MHB019 – Cymdeithas Llywodraeth Leol Cymru

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: Sarah Capstick, Gymdeithas Llywodraeth Leol Cymru | Evidence from: Sarah Capstick, Welsh Local Government Association

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Welsh Local Government Association (WLGA) our members are the 22 Councils across Wales all of whom provide mental health services through social services, housing and community safety provision. The WLGA itself does not provide any direct provision to the public.

Enshrining overarching principles in legislation

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

We can see the benefit of the proposed legislation to bring the powers under the 1983 Act more in line with the Wellbeing of Future Generations (Wales) Act 2015 and the Social Services and Wellbeing (Wales) Act 2014, as well as Children's Rights and Equalities legislation. However, we think it may lead to additional burdens on Councils, Primary Care, and Housing providers which will have to be taken into consideration and appropriate resources identified.

In addition, the Mental Health (Wales) Measure 2010 according to the draft Mental Health and Wellbeing Strategy 2024-2034 is being looked at by Welsh Government Ministers in light of both the duty to review that sits within in but also following the Independent Review of the Mental Health Act 1983 by the UK Government. Any possible changes that result from these reviews will also need to be taken into consideration.

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

We agree in principle with the overarching principles but think there may need to be some clarification in regard to 'c Therapeutic Benefit' (see question 5 below) to reduce any potential unexpected consequences. In addition, we think there should also be consideration given to safeguarding of the individual but

also of any children or other adults at risk due to the behaviour of the individual in a mental health crisis.

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.

Yes, we agree in principle especially with the positive implications this will have on those who are estranged or have strained relationships with their families. The Census data shows a continuing change in living arrangements, so the change from Nearest Relative to Nominated Person would appear appropriate and protect individuals from having their wishes overturned by family members who they have no contact with.

We are also of the opinion that it would be beneficial to have two identified Nominated Persons in case the first is unavailable. Whilst this would not have the same level of progression down the eight different categories under Nearest Relative it would provide some resilience against unplanned absences, accidents or holidays if only one person is nominated.

There will be a need to consider how the Nominated Person provisions will work. How will this be agreed and by whom. Will there be a need for a list to be maintained and how would this be monitored, maintained and how details of the Nominated Person will be shared and accessed at times of crisis by health, social services or other professionals.

Consideration will also need to be given to whether the displacement of Nearest relative provision would remain but be displacement of nominated person and if so whether the grounds to displace would need to be updated. There will also need to be consideration on how a nominated person will work alongside a Lasting Power of Attorney (LPA) for health and welfare if the LPA and nominated person are different.

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.

There needs to be a clear definition of what constitutes serious harm, is it limited to physical violence or would it also include hate crime or harassment which results in the victim resorting to self-harm or suicide or to a decline in their own mental health due to trauma, anxiety and depression because of the individuals behaviour.

Alongside any definition will need to be the scope for professional judgement to enable adjustment to cover all scenarios. The Mental Health Act 1983 is a safeguard which it is important we do not lose sight and make an admission threshold that is used to exclude people when they are in a crisis or sends the message, they don't pose a risk of serious harm which can lead people to escalate. From a systems point of view where inpatient beds may be unavailable at times this is likely to lead to doctors deciding the threshold is not met in response especially if it is the two Doctors who are to determine this as part of medical recommendations for detention under the Act.

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.

Whilst we agree that in almost all circumstances there should be a reasonable prospect of therapeutic benefit to the patient, we would suggest that any change should be to a 'should' or to a 'must unless there are exceptional circumstances'.

There are exceptional circumstances when this may not be possible and where an individual patient is unable to safely live in the community. A person may need to be detained or remain detained with no prospect of recovery for the safeguarding of children or adults at risk. If they were to remain in the community then it could result in victims and a vulnerable patient being placed in inappropriate criminal justice accommodation. Whilst these cases are rare, they do exist and therefore we are concerned that a potentially preventative

measure would be dismissed. We agree that wherever possible there should be a reasonable prospect of therapeutic benefit but that a lack of it should not leave children or vulnerable adults at risk as an unintended consequence.

Therapeutic benefit is not always apparent at the point of assessment for admission along with ensuring that the individual's views, voice are heard. The system may see no therapeutic benefit where an individual sees a benefit and vice versa.

There are also likely to be impacts on community based services if an individual is at risk of harm to themselves or others but is unable to be detained due to a potential lack of therapeutic benefit. This is likely to lead to more crisis management and additional burden and risk on community based health, social care and housing provision with little to no positive outcome. At a similar time to a change in policing with Right Care, Right Person where there will be reduced response by the police where mental health is concerned. Without considerable investment in Councils and community based health there is a potential gap in provision caused by an additional burden – where the safe option for an individual or others is for them to be detained. We agree that being detained should not be the first automatic response but that it should be one of the options when crisis occur.

