MHB026 – Iechyd Cyhoeddus 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: Emily van de Venter, Ymgynghorydd Iechyd y Cyhoedd (Llesiant Meddwl), Is-adran Gwella Iechyd, Iechyd Cyhoeddus Cymru| Evidence from: Emily van de Venter, Consultant in Public Health (Mental Wellbeing), Health Improvement Division, Public Health Wales

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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.

We support the need for this legislation. The language used in the Mental Health Act (1983) is outdated, disempowering and stigmatising. The Bill and the principles to be enshrined in it support the United Nations Universal Declaration of Human Rights1 and the United Nations Convention of the Rights of the Child2. In relation to children, young people and families the Bill has the potential to strengthen the implementation of the NEST/NYTH framework3 in Wales and supports the Frameworks' core principles including those of trusted adults, easy access to expertise and no wrong door.

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

We agree with the principles to be enshrined by the Bill, they are key to improving patient experiences and enabling a shift towards person-centred, strengths-based approaches which can support improved outcomes. There is scope to put further emphasis on the need to recognise that the individual is seen not in isolation, rather as part of a system of others, within their communities and neighbourhoods.

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[1] Universal Declaration of Human Rights | United Nations

[2] UN Convention on the Rights of the Child - UNICEF UK

[3] NEST framework (mental health and wellbeing): core principles | GOV.WALES

When supporting people accessing mental health services it is vital that the principles of a) Choice and Autonomy, b) Least Restriction, c) Therapeutic Benefit and d) the Person as an Individual are upheld in order to ensure that services adhere to the four pillars of medical ethics – Benefience, Non-malefience, Autonomy and Justice. In treating the person as an individual their wider health and social needs must also be considered. Whilst the Bill sets out to establish parity between treatment of physical and mental health, it has not included social factors which often interface with physical and mental health. The Public Health Wales Social Prescribing Interfaces paper recognises the synergies and distinctions between physical and mental health services, social prescribing and wellbeing activities & community assets. The paper identifies a series of recommendations in which recommendation 1 supports the interaction between mental, physical and social: To recognise and address the interface between social, physical and mental health and wellbeing in all policies.[4] This integration will place people's holistic needs at the heart of society's effort which may increase quality of life for both current and future generations, and in turn could improve population health.

The Determinants of Health Model (Dahlgren and Whitehead, 1991) demonstrates that there are many factors which contribute to poor social, physical and mental health and wellbeing. We therefore support the inclusion of 'the person as an individual' principle. However, we feel that emphasis should be placed on this principle by ensuring person-centred language is used throughout the Bill e.g. use of the terms individuals and people instead of patient.

Placing an individual at the centre of services which takes a strength-based approach (i.e. a what matters conversation) will help to enshrine the proposed 'person as an individual' principal. Health and wellbeing concerns that individuals face are often multi-faceted which require a spectrum of support. For some, social prescribing may be of benefit when used alongside medical interventions as social prescribing provides additional support. For example, an individual receiving a clinical intervention for anxiety may also be signposted or referred to social prescribing for a range of community or non-clinical support (i.e. mental health Tier 0). This involves multiple organisations (statutory health and social care services focused on mental and physical health, social prescribing and

[4] Public Health Wales (2022). *Social Prescribing Interfaces*. Available at: https://phw.nhs.wales/services-and-teams/primary-care-division/social-prescribing/social-prescribing/social-prescribing-interfacespdf/

community assets) working together to ensure a coherent and seamless pathway.

We would also like to suggest that clinicians or attending staff have an empathic and a trauma informed response to the individual and their family or community. We would like to suggest that the Wales Trauma Informed Framework[5] **Wales Trauma Informed Framework** and the evidenced based PACE model[6] are considered, recognising that staff supporting individuals are themselves part of the intervention, at all points of contact.

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.

We agree with the proposal for people to state a Nominated Person as it gives individuals greater autonomy to choose who can make decisions about their care during periods when they lack capacity. Opportunities for people who have had previous contact with mental health services should be created for them to nominate a person during periods of capacity, such as during contact with primary care, community mental health or social care professionals. For those experiencing a first episode of mental illness that warrants being admitted for treatment under the Act, or those who have not previously nominated a person, and are assessed as lacking capacity, consideration needs to be given as to when and how Nominated Persons will be identified, and/or whether in this situation clinicians will need to, and be permitted to, revert to the prior Nearest Relatives provision. Provisions will also need to be made for instances when individuals wish to change their Nominated Person, ensuring clarity of the process to be followed in such instances, be there for a one-off change or multiple changes. This is particularly relevant to long-term secure admissions under Section 3 of the Act.

