Legislation Committee 3

LC3(3)-08-10 - Paper 1

Proposed Mental Health (Wales) Measure

Written Evidence Submitted by Local Health Boards

Further to the Committee's request for evidence on the general principles of the Proposed Mental Health (Wales) Measure, the following submission has been compiled.

Background

The approach taken in the compilation of this evidence has been to compile from across the Local Health Boards in Wales responses to the questions raised in Annex 1 of the request for evidence.

The evidence submission has been prepared on behalf of the Local Health Boards in Wales by the Executive Directors of Primary, Community and Mental Health.

General Comments

Before responding to the detailed questions in the consultation document, we would make the following observations in relation to the Measure.

We welcome the focus which the Measure places upon mental health services in Wales, and the commitment to ensure that the citizens of Wales have adequate access to services and are supported appropriately throughout the period of their engagement in services. Using legal powers to guarantee such principles does however have implications and consequences for Health Boards, others and indeed citizens which should be clearly acknowledged, understood and reconciled at the outset.

The proposed Measure would place a legal duty upon Health Boards and others to provide certain elements of health care and support. In doing this it sets these aspects of service delivery aside from many other aspects of mental health service delivery and indeed the wider care responsibilities of the NHS in Wales. Such a legal standing has obvious benefits for the services concerned. However, the implication arising from this legal duty is an emphasis upon, and requirement for, the funding and delivery of such services within the overall planning and budgetary considerations of the Health Boards. This gives them an almost unique status, which will no doubt have an increasing impact over time. This is particularly so as demand for such services will no doubt continue to expand during a period of constrained public expenditure.

The unintended consequence of this could be the potential for fragmentation of care, the opposite to that which the Measure would be intending. Furthermore it could have the potential to overbalance health and social care systems towards a prescribed model of care, when over time, services should change to reflect societal as well as health and social changes in practice, safety and improving outcomes. This could in time be detrimental to mental health, as well as other equally important services, which must also must serve the population as a whole

We would also raise the question of whether the introduction of such legal provisions in relation to the care of adults without similar provisions for children and adolescents is desirable. Early intervention in emotional health and wellbeing for young children, and support for their families, offers significant potential health gain.

Consultation Questions

1. Is there a need for a proposed measure to deliver the following aims:

a) providing local primary mental health services at an earlier stage for individuals who are experiencing mental health problems to reduce the risk of further decline in mental health, and in some cases, reduce the need for inpatient treatment and compulsory detention;

The intention of the policy in the proposed measure relating to developing and providing primary care based mental health services is strongly supported and reflects not only national but also international views of primary mental health care as an essential component of a fully functioning health system. The principle of early recognition, early intervention and therefore early recovery is well evidenced, and therefore this approach within the NHS in Wales offers the opportunity to improve outcomes for people experiencing mild to moderate mental health problems. In supporting this model it is important to recognise that some citizens are not registered with a GP and therefore there is a need to extend coverage to include those, for example, who are homeless.

The requirement for Local Authorities and Local Health Boards to agree schemes in order to deliver such services also recognises that helping to address the difficulties that people experience with their own mental wellbeing needs a holistic service that encompasses social psychological, medical, physical and emotional approaches. It is important to recognise that services accessed via the GP form only one part of a wider network of services which should exist within an emotional health and well being prevention model. Equally important components of that model are provided by partners, particularly within the non statutory sector services. Retaining the benefits of these

services alongside those in the proposed Measure will be crucial.

b) ensure that all individuals accepted into secondary mental health services in Wales have a dedicated care coordinator and receive a care and treatment plan, and that service users previously discharged from secondary mental health services have access to those services when they believe their mental health may be deteriorating;

The need for effective care planning and the agreement of care plans with service users is central to the delivery of effective mental health care. The part of the Measure relating to care planning does not serve to introduce something new, but rather seeks to legislate for what organisations have been required to do under guidance already. Whilst legislation may bring a new impetus to this area of service delivery there are concerns that the individual nature of care plans, and their changing nature may make it difficult to be precise in legislation as to what standard and detail of care plan is acceptable. Changing needs of individuals, related to their condition, may also make the operation of care planning within a legal framework challenging. It may also defeat its own purpose because of its legislative framework in other words the ability to innovate and exercise choice, perhaps in contravention of human rights.

