Health and Social Services Committee

HSS(2)-12-04(min)

MINUTES

Date:	Thursday, 14 October 2004
Time:	1.30pm to 4.15pm
Venue:	Committee Rooms 3&4, National Assembly for Wales

Attendance: **Members of Health & Social Services Committee**

David Melding (Chair)	South Wales Central
Lorraine Barrett	Cardiff South and Penarth
Jocelyn Davies	South Wales East
John Griffiths	Newport East
Jane Hutt (Minister)	Vale of Glamorgan
Val Lloyd	Swansea East
Gwenda Thomas	Neath
Rhodri Glyn Thomas	Carmarthen East & Dinefwr
Kirsty Williams	Brecon & Radnorshire

In Attendance

Ruth Coombs	Policy Manager, Mind Cymru
Professor Phil Fennel	HAFAL

Lindsay Foyster	Director, Mind Cymru
Richard Lawson	HAFAL
Bruce McLernon	Association of Directors of Social Services
Gareth Phillips	Steward, Royal College of Nursing
Lisa Turnbull	Policy Adviser, Royal College of Nursing
Professor Richard Williams	Chair, Welsh Division, Royal College of Psychiatrists
Vicky Yates	HAFAL
Professor Anthony Zigmond	Vice President, Royal College of Psychiatrists

Officials In Attendance

Peter Lawler	Community, Primary Care and Health Service Directorate
Ann Lloyd	Head of Health and Social Care in Wales
Dr Sarah Watkins	Senior Medical Officer

Secretariat:

Jane Westlake	Committee Clerk
Claire Morris	Deputy Committee Clerk
Peter Jones	Counsel to the Committee

Item 1: Apologies and Substitutions and Declarations of Interest

1.1 Apologies had been received from Ann Jones and Jonathan Morgan. Lorraine Barrett substituted for Ann Jones.

1.2 Val Lloyd declared an interest as a member of the Royal College of Nursing (RCN).

Item 2: Draft Mental Health Bill (1.35 – 4.15pm)

2.1 The Draft Mental Health Bill was published by the UK Government on 8 September for pre-legislative scrutiny. The organisations who gave evidence were those that had given evidence to the previous Health & Social Services Committee in 2002, with the exception of the Law Society which was unable to send a representative. The Chair asked that discussion focus on the changes from the draft Mental Health Bill that was published in 2002 and the extent to which the new draft met the concerns raised then.

2.2 The following points were made:

Conditions for Compulsory Treatment

Royal College of Psychiatrists

- The definition of mental disorder and the conditions for compulsion were too broad and could increase the number of people liable for detention. It would be unique in legislation around the world in not having any exclusions from such a broad definition.
- If the definition of mental disorder and conditions were tighter then exclusions might not be necessary.
- The Scottish Mental Health Act 2003 contained provision for impaired decision making by reason of mental disorder. This was believed to be a serious omission in the England / Wales draft.
- The Bill was more concerned with countering risk than treating ill health. The threshold in relation to risk to oneself had been increased, but the threshold for protection of others had not. People with certain conditions could always be deemed to be at risk and therefore would be subject to permanent compulsion.
- The nominated person would have a limited role in the process of a person being subject to compulsion.
- Everyone currently detained under the Mental Health Act 1983 would have to be made subject to compulsion under the new Bill.
- Under the current draft, mental health services would be assessing and treating more people as a statutory requirement. This would shift the balance of service provision to the detriment of those seeking treatment voluntarily

Hafal

- The risk conditions would be difficult to satisfy. For example, would a person suffering from a psychotic illness ceasing to take medication constitute serious self-neglect?
- Clarification was needed in the Bill of the rights of people volunteering for treatment.
- Under Clause 14 anyone could make a claim, maliciously or mischievously, about an allegedly mentally disordered person and, ask the Local Health Board to undertake an assessment.

