

## **MHB027 – Coleg Brenhinol yr Ymarferwyr Cyffredinol**

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### **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: Rebecca Miller, Cydlynnydd Polisi a Materion Cyhoeddus, Coleg Brenhinol yr Ymarferwyr Cyffredinol | Evidence from: Rebecca Miller, Policy and Public Affairs Coordinator, RCGP Cymru 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.**

Yes. RCGP Cymru Wales feels that current legislation is confusing and difficult to navigate during the day-to-day of administering care and when dealing with people in crisis.

Although many provisions of the Bill already exist in guidance or in statutory instruments, the extent to which they are binding, and their practical applications is currently unclear.

The provisions of this Bill, particularly those related to therapeutic benefit of detention and enshrining a right to a nominated person, are clearer than current legislation. However, as with any piece of primary legislation, further practical guidance will need to be provided.

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

RCGP Cymru Wales agrees with the overarching principles. However, as with any piece of primary legislation, further practical guidance will need to be providing as to how various healthcare professionals will be required to comply with these new statutory rights. RCGP Cymru Wales draws particular attention to the difficulties of administering crisis mental health care in the community where there will be increased risk factors compared with a hospital setting.

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## **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.**

RCGP Cymru Wales is supportive of the provision to replace the Nearest Relative with the new Nominated Person. This will give more agency to the person receiving care and help allay any issues with regard to domestic abuse.

RCGP Cymru Wales notes that, as the Nominated Person could be anyone known to the patient, this could present a situation where a vulnerable person, such as someone with dementia, could be coerced into nominating a person who does not have their best interest at heart. However, a clear structure setting out how the nominated person is recorded on the patient record could mitigate this risk.

RCGP would recommend that guidance states that professionals ask the question of who the nominated person should be when a patient first wishes to discuss their mental health.

This is similar to the approach taken in women's health settings, where a mandatory question about domestic violence is asked every time a patient accesses the service. There should be a prompt introduced to the professional's workstation screen requiring them to input, and subsequently check the nominated person when a patient presents with regard to mental health but is not in crisis.

### **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.**

RCGP Cymru Wales feels that the wording of this provision will need to be clearly defined as it is often unclear how real the risk may be and how serious any

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potential harm may become. We feel that clinicians must be supported to use their expertise to ascertain the degree of risk.

**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.**

RCGP broadly supports the provision requiring a therapeutic benefit for detention. However, as above makes clear, guidance needs to be given on what qualifies as a therapeutic benefit. RCGP Cymru Wales is concerned that a therapeutic benefit can only be assessed in a clinical setting, in certain situations, and, therefore, if a person is not willing to come to a clinical setting this provision may put GPs at risk of violating a person's rights under the new legislation.

RCGP Cymru Wales again asks that the legislation allows for clinical expertise. The legal test of reasonableness will need to be properly defined, using examples and case studies as training tools, as GPs may be familiar with this terminology but not necessarily its application.

### **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.**

RCGP Cymru Wales agrees with the inclusion of remote consultation as an option, however assessments should be conducted in person wherever possible. The prospect of remote consultations is welcome to involve Second Opinion Appointed Doctors (SOADs) and Independent Mental Health Advocates (IMHAs) at short notice to expedite patient care.

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## **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.**

RCGP Cymru Wales agrees the age limit should be amended to include teenagers and children who should have the ability to request re-assessment if their mental health. As with the other provisions clinical expertise of capacity should be used rather than an arbitrary age limit.

**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.**

RCGP Cymru Wales agrees as patients may not have insight at the time to realise that a re-assessment is in their interests when they are acutely unwell.

### **General Views**

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

RCGP Cymru Wales recommends that any guidance with regard to the application of this Bill (in particular the provisions, which convey rights on the patient) gives proper regard to the impact on nonverbal people and allows them the same rights and privileges under the Bill as people who communicate verbally.

Much of the Bill requires communication from the patient and those who do not use verbal communication are at risk of being excluded if not considered in its drafting.

Mental health settings have a disproportionately high number of neurodivergent and nonverbal people compared with the general population<sup>1</sup>, therefore legislation specifically targeted to this sector must take account of the higher than usual prevalence of this group.

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<sup>1</sup> <https://www.mentalhealth.org.uk/explore-mental-health/a-z-topics/autism-and-mental-health>

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Guidance should be provided to professionals making it possible for them to deal with individuals who may use an AAC system or other means of communication which are not standard.

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

RCGP Cymru Wales believes children should have the same rights as others when it comes to mental health issues, as their views may otherwise be neglected.

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

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