It is important that the principles of the Mental Health Capacity Act are adhered to, whereby individuals are assumed to have capacity unless it is established

[5] Trauma Framework - ACE Hub Wales

[6] What is meant by PACE? - DDP Network

otherwise, decisions are made in the persons best interest and in a way that is least restrictive of a persons rights and freedom of action. Consideration must also be made of any legal documentation in place for Lasting Power of Attorney.

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.

We agree with the criteria that people are only admitted for treatment under the Act only if they pose a risk of serious harm to themselves or others; whilst this should be the case currently it is helpful to make it explicit in the new Bill. In addition clarity of the criteria of what constitutes 'serious harm' is required, including whether harm to one's own health, for example from not eating or drinking for a long period of time, is included within this definition.

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.

We agree with the criteria that there must be reasonable prospect of therapeutic benefit; whilst this should be the case currently it is helpful to make it explicit in the new Bill. Clarity will be required on what constitutes therapeutic benefit and who will make the determination of probable benefit, including consideration of views from individuals themselves, Nominated Persons or carers and relatives.

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.

The increased use of remote mental health assessments during the COVID-19 pandemic provided an opportunity to gather evidence on the views and

experiences of people in receipt of remote assessments. The evidence base shows mixed experiences with some individuals stating they preferred remote assessments and found them helpful, with others finding them difficult due to a lack of comfort with technology or feeling uncertain about professionals being able to adequately assess how they were feeling and acting in a remote context.[7] For some individuals the introduction of remote assessments may be helpful and there is potential for this to improve timely access to Second Opinion Appointed Doctors (SOADS) and Independent Mental Health Advocates (IMHAs) for people during times of distress. Maintaining the principle of 'Choice and Autonomy' will be important in respect to individual preferences for remote or in-person assessments.

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.

We support this in principle as it will provide greater parity between adults and young people accessing mental health services and help to empower young people and their advocates. Capacity and resourcing implications for already stretched services will need careful consideration for effective implementation. Consideration of whether children under 16 are Gillick competent at the time of requesting a reassessment and whether their parent/carer of a young person who is deemed not to be Gillick competent can make a request for reassessment on their behalf.

[7] Schölin L, Connolly M, Morgan G*, et al.* Limits of remote working: the ethical challenges in conducting Mental Health Act assessments during COVID-19. *Journal of Medical Ethics* 2021;**47:**603-607.

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 support the proposal to amend the Measure to extend the ability to request a re-assessment to people specified by the patient in terms of helping to empower parents and carers of young people accessing mental health services. For young people in distress having another person, or trusted adult, who is able to advocate for them when they are unable to do so for themselves is important. As above the impact on capacity of an already stretched service will need careful consideration in implementing this change.

General Views

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

The proposed Bill is likely to be a positive move in improving service experiences for people experiencing serious mental illness and their families. Would hope this goes someway in improving health equity and reducing inequities in provision and use of detention under the existing MH Act that are experienced, for example by people from minority ethnic groups. Detention rates for black people under the Mental Health Act are currently around 5 times higher compared with the general population (see: **Detentions under the Mental Health Act - GOV.UK Ethnicity facts and figures (ethnicity-facts-figures.service.gov.uk)**).

It will important for this consultation to review whether sufficient responses have been received across a range of demographic groups and/or organisations representing them, particularly those with protected characteristics, those who have had previous contact with mental health service, migrant populations and those living in rural areas.

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

The amendments are likely to have a positive impact on children's rights, giving them and their carers/Nominated Persons a greater say in the support they receive.

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

The language used in relation to ‘detention’ or ‘sectioning’ of people under the Mental Health Act is outdated and would benefit from improvement to avoid the Bill repeating/entrenching stigmatising language. It would be useful to consider less stigmatising language which is more reflective of the supportive nature of ‘detention’ only for the purposes of safety to self/others and where there is a therapeutic benefit.