- Psychiatric services could be required to make compulsory treatment orders for substance misusers who may have only some subsidiary mental health problem.
- Concern was expressed that the current draft would increase the stigma associated with mental health problems.
- The Bill would not help people who sought treatment voluntarily in the early stages of mental illness.
- The removal of nearest relative status in challenging compulsion could cause difficulties for carers. It was felt that carers would have all the responsibilities but none of the rights
- Carers would be consulted 'where practicable' but there was no obligation for a carer's views to be sought.
- The arrangements for a nominated person were complex. There was no guarantee that the nominated person would be the carer. This created the potential for conflict and the nominated person would not be named until after the assessment process had started.

Mind Cymru

- People with drug and alcohol problems, or generally socially unacceptable lifestyles, could be at greater risk of compulsion.
- Clinical supervisors would have greater power, and tribunals would be less able to discharge a patient against the wishes of the clinical supervisor.
- At the examination stage, a patient may not have the safeguard of having someone with them. If they did not have a carer of their carer was not available to be or did not want to be their nominated person it could be five days before the patient had any support.

Royal College of Nursing

- The widening of the definitions for compulsory assessment could lead to more assessments being undertaken, which would have an impact on resources.
- It was envisaged that the majority of assessments would be undertaken by link nurses working in Accident & Emergency Departments, where resources were already stretched.

Treatment Orders in the Community

Royal College of Psychiatrists

- The Mental Capacity Bill set out the framework for treating people who lacked the capacity to make a decision without their consent. A person subject to the Mental Capacity Bill would have more rights than those subject to the Mental Health Bill, and it was believed that there should be similar rights and safeguards in both Bills.
- Clause 9.5 of the Bill is ambiguous as it relates to children under the age of 16 and their parents. The drafting needed to be re-appraised to protect young people.
- The Mental Health Bill provided for compulsory treatment of people who might be a risk to

themselves, those who might be a risk to others and mentally disordered offenders in the same way. There should be different provision for offenders.
- Although though the Bill provided for compulsory treatment in a health care setting, there was no detailed definition of what be appropriate.

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- The Bill put pressure placed on carers to ensure the patient did not breach conditions. The carer could be seen as part of the coercive process, which could have an adverse effect on the carer / patient relationship.

Mind Cymru

- Service users felt compulsory orders would be an intrusion in their lives whilst living at home. People who did not need compulsory treatment in hospital were not sufficiently seriously ill to require compulsory treatment.
- A residential patient would be kept under review by the clinical supervisor. If they did not meet the threshold for hospital treatment they could be transferred to a non-resident order and as such they did not need to be discharged from compulsory care making.

Royal College of Nursing

- The demand for intermediate care would increase at a time when day hospitals were closing. This would increase the work of community psychiatric nurses.

Effects on Professional Roles

Association of Directors of Social Services

- While responsibility for the training and approval of Approved Mental Health Professionals being with local authorities was welcomed, the removal of the Approved Social Worker role was not supported. There was closer integration of health and social care and the Bill should take account of the aims of the National Service Framework.

Royal College of Psychiatrists

- Non-medical clinical supervisors should not be allowed to prescribe Electroconvulsive Therapy (ECT).
- Once a person was subject to compulsion, the clinical supervisor would be required to ensure that the conditions were being met, but they were not deemed qualified to determine those conditions in the first instance.

Mind Cymru

- The Approved Social Worker was seen to have a level of independence because they were not normally employed by the NHS. This independence could be lost if the creation of the Approved Mental Health Professional meant that the role was undertaken by a professional from within the NHS. Service users had expressed concern at this.

- Users, carers and professionals outside the hospital setting should have an input in the tribunals process but this would place increased demand on mental health professionals.

Royal College of Nursing

- It was already difficult to recruit people in the field of mental health and it was felt that the increased emphasis on treating people with severe disorders might put off more people.
- Similarly a change in focus from a therapeutic, caring relationship to one of compulsion could be damaging.
- 95per cent of care came from nurses in the community. Under current legislation there was a useful separation between that clinical role and the decision making process that facilitated a therapeutic relationship between nurse and patient.

