

Mental Health Bill, Newsletter number 14

This, you may be pleased to read, is my final newsletter. The Bill has been agreed by both Houses of Parliament and will, in due course, attain Royal Assent and we will have the Mental Health Act 2007. As I write there has been no official announcement as to when the amended Act will come into force (although October 2008 has been mentioned). It may well be staged, as the Mental Capacity Act has been. I cannot put all the provisions in a newsletter but the main features of the Act are outlined below.

Of course there is still much to do; on the Code of Practice, training, and trying to ensure the best possible care for our patients. I am handing over the lead for this work to others.

Two questions spring to my mind. How did we do and will the amended Act be better or worse for patients, their families and society? The former question probably needs time for reflection, the latter will be decided only after several years. I have no doubt that the 1983 Mental Health Act, as amended, is significantly better for everyone than either the 2002 or 2004 draft Bills or the Bill that was introduced to Parliament last November. I am also confident that the reputation of the Royal College of Psychiatrists has been enhanced.

I must take this opportunity to thank so many of you for all your support and encouragement.

With best wishes and much gratitude

Tony Zigmond
Honorary Vice-President
Royal College of Psychiatrists

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Mental Health Act 2007 – brief summary of provisions

Principles

The code shall include a statement of the principles which the Secretary of State thinks should inform decisions under this Act. In preparing the statement of principles the Secretary of State shall, in particular, ensure that each of the following matters is addressed—

- (a) respect for patients' past and present wishes and feelings,
- (b) minimising restrictions on liberty,
- (c) involvement of patients in planning, developing and delivering care and treatment appropriate to them,
- (d) avoidance of unlawful discrimination,

- (e) effectiveness of treatment,
- (f) views of carers and other interested parties,
- (g) respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation (within the meaning of the Equality Act 2006)

Principles 2

- (h) patient wellbeing and safety, and
- (i) public safety.

The Secretary of State shall also have regard to the desirability of ensuring—

- (a) the efficient use of resources, and
- (b) the equitable distribution of services.

In performing functions under this Act persons mentioned in subsection (1)(a) or (b) shall have regard to the code.

Definition of mental disorder

- Any disorder or disability of the mind

Exclusions

- Drug or alcohol dependence
- Learning disability unless with abnormally aggressive or seriously irresponsible behaviour.

Criteria for detention

- Mental Disorder – single broad definition.
- Nature or degree to (S2) warrant detention in, (S3) receive medical treatment in, hospital
- In the interests of the patient's health or safety or for the protection of others
- Appropriate treatment is available (that medical treatment is available which is appropriate in the patient's case, taking into account the nature or degree of his mental disorder and all other circumstances of his case).
- Any reference in this Act to medical treatment, in relation to mental disorder, shall be construed as a reference to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations

"Medical treatment" includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care

Professional roles

- Applicant ASW to be replaced by AMHP from any health profession/social work (except registered medical practitioners (RMPs))
- Medical Recommendations by 2 doctors, one section 12 approved
- Note: All medical Approved Clinicians are deemed also to be approved under S12(2)
- Note: Section 20 renewal and CTOs: the 'medical' recommendation made by the Responsible Clinician

Approved Mental Health Professional (AMHP)

- An AMHP is a person approved to act in that role by a local social services authority (LSSA). Can act in: England or Wales. Lasts 5 years
- No requirement for an AMHP to be employed by the LSSA that they are acting on behalf of. For example, a LSSA may wish to enter into arrangements with a NHS Trust to provide the AMHP service on their behalf. It is for the LSSA to decide how they provide an AMHP service.
- A registered medical practitioner may not be an AMHP

Approved Clinician

- An approved clinician is a person approved by the appropriate national authority to act as an approved clinician for the purposes of the Act. The power to approve is delegated.
- To act as a patient's responsible clinician, a professional must first be approved as an 'approved clinician'. The approved clinician in charge of a particular episode or type of treatment may or may not be the responsible clinician.

Responsible clinician (RC)

- A patient's responsible clinician is defined as the approved clinician with overall responsibility for the patient's case. All patients subject to detention or Supervised Community Treatment have a Responsible Clinician.
- Nurse, Occupational therapist, Psychiatrist, Psychologist, Social Worker

Section 20 renewal

- Responsible Clinician (after consulting with one or more other persons professionally involved)
- But the responsible clinician may not furnish a report unless a person—
 - who has been professionally concerned with the patient's medical treatment; but
 - who belongs to a profession other than that to which the responsible clinician belongs,states in writing that he agrees that the conditions set out in subsection (4) above are satisfied.

CAMHS (under 18)

- 16&17 year olds - capacitous refusal cannot be overridden by parental authority
- SOAD needed for ECT
- Age appropriate services
 - The managers of the hospital must ensure that the patients environment in the hospital is suitable having regard to his age (subject to his needs).
 - The Managers shall consult a person who appears to them to have knowledge or experience of cases involving patients who have not yet attained 18 years.

