

MHB016 – Bwrdd Iechyd Prifysgol Caerdydd a'r Fro

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: Dan Crossland, Bwrdd Iechyd Prifysgol Caerdydd a'r Fro | Evidence
from: Dan Crossland, Cardiff and Vale University Health Board

Enshrining overarching principles in legislation

**Question 1: Do you think there is a need for this legislation?
Can you provide reasons for your answer.**

Yes with some caveats

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

The legislation contains some positive principles for the protection and wellbeing of people who are subject to Mental Health Act assessment and treatment under the Mental Health Act. This formalises some of the Code of Practice guidance into law. However, there are concerns about the potential impacts on service provision, those at early risk of harm and the potential unintended consequences that can incur from changes. Greater consideration is required about the cross-border impacts of legislative changes when transferring patients from England to Wales, or Wales to England.

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 consensus of consulted professional was in favour of a change.

There were concerns raised in relation to the variation and cross-border arrangements with England and whether there is likely to be consequent unhelpful impacts in a cross-border transfer.

The consultees agreed that some consideration about the legal application of Advance Directives in support of this change, the safeguarding of patients and how decisions to appoint a Nominated Person are supported or challenged. There was concern about the greater risk of exploitation and displacement of relatives in coercive, controlling relationships while this was balanced by safeguards of an alternative to relatives who might not always have the best interests of the patient at heart.

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.

The broad consensus was in favour. However, concerns were raised by individuals.

The definition of ‘serious harm’ requires clarification and definition, it is also in contrast to recent police guidance to only become involved once there is an ‘immediate risk to life’. Consideration about the long-term risk of harm due to the nature and history of presentations and the opportunity for an early intervention to circumvent serious harm need to be addressed. The use of Advance Directives by patients and their families should also be considered where this may advise a detention is required formally under the Mental Health Act. Recall of patients under Community Treatment Orders may also be an area that diverges with this guidance, as this is based on the engagement with services or promoting behaviours that prevent harm.

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.

Broad consensual agreement with some caveats

The definition of what is considered ‘therapeutic’ is often difficult to define. In relation to Public Protection, Forensic detentions and the management of public safety may be exclusions that may safeguard the benefit of the public but not necessarily be of ‘therapeutic’ benefit to the patient. On occasion detention under the Mental Health Act may be for treatment where the therapeutic benefit is uncertain, unclear, or measured in years may be difficult to define under this definition. Examples may include detention from living situations in order to promote a better quality of life in a suitable placement in the best interests of the patient, but may not necessarily be considered ‘therapeutic’.

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.

Broad disagreement with this with some caveats.

Face to face assessment and access to IMHAs are the preferred approach to fully understand the non-verbal and environmental considerations and contexts of the detention and treatment. If a patient’s preference for virtual assessment was made and this was supported by clinical teams this would seem reasonable. The opinion of professionals was that face to face assessment and contact is of greater therapeutic impact and promotes closer engagement and rapport than a virtual appointment. In the circumstances that face to face contact could not be achieved (for infection control or other significant reasons) then this would be acceptable as a second option.

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.

Broad consensus was in support of this.

Data Protection and Retention of Records might limit the maintenance of an indefinite period and present a challenge to Health Boards who might aim to dispose of records after a 20 year period.

The clinical consultees felt an extension, rather than an indefinite period was a preferable approach.

The opinion of professionals was in support of parity and equity for people of all ages.

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.

Yes

While the Code of Practice reflects this, the clinical consultees expressed a desire to see this enshrined in law.

General Views

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

There were no specific provisions and protections that might incur greater protection for people with protected characteristics. The clinical consultees did not express any specific concerns or impacts other than greater parity for children and young people, but also a positive impact on carers.

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

No specific issues were raised.

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

Clinicians did express concern about the unintended consequences of changes to the legislation without thorough consideration, especially in relation to cross-border arrangements and the impact this may have. Mental Health law has evolved since the Mental Health Act 1983 and the clinical teams raised concern about the impact of these changes for groups such as forensic patients, patients subject to Community Treatment Orders, and those patients with diagnostic uncertainty where therapeutic benefit may be uncertain.
