAFT MENTAL HEALTH BILL

Department of Health 2002

Response from the Royal College of Nursing, Wales

ABOUT THE ROYAL COLLEGE OF NURSING (RCN)

The RCN is the world's largest professional union of nurses, representing over 345,000 nurses, midwives, health visitors and nursing students, including over 19,000 members in Wales. Recently, the membership has been widened to include level 3 NVQ health care assistants. The majority of RCN members work in the NHS with around a quarter working in the independent sector. The RCN works locally, nationally and internationally to promote standards of care and the interests of patients and nurses, and of nursing as a profession. The RCN is a UK-wide organisation, with its own National Boards for Wales, Scotland and Northern Ireland. The RCN is a major contributor to nursing practice, standards of care, and public policy as it affects health and nursing.

The RCN represents nurses and nursing, promotes excellence in practice and shapes health policies.

INTRODUCTION

In June 2002 the UK Government published a draft Mental Health Bill setting out proposals for mental health law in Wales and England. Changes to the 1983 Act are long overdue. However, there has been widespread criticism of the draft Bill. The Mental Health Alliance, the largest group of mental health organisations ever formed of which the RCN is a member, is campaigning for substantial changes to the draft Bill. This submission primarily elaborates on that common Alliance position.

The impact of the draft Bill would be significant for nurses who are heavily involved at every stage of care for people with mental illness, in hospital and in the community. Their therapeutic relationship with users is central to nurses' ability to effect positive outcomes for all involved. Under proposals in this draft Bill, there is concern that nurses would become more involved in the application of broader compulsory powers through their roles as Approved Mental Health Professionals (AMHP) and in tribunals[1].

The RCN welcomes the priority that the UK Government has given to mental health but notes that this priority does not always reflect the priorities of the local NHS trusts and Health Authorities. The UK Government's draft Bill presupposes that targets and restructuring under the National Services Framework (NSF) have or will be achieved.[2] While the RCN applauds the

[1] The government estimate that, on average nursing managers will spend three hours per patient preparing for a Tribunal; with an increase of 0.353 in Tribunals expected. This will be at an additional annual cost of £31,000 (est. for the year 2005/6). See Option 4, number 11i, *Draft Mental Health Bill: Explanatory notes,* Department of Health, CM 5538-II, 2002, p. 74

[2] See Option 4, number 8, *Draft Mental Health Bill: Explanatory notes,* Department of Health, CM 5538-II, 2002, p. 73. These measures are therefore not factored into the government's cost-estimates.

setting of high standards, the capacity to deliver will be based on realities. Given the draft Bill's emphasis on community compulsory care, the Welsh Assembly Government[3] needs to ensure that provisions are in place locally before it can be workable. This is of particular concern to Wales where large rural areas present particular difficulties in the provision of community services. It is vital that the consultation process is meaningful and takes on board suggestions from clinical and service user groups. The RCN welcomes the efforts of the Assembly's Health & Social Services Committee in holding this extraordinary meeting during recess as part of their own consultation process.

The Mental Health Alliance seeks to keep the best of the new proposals, such as rights to advocacy and the new tribunal system, but are deeply concerned that the proposals could see an unnecessary increase in people subject to compulsory treatment. For nurses the integrity of the therapeutic relationship must be preserved. Paradoxically, the function of such a breakdown in the therapeutic relationship would generate the self-perpetuation and expansion of demand for these proposed coercive powers. The RCN believes that, the Bill should focus on giving people rights and access, not removing and restricting them with compulsory powers.

[3] On a point of information, although the Draft Bill refers throughout to 'the appropriate Minister' this is then defined for Wales in Section 2.2 as the National Assembly for Wales.