- Section 140 amended (duty on health authority to inform social services of arrangements) for the provision of accommodation for patients who have not attained the the age of 18 years
- The intention is that the Code will state: Wherever possible a CAMHS specialist will be part of the mental health assessment. Separate and appropriate facilities; staff to have the right training and checks; hospital routine that will allow the development, including education, of the child to continue
- Referral for a MHRT annually

Supervised community treatment (also called a community treatment order)

- Section 25A (Aftercare under supervision) rescinded
- Patients detained under sections 3 or 37
- Decision made by RC with agreement of AMHP
- Should be considered instead of section 17 leave if for more than one week

SCT - Criteria

- The patient is suffering from a mental disorder of a nature or degree which makes it appropriate for them to receive medical treatment;
- It is necessary for their health or safety or for the protection of other persons that they should receive such treatment;
- Subject to their being liable to be recalled as mentioned below, such treatment can be provided without their continuing to be detained in a hospital;
- It is necessary for their health or safety or for the protection of other persons that they should be liable to be recalled to hospital for medical treatment;
- Appropriate medical treatment is available for the patient.
- It is necessary that the responsible clinician should be able to exercise the power to recall the patient to hospital
- In determining whether the criterion is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were not detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

SCT - Conditions placed on the patient

- Necessary or appropriate for one or more of the following:
 - Ensuring the patient receives medical treatment
 - Preventing risk of harm to the patient's health or safety
 - Protecting other persons

SCT - Review

- The RC may vary or suspend the conditions.
- A review of the CTO may be prompted if, for example:

- The patient's mental condition improves or the patient plans to return to employment
- The patient's mental condition deteriorates or the patient fails to comply with conditions or shows signs of becoming a greater risk to himself or others
- The patient, their nearest relative, a carer or person with legal authority to act on their behalf requests a review or the patient's carer becomes unavailable

SCT - Recall

- RC
- If patient needs treatment for health, safety, etc which can only be given in hospital
- If patient refuses to make himself available for examination by RC or SOAD
- Should be considered if patient does not comply with conditions
- Maximum duration 72 hours
- Can happen even if patient already in hospital.

SCT - Revocation

- RC and AMHP if the patient again meets the criteria for detention.
- Automatic referral to MHRT

SCT - Consent to treatment

- Complex
- Part 4 does not apply whilst patients are in the community
- After 3 months (if an in-patient) or 1 month (on a CTO) (whichever is later), for section 58 type treatments need a 'SuperSOAD' certificate. The SOAD specifies which treatments are to be given only if the patient has capacity and consents to it and which may be given despite capacitous refusal or incapacitous resistance - the latter two only following recall.
- What treatment may and may not be given in the community is different depending on whether the patient is under 16 years of age and, if 16 or over, whether capacitous and refusing or incapacitous.

SCT - Renewal and discharge

- Renewal
 - RC & AMHP
 - New 6 months order every time SCT applied or revoked
- Discharge
 - Expires
 - Discharged by RC, MHRT, Hospital Managers,
 - for Part 3 patients end of a specified duration.
 - Revoked

Nearest relative

- Patient to be able to apply to court for displacement of NR (on grounds of 'unsuitability')
- Definition to be amended to take account of the Civil Partnerships Act 2004

Treatment safeguards

- No ECT in the face of capacitous refusal other than in an emergency and then only if
 - Immediately necessary to save life
 - Immediately necessary to prevent a serious deterioration in his condition

Independent Mental Health Advocates

- All patients liable to be detained, guardianship, CTO
- If discussing section 57 type treatments
- If under 18 years of age and discussing section 58A type treatments

Other amendments

- Section 136 - authority to move a patient from one place of safety to another
- Restriction orders - removal of time limited orders
- MHRT - all patients to be referred, at 6 months, for a Tribunal. Time to be reduced as resources permit.
- Victims rights extended to non restricted patients (amends Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004)
- Ill-treatment - punishment for ill-treatment increased from 2 to 5 years imprisonment
- Cross border arrangements
- Other issues affecting regulations

Amendment of the Mental Capacity Act

- Authorises deprivation of liberty in a hospital or care home
- Requires 6 assessments
 - Age (18+)
 - Mental disorder (as defined in MHA without exclusions relating to LD) (this assessment must be carried out by a registered medical practitioner)
 - Mental capacity (lacks capacity to consent to being accommodated for the purpose of being given relevant treatment) (will usually be carried out by a RMP)
 - Best interest (to be detained and proportionate to likelihood and seriousness of harm) (this assessment will usually be carried out by an AMHP or a person qualified to be one)
 - Eligibility requirement ("the relevant person meets the eligibility requirement unless he is ineligible")
 - The no refusals requirement (valid decision of a donee or deputy, advance directive)
- Request of the managing body, undertaken by the supervisory body (e.g. hospital & PCT or nursing home & social services)

Standard Authorisations

- Requested by managing authority
- Given by supervisory body
- P is likely, within the next 28 days, to be a detained resident (and will meet the qualifying requirements)
- May, or not, already be in hospital/care home

Urgent authorisations

- Given by managing authority

- Have made/are going to make a request for a standard authorisation
- Need to detain before they can make the request or the request can be disposed of
- Maximum 7 days renewable for a further 7 days

Other matters

- No renewal. Repeat the process
- Appeals to the Court of Protection
- Any fees payable to the home continue to be payable despite deprivation of liberty
- Additional matters: Appointment of representative, Third party notifications, Changes in supervisory responsibility, Review of authorisations, Record keeping