

Explanatory Memorandum and Regulatory Impact Assessment

The Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011

Contents

PART 1 – EXPLANATORY MEMORANDUM	3
1. Description.....	3
2. Matters of special interest to the Constitutional and Legislative Affairs Committee	3
2. Legislative background.....	4
3. Purpose and intended effect of the legislation	4
4. Consultation.....	5
5. Options	6
6. Costs and benefits.....	8
7. Consultation.....	8
8. Competition assessment	11
9. Post implementation review.....	11
Annex A – Contact information.....	12

Explanatory Memorandum to the Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM
Minister for Health and Social Services

7 November 2011

PART 1 – EXPLANATORY MEMORANDUM

1. Description

1. The Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011 make provision as to:
 - a. determining whether a Local Health Board (LHB) or a local authority is identified as the relevant mental health service provider for a relevant patient, and is therefore responsible for appointing a care coordinator for that patient (other than as provided in the Mental Health (Wales) Measure);
 - b. the eligibility of persons who may be appointed as a care coordinator for patients receiving secondary mental health services;
 - c. the form and content of care and treatment plans;
 - d. who is to be consulted when making and reviewing a care and treatment plan for a relevant patient;
 - e. when care and treatment plans must be reviewed or revised;
 - f. who should receive a copy of a care and treatment plan;
 - g. how copies of care and treatment plans are to be provided;
 - h. what information should be provided to a patient when they are discharged from secondary mental health services; and,
 - i. transitional arrangements in respect of patients within secondary mental health services at the coming into force of the Regulations.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2. This is the first set of Regulations to be made relating to Part 2 of the Mental Health (Wales) Measure 2010.
3. Because the first regulations (alone or with other provisions) to be made under section 18(1)(c) or 18(8) of the Measure are made subject to the approval of the National Assembly for Wales, all of the regulations made within this statutory instrument are made subject to approval.
4. These Regulations include transitional provisions, reflecting the necessary arrangements of moving from a non-statutory to a statutory scheme of care and treatment planning within secondary mental health services.
5. It is proposed that these Regulations are made before the commencement of the main provisions of Part 2 of the Measure. However, the powers to make these Regulations have commenced in accordance with section 55(1) and (2)(b) of the Measure, and the remaining provisions of Part 2 will be commenced prior to the coming into force date of these Regulations.

2. Legislative background

6. These Regulations may be made in exercise of powers conferred on the Welsh Ministers by sections 15(4), 18(1)(c), 18(8), 18(9), 47(1)(b), 47(2) and 52(2) of the Mental Health (Wales) Measure 2010.
7. These Regulations are made subject to the approval of the National Assembly for Wales, as noted previously.

3. Purpose and intended effect of the legislation

8. Part 2 of the Mental Health (Wales) Measure seeks to provide that all relevant patients (of any age) who have been accepted into secondary mental health services in Wales have a dedicated care coordinator and that service providers (LHBs and local authorities) act in a coordinated manner to improve the effectiveness of the mental health services provided to an individual. Also:
 - a. there will be a care and treatment plan for the patient;
 - b. the plan will be developed by a care coordinator in consultation with the patient (so far as practicable, taking into account their capacity and cooperation) and service provider(s), and overseen by the care coordinator;
 - c. the plan is to be agreed with a view to achieving the outcomes which the provision of mental health services for the patient are designed to achieve;
 - d. the plan will be in writing; and,
 - e. the plan will be subject to periodic review and revision in accordance with any Regulations which are made by the Welsh Ministers.
9. These regulations support these provisions of the Measure, by providing detailed practical arrangements to support the operation of Part 2 of the Measure.
10. In relation to care coordinators, these Regulations will:
 - a. ensure that only persons meeting the eligibility requirements may be appointed as a care coordinator; this is to ensure that suitably qualified, trained and experienced staff undertake this important function;
 - b. continue the intentions of section 15 of the Measure, to ensure that the most appropriate mental health service provider is identified as the relevant mental health service provider for a relevant patient, and appoints the care coordinator for that patient (in the case of the Regulations this applies where both an LHB and a local authority provide services).