KEY CONCERNS ABOUT THE CURRENT PROPOSALS

1. Rights to assessment and treatment

Rather than focussing on compulsory treatment, the RCN and its partners in the Mental Health Alliance would like to see the Bill give people the right to receive the services and support that they need. At present too many people who ask for help from mental health services are turned away.[4] The draft Bill does nothing to address this problem, as it does not include a *right* to assessment or treatment. In addition, the Bill does not seem to closely reflect the ethos of the *Adult Mental Health Strategy for Wales* (the Strategy) upon which the Assembly based its *Adult Mental Health: National Service Framework*, particularly with respect to its principles of equity and empowerment.

2. Compulsion

We believe that the proposals in the draft Bill are likely to increase compulsion. Section 6 sets out the four conditions which must be met before compulsory treatment can be authorised. The Mental Health Alliance believes that these conditions are far too wide. Combined with the removal of a requirement to provide compulsory treatment in hospital, this could facilitate a large increase in the use of compulsory powers.

- The definition of mental disorder is wider than under the 1983 Act. The exclusions (e.g. immoral conduct, sexual deviancy, dependence on alcohol and drugs) contained in the current Act are to be eliminated as superfluous and old fashioned. Mental health nurses have voiced their concern to the RCN that this could lead to inappropriate compulsory treatment. This could result in the deterioration of user's faith that the system served their interests. Those in need of treatment would be discouraged from coming forward voluntarily, in turn increasing the need for compulsion. The Department of Health makes the case that the exclusions currently deter professionals from a diagnosis but admit to having only anecdotal evidence for this assumption.[5] The issue of exclusions cannot be assessed in isolation, rather they must be judged on the basis of the entire document and best practice.

- The requirement that the particular mental disorder warrants the provision of medical treatment by an approved clinician is undefined. Approved clinicians are to be defined in regulations, with the UK Government's stated intention being that this will mean specialist mental health clinicians of consultant psychologist and psychiatric status. It is therefore not yet clear how narrow this criterion will be.

[4] Hafal found that 35% of people who are treated compulsorily under the 1983 Act have previously been refused treatment, which they sought voluntarily.
[5] Department of Health representative at the Mental Health Roadshow, Bristol, 20th Aug. 2002

- The condition that the treatment can be given because it is necessary for the health or safety of the patient or others is very broad and may at times be contradictory. This may mean people being compelled to receive 'treatment' not of therapeutic benefit to them.

    - There are ethical issues surrounding the detention of those who cannot be treated, on the premise that they may commit a crime in the future. There is no evidence to suggest that detention will prevent crime given that most people with personality disorder who commit offences have never presented with a mental health problem.
    - The proposals for those with severe personality disorders, rather than being based on a medical diagnosis, are subjective and arbitrary.

- The definition of treatment is also very broad. It includes 'care' and 'training in work, social and independent living skills'.

    - Mental health nurses are concerned that they will be expected to implement and monitor people's compliance with these measures, which risks unsettling the therapeutic alliances and relationships that they seek to build with service users. Some nurses have questioned whether there are sufficient nursing staff available to monitor the user's compliance with these arrangements.
    - Furthermore, nurses are concerned that there are insufficient resources providing work and training for users, particularly in rural areas, making it difficult for the user to comply and a challenge for nurses to encourage compliance with these elements of a care plan.
    - 'Care', upon which a compulsory order could be extended, could potentially be nursing care. The care plan, as defined in Section 26, will become an important part of the tribunals. The Bill identifies those ultimately responsible for drawing up that care plan as the clinical supervisor responsible for delivering treatment. There is no mention in legislation of a multidisciplinary requirement to the care plan. There is only an obligation[6] on the clinical supervisor to consult with the patient's nominated person and any carers. This would seem to fall far short of the Strategy's vision. [7]

The RCN wants to see narrowly drawn criteria on the use of compulsion. These criteria must include:

- Taking account of a person's capacity to make his or her own decisions. Compulsion should only be used in cases of serious risk of harm to others, suicide or where a person cannot make their own decisions.

- Compulsion to be used only where a person has been subject to an assessment in hospital. Under the Bill home assessments are possible.