Effective care planning must avoid unnecessary bureaucracy given the imperative to maximise both our efficiency and cost effectiveness within the public sector. This measure must contribute to simplifying the process if it is to be regarded as a meaningful piece of Welsh legislation and to do that there must be a clear and simple understanding at a national level of how the different policies across health and social care relating to planning and delivering care fit together. Within mental health services the ongoing confusion between the care planning processes of the Unified Assessment Process and the Care Programme Approach has been damaging and wasteful. Should legislation be introduced then the opportunity to reduce the aforementioned bureaucracy through this Measure would contribute to more streamlined and effective care delivery. To not achieve this would be a failure and introduce more risk into an already complex system.

Ultimately what could be beneficial in this aspect of the Measure is that the care provided to service users should be clearly documented, co-ordinated and reviewed as necessary. However this legislation will only be rightly hailed as productive if it enables the flexibility that ensures that where a person's needs are complex, with complex interventions the care planning process is sufficiently robust to co-ordinate safe care and where a person's needs are less complex with straightforward interventions that the care planning processes do not create a disproportionate administrative burden to the risks being managed.

With regard to the ability of service users to re-engage with services once discharged, this is welcomed in principle as an important aspect of the recovery approach to mental health services. Mental health teams should be able to discharge service users from their care in a manner which is constructive and positive in terms of the recovery process, but does not leave service users feeling vulnerable and isolated from support. It is important that this right to re-assessment is focussed upon the correct group of service users. It should be provided for those who have previously been actively engaged with the Community Mental Health Team and be seen as a part of an ongoing duty of care. However, where individuals have previously had a brief contact with services, either through consultation or other engagement, but this has not resulted in ongoing support from the CMHT, the access route to services should be via their GP, or other accepted referral route. This will ensure that CMHTs focus upon the most appropriate service users. It will also maintain the GP as the co-ordinator of an individual's care, one of the founding principles of the NHS that should not be overridden, but in fact strengthened through the reforms of the NHS in Wales.

2. extending mental health advocacy provision beyond current arrangements?

The principle of extending advocacy support to all inpatients is viewed as a positive step. However, there are a number of concerns regarding the practical applicability of this aspect of the Measure. The first relates to patients who are on short term sections. There is a firm belief that assessment of a patient on a short term section should not be delayed by the need to access advocacy. In practical terms many such patients are admitted outside of normal working hours, and are assessed within hours of admission. Therefore to support access to advocacy in these circumstances would require a 24 hour service 365 days a year, with very rapid response times. The resource effectiveness of such an approach is believed to be questionable. A more practical approach may be to focus upon the provision of information to a patient regarding advocacy at the earliest appropriate opportunity, facilitating support from an advocate as soon as possible after admission.

The extension of advocacy support to informal patients is a positive measure, although the impact of such a measure is difficult to quantify and therefore plan for in terms of resource allocation. Absolute clarity is required regarding the provision of support to patients on general wards. Concerns have been expressed that focussing upon advocacy for those receiving treatment other than for their mental health problems could be viewed as stigmatising such individuals. The Measure requires more detailed clarification on this issue.

With the increased provision of crisis resolution services and the shift of care from hospital settings to community based treatment, considering the extension of advocacy rights into some community settings would be beneficial. Without this there could be a loss of support for service users over time as care models change.

3. How will the proposed Measure change existing arrangements, and what impact will such changes have?

The most significant changes are anticipated in relation to primary care mental health access and advocacy.

With regard to primary care, there are differing models of service available throughout Wales, and these will need to be reviewed in light of the requirements contained within the proposed Measure. The delivery of schemes for services within and alongside GP surgeries has the potential to confirm a simple mental health care pathway with better co-ordination and completion of the initial assessment of people with mental health related needs. This will assist in ensuring access to the right level of support, delivered in the right place at the right time.

It is envisaged that the Measure will increase the number of people who receive mental health services, by increasing the range and access to brief psychological therapies. This will also need to be complemented by available capacity in other services to meet the needs of those accessing primary mental health services. This will include services such as primary care counselling and other support services. It is difficult to assess the potential demand for such services, but without them the Measure may fail to have the desired impact in terms of early intervention to support mental health and wellbeing. This would not appear to be reflected in the resource plans accompanying the Measure.