11. In relation to care and treatment planning, these Regulations will:

- a. set out a prescribed form which the care and treatment plan must meet. This will help to ensure that plans are clear and accessible, and meet the purposes of such a document;
 - b. establish the content which all care and treatment plans must include; such content is based within the context of the philosophy of recovery which underpins secondary mental health services; and,
 - c. prescribe the circumstances when care and treatment plans must and may be reviewed and, if necessary, revised.
12. To support the principles of consultation, collaborative and joint working which underpin care and treatment planning within secondary mental health services, these Regulations will:
- a. provide comprehensive requirements about the persons, in addition to the relevant patient and the mental health service providers, who should be consulted in making and reviewing care and treatment plans; and,
 - b. help to ensure that the right people and organisations are clear about the expected outcomes of service provision, and understand what their obligations and expectations are in achieving those outcomes. This is achieved, in part, by providing copies of a relevant patient's care and treatment plan.
13. To help identify the support which relevant patients who leave secondary mental health services may need, these Regulations require certain information to be provided to patients on discharge.
14. It is anticipated that statutory care and treatment planning will lead to the greater involvement of patients in decisions which are made in relation to their care and treatment, and better outcomes for them.
15. In addition, it is expected that the design and delivery of care and treatment plans will foster more cohesive, focussed and effective cross-discipline working amongst mental health and social care professionals in delivering services.

4. Consultation

16. Details of the consultation undertaken are included in the regulatory impact assessment that has been completed for these Regulations, and is set out in Part 2 of this document.

PART 2 – REGULATORY IMPACT ASSESSMENT

5. Options

17. This section of the RIA presents two different options in relation to the policy objectives of the proposed Regulations (see Section 4 of Part 1 of this document). Both of the options are analysed in terms of how far they would achieve the Government's objectives, along with the risks associated with each. The costs and benefits of each option are set out in Section 7 of this Regulatory Impact Assessment.

18. The options are:

- Option 1 - Do nothing
- Option 2 - Deliver the policy objectives through the Regulations

Option 1 – Do nothing

19. The current responsibilities for health and social care services in respect of care and treatment planning for patients in adult mental health services is set out in policy guidance relating to the Care Programme Approach ("CPA")¹. The CPA guidance does not, currently, apply to patients in child and adolescent secondary mental health services.

20. The Welsh Government has also initiated performance management arrangements in respect of CPA through the Service and Financial Framework (SaFF) and more recently through the Annual Operating Framework (AOF) and Annual Quality Framework (AQF).

21. However, despite existing guidance and targets, there have been anecdotal concerns over recent years that care and treatment plans are not being effectively developed with service users, and that the CPA guidance is not being correctly followed. This position has been confirmed by a recent review of the operation of CPA in Wales².

22. Part 2 of the Measure is aimed at ensuring patients (of all ages) have a care coordinator and a care and treatment plan. Although this will improve the current situation, without the supporting regulations there are risks that a multitude of different documents will be considered to be a care and treatment plan and that different standards will be applied to the content of care and treatment plans. There are also risks that ineffective consultation with relevant individuals, professionals and organisations take place.

¹ Welsh Assembly Government (2010) *Delivering the Care Programme Approach in Wales: Interim Policy Implementation Guidance*

² Elias E and Singer L (2009) *A review of the care programme approach in Wales*. Bridgend: Delivery Support Unit and National Leadership and Innovation Agency for Health (unpublished)

23. There are also concerns that unacceptable variations will continue, or increase, as to who may be appointed as a care coordinator and the skills and experience that such an individual will hold.

Option 2 – Make regulations

24. This option proposes that the Regulations will provide the necessary operational detail to the Measure, and make provision as to:

- a. determining whether a Local Health Board (LHB) or a local authority is identified as the relevant mental health service provider for a relevant patient, and is therefore responsible for appointing a care coordinator for that patient (other than as provided in the Mental Health (Wales) Measure);
- d. the eligibility of persons who may be appointed as a care coordinator for patients receiving secondary mental health services;
- e. the form and content of care and treatment plans;
- f. who is to be consulted when making and reviewing a care and treatment plan for a relevant patient;
- g. when care and treatment plans must be reviewed or revised;
- h. who should receive a copy of a care and treatment plan;
- i. how copies of care and treatment plans are to be provided;
- j. what information should be provided to a patient when they are discharged from secondary mental health services; and,
- k. transitional arrangements in respect of patients within secondary mental health services at the coming into force of the Regulations.