[6] See section 26.4 of the draft Bill
[7] See section 6.4 of the Strategy

- Treatment provided should be proven to be therapeutic.

- Treatment should be the least invasive and restrictive possible.

- Compulsion should be used only where it is necessary to effect treatment.

3. Advance statements

The Alliance believes that people with mental health problems should have the right to draw up legally enforceable advance statements in conjunction with mental health staff, which set out what they would like to happen if they become too ill to make decisions for themselves.

There is no mention of advance statements in the draft Bill. The frequently asked questions section in the consultation paper makes it clear that this would be covered in the code of practice. As in its response to the green paper, the RCN is keen to see advance statements included in the Bill itself.

4. Advocacy

The RCN strongly endorses the draft Bill putting a duty on the National Assembly for Wales to provide sufficient advocates for everyone subject to compulsion. However, advocates will only be provided to people who have already been assessed and moved into the 28-day assessment period. We believe advocates should be provided before people have become subject to compulsory powers. Patients who volunteer for treatment do not have this right, thus creating a two-tier system of rights

Further RCN members' issues and concerns

- It is feared that compulsory treatment in the community may be used as a substitute for hospital care, inappropriately easing high bed occupancy in inpatient settings. These concerns can only be addressed by adequately funded services in the community, narrower criteria for compulsion and more specific definitions of 'care' and 'treatment'. Without adequate resources in the community, only people with the most severe cases will be able to access services. This will increase pressure on primary care providers who will have to deal with the extra workload.

- There is a fear that prisoners could be inappropriately treated in prison rather than in hospital. This will only affect Wales when the *In-reach* programme is in place in the relevant institutions.

- ‘Approved clinicians’ are expected to be ‘psychiatrists and psychologists of consultant status’. Some consultant nurse members have questioned whether they too should be included in this role, others are fearful that they it may be required of them. If nurses are to be clinical supervisors, they may require an opt-out clause on ethical grounds. Will those who opt-out consequently be limited in their promotion opportunities? Clarification is needed on these points.

- Allowing ‘anyone [to] make a request for a preliminary examination’ may encourage harassment of those with, or perceived to have, a mental health problem by those who would seek to have them removed from their community, leading to stigma and causing professionals to become engaged in repeated preliminary examinations.

- Nurses have expressed concerns about the implications for increased administrative workloads (recording and registering decisions for instance) under the proposed Bill. This is seen as yet another impediment to practitioners working with patients in therapeutic ways.

- The proposals raise questions about the financial and human resources required for implementation. Rigorous and widely available CPN training for the proposed AMHP role will be required. Yet, mental health nurses do not currently find it easy to access or attend continuing professional development opportunities. Also nurses who become AMHPs must be empowered in this role, especially for the purposes of tribunals, in this role with respect to doctors.

- There is a concern that this draft Bill may presage the creation of a generic mental health professional. Whether this is an appropriate or desirable direction for mental health services’ future, needs to be considered.

- Finally, would the financial resources required to implement the proposals be better spent on bolstering existing mental health services, meeting current demand and targets adequately?

CONCLUSION

The RCN feels that adequate safeguards are not included in the draft Bill to ensure appropriate treatment given the broad definition of mental illness and criteria for compulsory treatment. Our aim would be to avoid bringing the professions into disrepute with service users and the public by inappropriately violating people's rights.

We hope the Health & Social Services Committee will bring their significant influence to bear on the Department of Health. Ultimately it will be the responsibility of the Welsh Assembly Government to implement this legislation and we feel the commendable steps taken in the Strategy and the NSF need to be reflected in the proposals.

Although the RCN welcomes some of the provisions of the Bill, such as advocacy and tribunals, we feel that there is insufficient attention paid to the rights of service users. The UK Government must include narrower definitions and safeguards to create a sound piece of legislation and improve mental health services in Wales.

Board Secretary
Ty Maeth
September 2002