There are also services in place currently in parts of Wales which allow access to care without referral via GPs. In introducing the Measure flexibility needs to be retained to have such arrangements and not focus all referrals via GPs as this could introduce an unintended bottleneck in the care system.

The explanatory memorandum makes reference to the primary care mental health service supporting people with dementia as well as those with a functional mental illness. There needs to be clarity regarding the role of the new service in supporting people with dementia as this will have implications for both Memory Clinic services and Older Persons Mental Health Teams (OPMTs). In order to work with people with dementia the primary care service would need a very different skill mix and the draft National Dementia Action Plan for Wales currently states that management of people with dementia and support for their carers will be provided via Memory Clinics and OPMHTs.

In relation to care planning, over the last two years one of the NHS Annual Operating Framework Targets has focussed upon the operation of the Care Programme Approach (CPA), including the need to ensure that all people receiving care at the enhanced level of the CPA have a care plan that meets requirements stipulated by the Welsh Assembly Government. The introduction of these targets has made a significant difference to the attention that has been given to the operation of the CPA and it is anticipated that legislation would be something that built upon this, encouraging continued improvement, rather than being an additional burden.

Within Wales, mental health services are increasingly focussing upon the 'recovery model' and discharge from mental health services is a key stage within this model for some service users. Experience of working with this model has identified that without a clear pathway back into to services staff may be reluctant to discharge, and service users are often very anxious about being discharged. While contingency planning is a key element of CPA, the placing of a duty on Health Boards and Local Authorities to provide assessments to former service users should provide reassurance and reduce the risk of a crisis developing. While this 'entitlement' to reassessment within a set time period will be advantageous to service users it is likely that this will create issues of capacity for services to respond and this will need to be reflected in response times. The Measure should also account for the responsibilities of individuals rather than solely on their rights.

Another potential issue arising from the right to reassessment, in some areas, may be relatively high numbers of former service users from other localities requesting assessments. This will have a particular impact where the services required involve the provision of accommodation, community care and welfare services in localities, where services had not previously anticipated this additional need arising.

The proposals in the Measure relating to advocacy will potentially have a significant impact across a range of services. There is expected to be a significant demand to support older people with mental health problems who are receiving inpatient care. This could arise in a wide range of care settings.

There is also a need to ensure that with the introduction of more formal advocacy support, backed by legislation, the current provision of local advocacy services is not undermined. These services have developed over a period of time and are well

valued by staff and service users alike. The relationship between such services requires careful consideration should the Measure progress.

4. Are the sections of the proposed Measure appropriate in terms of achieving the stated aims?

In considering this question, respondents may wish to consider the nature of the provisions in the proposed Measure that:

a) Provide that there will be local primary case mental health services throughout Wales delivered by local health boards and local authorities working in partnership (part 1, sections 1-10)

The development of joint schemes is welcomed as this will support the variety of needs that may arise from people presenting in primary care. Within these schemes there may be tensions as in some areas Local Authorities meet their statutory responsibilities to provide services when there is a substantial or critical risk to a person's independence but do not provide services in any other circumstance. This may mean that these Local Authorities are not prepared to enter into the development of a scheme which seeks to provide a service to people who although unwell are not at the perceived level of risk that would entitle them to a service. The provisions of the Measure will need to address this issue explicitly.

The proposed Measure refers only to the requirement to provide assessments. Where referrals on to other services are made, providers of that service can decide whether that provision is called for and therefore an effective response to the identified need is not necessarily guaranteed. There are no references to the 'mental health service provider' developing any sort of care or treatment plan which would at least inform the patient of what intervention, treatment or support may be helpful.

b) Provide for care and treatment plan for individuals receiving secondary mental health care (part 2, sections 11-17)

This section appears to be appropriate in terms of achieving the stated aims. However, effective delivery would be significantly aided by

the provision of an effective IT system to support care planning within multi agency mental health teams.

c) Provide an entitlement to assessment by the providers of secondary mental health services for previous service users in particular circumstances (part 3, sections 18-28)

This section also appears to be adequate in terms of achieving the stated aims. The issue of patients who are transient or new to a particular geographic area requires clarification in relation to the responsibility of a CMHT who may have no previous knowledge or relationship with an individual.