25. Using legislation in this way will ensure that relevant patients receive an effective assessment of their needs and risks (including vulnerability) that can be translated into effective planning of care and treatment designed to address identified needs, the management of identified risk, and achieve the agreed outcomes.

26. The duties contained in the Measure will therefore be supplemented by detailed regulations and both will be supported by updated guidance, and an implementation programme aimed at moving planning to a holistic, outcome-focussed, recovery-centred approach. Taken collectively this will enable the Welsh Government to redirect the focus of care planning and achieve a position whereby all relevant patients have the support of a dedicated care coordinator and receive a plan which is relevant to their needs, regularly reviewed and updated as appropriate throughout the duration of their treatment.

27. The risks associated with this option relate to the implementation of the legislation, rather than in taking a legislative approach. For example, it will be important to ensure that services are supported in moving towards holistic care planning where such services are not currently working in that way. These risks will be addressed through the implementation programme for the Mental Health (Wales) Measure 2010.

6. Costs and benefits

Costs and benefits of Option 1 (do nothing)

28. Ongoing performance management of CPA will have no additional direct costs, and would continue to be used to ensure that care plans are in place for individuals. However, there are costs associated with inadequate planning of care, including poorer outcomes for individuals and their families, and ineffective care delivery and resource allocation. In the worse case, this may even lead to compromised public and patient safety, and increased potential for litigation, and reputational damage. The benefits expected to be realised in moving care and treatment planning forward on a statutory basis (as established by Part 2 of the Measure), may well not be realised with the 'do nothing' option.

Costs and benefits of Option 2 (make regulations)

29. Because care and treatment planning has been a (non-statutory) requirement within secondary mental health services for a number of years, there are no anticipated additional costs associated with these Regulations. There are identified implementation costs associated with Part 2 of the Measure (as set out in the Explanatory Memorandum to the Measure), but these Regulations do not add to those costs.

30. It is anticipated that these Regulations, in association with the Measure, will lead to greater involvement of relevant patients in decision-making around their care and treatment, and better outcomes for those patients. Revised CPA guidance and other components of the implementation programme will be directed to support the re-focussing of care and treatment planning which should also encourage more cohesive, focussed and effective cross-discipline working amongst mental health and social care professionals in delivering services.

31. The ultimate aim is to ensure that appropriate services are directed where they are actually required in a timely manner. If successful, this will not only benefit patients, but should also help remove inefficiencies in practice and potential wastage in care and treatment delivery, leading to potential cost savings (although unquantifiable at this stage) within the service.

Summary

32. **Option 2 (make regulations)** best meets the Government's objectives.

7. Consultation

33. Welsh Government officials undertook a programme of consultation on the draft regulations relating to care coordination and care and treatment planning. 117 written responses were received from a variety of stakeholders, including service user representative bodies, NHS organisations, local authorities and professional

bodies.

34. A detailed consultation response report has been published on the Welsh Government's website, but the views received and the most noteworthy amendments made to the regulations as a result of the consultation are summarised in the following paragraphs.

Identification of relevant mental health service provider

35. The majority of respondents agreed with the principle that one organisation (either the relevant LHB or the local authority) should be the body responsible for appointing a care coordinator; therefore the Welsh Government will not be amending this Regulation.

Eligibility requirements for care coordinators

36. In response to suggestions received from stakeholders, dieticians, physiotherapists and speech and language therapists have been added to the list of those professionals who can be appointed as care coordinators. The Regulations have also been amended to make it clear that only qualified social workers (as opposed to student social workers) may be appointed as care coordinators. In addition, 'skills' has been added to Regulation 4(1)(b) in recognition of the fact that certain specific skill sets will on occasions be necessary when appointing care coordinators to patients with certain conditions or requirements.