Effects on Welsh Mental Health Services

Royal College of Psychiatrists

- This was a major area of concern as it was already extremely difficult to recruit mental health professionals.
- Recruitment of psychiatrists in Wales had improved, but the level of posts filled was still 21per cent below complement.
- There were already 40 vacancies and 30 more consultants would be necessary to implement the Bill.
- The requirements of the Bill would also put additional pressure on General Practitioners.
- Concern was expressed that the additional duties arising from the Bill would inevitably result in a reduction in services, particularly to those patients who were not subject to the provisions of the Bill.

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- It was felt that the focus of the draft Bill contravened Welsh Assembly Government policy to increase empowerment and choice for patients and families. It would also divert time and effort away from service provision and increase the stigma attached to mental illness.
- There would be major training requirements as a result of this Bill, the Mental Capacity Bill and the associated Codes of Practice. It could take three years for the new legislation to bed-down.

- The proposed legislation does not have stated principles, is not modern in concept and would be unnecessarily complex to administer.

Mind Cymru

- Issues relating to the Welsh language and problems in providing services and tribunals in rural areas were not addressed.
- Concern was expressed at the delay in implementing the National Service Framework in Wales and it was felt that this Bill would further divert resources away from it.
- The Code of Practice for Wales would be an important part of implementing future legislation appropriately in Wales.
- Advanced statements were not included in the Bill.
- Free aftercare would be reduced to 6 weeks.

Royal College of Nursing

- More compulsory treatment facilities were needed, particularly for children and young people.

Discussion of Evidence

2.3 The Committee considered the evidence received and reached the following conclusions:

- It was generally felt that there needed to be a statement of the underlying principles behind the Bill.

Conditions for Compulsory Treatment

- The definition of mental disorder was too broad and needed to be qualified by certain exclusions.
- The emphasis on compulsion would draw heavily on resources resulting in less scope for early therapeutic intervention where this was sought voluntarily. The right of people to have voluntary treatment needed to be given equal status.

Treatment Orders in the Community

- The role of the nominated person would be weaker than that of the current "nearest relative". This needed to be addressed, as did the role and rights of carers. The Committee recommended that the Joint Parliamentary Committee be asked to look at the roles of the nominated person and carers in the cycle of assessment and treatment.
- The concerns about compulsory treatment raised by the Committee in 2002 had not been addressed.
- Clause 14(1) was open to abuse in people making malicious or frivolous requests for assessment. It was recognised that this clause was probably intended to protect the rights of families and

carers, but its intention needed clarification.
- There is potential for people being trapped in a cycle of incidents of compulsion. Compulsion should be a temporary measure only.
- It was important that the provisions and terminology of the draft Mental Health Bill and the Mental Capacity Bill currently before Parliament should be compatible.

Effects on Professional Roles

- The provisions in the Bill for compulsion could damage the therapeutic relationship between the patient and health care professionals.
- It would not be appropriate for the role of the Approved Social Worker to fall to a professional in the health service.
- If the number of people receiving compulsory assessment and treatment were to increase under the Bill as predicted it would be necessary to recruit more psychiatrists.

Other Resource Implications

- The additional costs that would be associated with providing more tribunals and advocacy were noted, although evidence on this had not been discussed.

Effects on Welsh Mental Health Services

- The Bill should seek to reduce, rather than increase, the stigma associated with mental illness. The Committee recommended that the Joint Parliamentary Committee address this issue in detail when it scrutinises the Bill.

2.4 The Chair would write to the Minister for Health & Social Services setting out the Committee's conclusions. A report would also be sent to Lord Carlile, Chair of the Joint Parliamentary Committee scrutinising the draft Bill. The minutes of the meeting and the written evidence received would be appended to that report.