5. Make provision in relation to Independent Mental Health Advocacy schemes in respect of patients subject to the compulsory powers of the Mental Health Act 1983, and 'informal patients' (part 4, sections 29-37).

Consideration needs to be given to those who reside or receive NHS care commissioned from the independent sector, and their entitlements clearly specified.

6. What are the potential barriers to implementing the provisions of the proposed Measure (if any) and does the proposed Measure take account of them?

The availability of people with the right skills for working within Primary Mental Health Support Services will be fundamental to the effective implementation of the proposals in the Measure. The explanatory memorandum states that the staff who may deliver new services are likely to come from secondary care services in the first instance. Whilst there are undoubtedly transferable skills in terms of assessment there is also a need for a new skill set, based around brief interventions. This will require specific training packages which will need to be both resourced and given time for delivery.

Capacity in supporting services such as counselling and other local community support services will need to be re-assessed in light of the demand arising from the primary care service. These areas will no doubt require additional resources if they are to respond adequately. Additionally, the specific needs of older people with mental health problems will require significant additional skills and capacity if early intervention and support is to be delivered. This presents a workforce and resource challenge.

The delivery of services in primary care settings will be of significant potential benefit. However, there is often limited space within Primary Care settings due to the intensive nature of General Practice provision which means that physical and environmental barriers can hinder the development of services within surgeries. The guidance surrounding the development of primary care premises, and the current constraints regarding space which can be incorporated for such use will need to be re-visited. Planning and working in partnership can deliver change but the timescales for this need to be taken into consideration when commencement dates for the Measure are agreed.

There is need to define the interface between the Unified Assessment Process and the mental health assessment process, especially the provision of social care responses in the primary care setting. Some Local Authority Social Services eligibility criteria do not necessarily intervene at the level of primary care mental health services, as presentation of and access to social care based assessment and interventions are focused more so on the most complex and most vulnerable cases in society. This scenario may provide a mismatch between assessment and care provision.

The advocacy provisions potentially require a significant expansion of capacity and it is unclear as to whether the skills and resources exist to respond to this demand. Furthermore, the current proposed response to patients on short term section exacerbates this situation by demanding a 24 hour service. This is not considered resource effective or feasible given the capacity in advocacy services and the geographic challenges of coverage across Wales.

7. What are the financial implications of the proposed Measure for organisations if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the proposed Measure.

The calculations contained within the Regulatory Impact Assessment provide a starting point for discussion relating to the financial impact of this Measure. Whilst accepting that they require working through in more detail, they potentially fail to recognise the requirements to deliver comprehensive and effective services within and alongside Primary Care.

It is acknowledged that there is very scant benchmarking data relating to such services for Wales, and comparison with services in neighbouring countries does not necessarily allow like for like calculations. However, the most immediate concern regarding the possible financial impact relates to the significant risk of funding not actually being sufficient to meet the demand generated by comprehensive primary care access. Such a situation would lead to poor delivery, continued dissatisfaction with responses by services and a failure to actually improve the early intervention which the measure seeks to achieve.

Whilst noting the long term goal that early intervention can lead to a lesser demand upon secondary care services, in the short to medium term it is likely that there will be additional demand for support services that is not factored into the current calculations. This is particularly so for older adults with mental health problems where demographic indicators signal a significant rise in demand in the coming years. Should the Measure introduce the right to services then the capacity and financial resource to respond appropriately must be in place.

In addition to these points it must be stressed that to undertake mid point salary scale calculations of potential costs contains significant risks itself. It is likely that in the first instance the people that will be attracted to working in this area will have a degree of experience

that may mean they are at or above this point in the salary scale. It is also local experience that work in this area is popular and as such it is likely that workers will remain in post for some time. Both these situations result in actual costs for services eventually being higher than the allocated budget causing deficit for organisations.

Awareness training programmes for all Health and Social Care, Corporate, Mental Health Service and Primary Care staff in regard to the Measure will be required. This should be built into the costs schedules for the Measure in a similar way that was developed for the implementation of the Mental Health Act 2007

The additional resource for advocacy services is welcomed. It is important to stress that this should be in addition to the current IMHA budget which has been allocated on a recurring basis since 2008/09. Given the logistical challenges associated with the undertakings in the Measure as currently drafted, as have been referred to earlier, the resource effectiveness of this approach may be subject to question.