Form and content of care and treatment plans

37. The Welsh Government has made significant changes to Schedule 2 of the Regulations to take into account the range of views expressed by stakeholders. All care and treatment plans will now include a review date, any risks identified in relation to the patient will be recorded against the relevant outcomes, and details of the patient's relapse signatures will be included. In addition, the wording of the mandatory text in Schedule 2 has been adapted to make the language less formal, and the layout of the plan has been substantially revised to clearly link outcomes with the mental health services to be provided with a view to achieving those outcomes. Given the amendments made to Schedule 2, the wording of Regulation 5 has been simplified from the version introduced for consultation.

Persons to be consulted in preparing, reviewing and revising care and treatment plans

38. To address concerns voiced by some respondents regarding how/whether certain persons set out in the draft Regulations should be consulted by the care coordinator when preparing or reviewing a care and treatment plans, the Regulations have been amended so that whilst it will be the case that the care coordinator has to take account of the views of the patient before consulting with any of the relevant persons set out in the regulations, he or she may choose to consult with such persons against the wishes of the patient, provided that the care coordination has given due consideration to the wishes of the patient. This

approach is intended to ensure that the wishes of the patient are balanced against the care coordinator's responsibility of delivering safe and effective care and treatment to the patient. To avoid adding unwarranted complexity to the process of developing and reviewing the care plan it was not felt proportionate to require the care co-ordinator to seek a decision from a 3rd party on whether it was appropriate to consult certain people against a patients wishes. It is expected that the Code of Practice relating to Parts 2 and 3 of the Measure will recommend that the reasons for such decisions should be clearly documented.

Review and revision of care and treatment plans

39. In response to uncertainty expressed by some consultees, the wording of the Regulations has been amended to make it clear that a review must be held *within* each 12 month period. The Welsh Government has also amended the Regulations to make it clear that any statutory mental health service provider providing care to a patient, and the patient's carer, or adult placement carer, may request that the care and treatment plan be reviewed as suggested by some stakeholders ('adult placement carers' have been added to the Regulations to reflect the fact that some patients will be cared for by such a carer under an Adult Placement Scheme).

Copies of care and treatment plans

40. To address concerns voiced by some respondents regarding whether/how certain persons set out in the draft Regulations should receive copies of the patient's care and treatment plan, the Regulations have been amended so that the care coordinator has to take account of the views of the patient before providing copies of his or her care and treatment plan to any of the persons set out in the Regulations. However, the care coordinator may choose to provide such persons with copies of the plan against the wishes of the patient provided that the care coordinator has given due consideration to the wishes of the patient. This approach is intended to ensure that the wishes of the service user are balanced against the care coordinator's responsibility of delivering safe and effective care and treatment to the patient. To avoid adding unwarranted complexity to the process of developing and reviewing the care plan it was not felt proportionate to require the care co-ordinator to seek a decision from a 3rd party on whether it was appropriate to consult certain people against a patients wishes. It is expected that the Code of Practice relating to Parts 2 and 3 of the Measure will recommend that the reasons for such decisions should be clearly documented.

Information for persons ceasing to be relevant patients

41. Given that a majority of consultees were content with the arrangements set out in the draft Regulation, the Welsh Government will not be making any substantive amendments to this Regulation. The wording of the text of Regulation 10(3)(b) has, however, been revised to make the relevance of a child's 18th birthday clearer, and, in keeping with amendments made elsewhere in the Regulations, the 'best interest' test which was previously included in Regulation 10(4) has been removed.

Transitional provisions

42. In response to the view expressed by some stakeholders, services will be required to ensure that all persons in secondary mental health services (irrespective of age) at the time of the commencement of this legislation should have a care and treatment plan within 60 days.

8. Competition assessment

43. The competition filter is required to be completed if the subordinate legislation affects business, charities and/or the voluntary sector. The filter is therefore not required in respect of these Regulations.

9. Post implementation review

44. Section 48 of the Measure places the Welsh Ministers under a duty to review the operation of Measure, and to publish a report of the findings of the review. The report on Part 2 of the Measure must be published no later than four years after the commencement of the principal provisions of Part 2.
45. It is intended that the review relating to Part 2, will take account of these Regulations.
46. The report of the review must be placed before the National Assembly for Wales, in accordance with section 48(9) of the Measure.

Annex A – Contact information

For further information in relation to this document, please contact:

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