In addition, there may be duplication with the Recovery-focused approach in secondary care which is part of the Draft Mental Health and Wellbeing Strategy 2024-2034 (page 51).

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.

We do not have any particular opinion but this would appear to be appropriate given an increase in the use of video/conference appointments within community health settings, including primary care. However, we think it should not be the only option and it may depend on what is meant by specific provisions. The person is entitled to a SOAD as part of the consent to treatment provisions and it is difficult to see how a SOAD can do a holistic assessment which includes a consultation/conversation with the individual remotely, so we

think it should be appropriate that the person maintains a right to an in person meeting if they choose to do so.

If this was enacted, we would hope to see clear guidelines around the management and ongoing care and support following remote virtual assessments. This should support the person themselves as well as their care team and support networks. Two-way communication should be essential and built into the system and processes.

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 appear to reduce any variation that may occur around transition and deliver on Wales being a Child Friendly place to live. However, we are aware that there are significant delays in access to child mental health provision and so are concerned about the capacity in the system to be able to undertake any additional re-assessments. This could lead to an increase in the waiting lists, with delays in appropriate medication or therapeutic interventions. These delays could impact on other services such as education, social services and community cohesion.

We would be keen for there to be discussion and guidance for how this would be applied to those under the age of 18, especially in regard to the Gillick competency which is often used to help assess whether a child has the maturity to make their own decisions and to understand the implications of those decisions. This may be particularly challenging when different mental health conditions may be seen as more acceptable by the young person themselves, we would also want to protect the child from any forms of exploitation and coercion whilst they are in a very vulnerable state due to the mental health crisis.

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.

We are concerned on the potential risk this could have on budgets, mental health and other professionals' capacity. We would suggest that there should be

consideration on extending the role of the nominated person or persons to automatically include this option. It would reduce any confusion and mean there is consistency of who can make the request especially where the patient themselves is incapacitated. We would also suggest there would need to be consideration around the action to take when the patient and nominated person disagree in this regard and how mental capacity for decision making would be made and recorded.

As per our response to question 7 we would like for there to be consideration to the Gallick competency, but also in regard to any potential safeguarding, modern slavery, exploitation or coercion which may take place. Especially where medications may be part of treatment for something they hope the diagnosis to be.

General Views

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

The proposals should have a positive impact on a number of different population groups including children, adults, those who are LGBTQ+ and who may be estranged from family and those with disabilities.

However, as it currently stands it could have a detrimental impact on children, adults at risk, victims of hate crime, harassment and domestic abuse where there is a mental health concern with limitations in the definition on if this relates to only physical harm, whilst criminal justice legislation now includes other forms of harm (see our answer to question 4), and if safeguarding is not included in the considerations (see our answer to question 5).

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

The proposal to allow those under the age of 18 the option to request a re-assessment or second opinion should have a positive impact on children's rights, providing there are the right staff or others who are qualified to provide those re-assessments and not add to any delays in diagnosis or treatment, which could be to the detriment of the child and their family (including other siblings).

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

The proposals as they are written appear to be clear, however there may be a need to strengthen the links across to safeguarding, both within any services or treatment but also in considerations when making decisions. Safeguarding is a fundamental part of the Social Services and Wellbeing (Wales) Act 2014 along with prevention, and as per our response to question 5 the proposal appears to step out of line with the Act in both safeguarding and prevention when limiting detention to where there is a therapeutic benefit of detention where exceptional circumstances apply.

It may be beneficial to undertake an evaluation of how many people are detained where there currently is no therapeutic benefit but where there are no exceptional safeguarding circumstances so that a clear assessment of any additional burden for Councils, primary and community health services and other partners can be carried out and a transitional stage be put in place, which we anticipate will be added to if there are delays during re-assessment. We would be keen for early discussions around potential budget movements if fewer people will be detained within health premises with an expectation for new accommodation based care and support to be provided or commissioned by Councils to fill any potential gaps due to this change in legislation.

Further detail will be required as to how some of the proposals will be operationalised, for example the proposal to be able to have a Nominated Person, the criteria that will be applied and how this will be managed, taking into consideration any resource implications these changes may have. In addition, it will be important to fully assess any resource or capacity issues the changes could have, for example around the potential increase in the number of re-assessments that may be requested.

There may be an additional requirement for specialist training for social care and other community workers in the management of mental health crisis across the whole sector rather than just with the commissioned specialist mental health service provision. The risk otherwise is of social care provision being handed back when there is a mental health crisis where the provision of social care relates to other factors such as personal care, leaving the individual in crisis with limited or no support leading to further deterioration in both physical and mental health.

We are also concerned that both this Bill and the Draft Mental Health and Wellbeing Strategy 2024-2034 are being consulted on at the same time which could cause confusion if changes are not reflected across them both.