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Consultation Document

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

Consultation on the draft Regulations and
the draft Explanatory Memorandum and
Regulatory Impact Assessment

Date of issue: **21 February 2011**

Action required: Responses by **16 May 2011**

Overview

This consultation is about draft regulations relating to care coordination and care and treatment planning within secondary mental health services.

How to respond

The closing date for replies is 16 May 2011.

Please mark the subject of your email/letter 'Consultation on Part 2 Regulations'. We would be grateful if your response could include information about you.

A sample questionnaire for completion is given at Annex 1, and replies should be returned either electronically or by post to:

Mental Health Legislation Team

Welsh Assembly Government

Cathays Park

Cardiff

CF10 3NQ

Email: mentalhealthandvulnerablegroups@wales.gsi.gov.uk

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

There are four Annexes to this consultation document:

Annex 1: Consultation response form

Annex 2: Draft Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011

Annex 3: Sample care and treatment plan

Annex 4: Draft Explanatory Memorandum and Regulatory Impact Assessment

Contact Details

For further information:

Mental Health Legislation Team

Welsh Assembly Government

Cathays Park

Cardiff

CF10 3NQ

Telephone: 029 2082 6988

Email: mentalhealthandvulnerablegroups@wales.gsi.gov.uk

Data Protection

How the views and information you give us will be used.

Any response you send us will be seen in full by Welsh Assembly Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Assembly Government staff to help them plan future consultations.

The Welsh Assembly Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Assembly Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Introduction

1. The Mental Health (Wales) Measure (“the Measure”) was passed by the National Assembly for Wales in November 2010 and received Royal Approval in December 2010.
2. The Measure makes a number of important changes to the current legislative arrangements in respect of the assessment and treatment of people with mental health problems in Wales.
3. These draft Regulations are to be made by the Welsh Ministers in exercise of powers under the Measure, and relate to Part 2 of the Measure.

Legislative background to the Regulations

4. Part 2 of the Measure is concerned with coordination of and care and treatment planning for secondary mental health service users.
5. The Measure places duties on Local Health Boards (LHBs) and local authorities to appoint an eligible care coordinator for a ‘relevant patient’ (someone for whom secondary mental health services are being provided). Eligibility to act as a care coordinator is a matter that can be set out in Regulations.
6. LHBs and local authorities are placed under a duty to coordinate the provision of mental health services, and the care coordinator may be asked for advice on how such coordination can be achieved. The care coordinator may also give advice at any time on this matter.
7. The care coordinator must work with the relevant patient and the service providers to agree the outcomes that the provision of secondary mental health services is designed to achieve, with a view to agreeing a care and treatment plan aimed at achieving those outcomes. The care coordinator must record the plan in writing, and must also work with the relevant patient and service providers to review and revise that plan.
8. So far as it is reasonable practicable to do so, service providers must ensure that the mental health services set out in the care and treatment plan are provided in accordance with the plan.

Overview of the Regulations

9. These Regulations include provisions about care coordinators, and the making, reviewing and revising of care and treatment plans.
10. The Welsh Ministers may make Regulations which establish –
 - a) the eligibility of persons who may be appointed as a care coordinator for patients receiving secondary mental health services;

- b) whether an LHB or local authority is responsible for appointing a care coordinator for a patient (other than provided for in the Measure);
- c) that the appointment of a care coordinator will cease, if there is a change in the patient's relevant mental health service provider;
- d) the form and content of care and treatment plans;
- e) when those plans must be reviewed or revised;
- f) who must be consulted in making or reviewing the plans, and any obligations placed on a consulted person;
- g) who should receive a written copy of the plan; and
- h) what information should be provided to a patient when they are discharged from secondary mental health services.

11. The draft Regulations propose making the following provisions:

- a) The body (the LHB or local authority) with responsibility for appointing a care coordinator, when both bodies provide secondary mental health services to a relevant patient, is to be determined in accordance with Regulation 3.
- b) Only certain mental health professionals may be eligible to be appointed as a care coordinator for a relevant patient (Regulation 4 and Schedule 1).
- c) Care and treatment plans must record all of the outcomes that the provision of services are designed to achieve, and any other information which must be captured in accordance with Regulation 5 and Schedule 2. In relation to achieving the outcomes, the care coordinator must also record the services which are to be provided, and by whom, the past and present wishes and feelings of the relevant patient regarding these services, and any requirements the patient may have regarding the Welsh language.
- d) A care and treatment plan must be completed which captures the prescribed information (as identified above) in accordance with the form set out in Schedule 2 of the Regulations. A sample 'mock-up' of how such a care and treatment plan may look is included at Annex 3.
- e) Regulation 6 sets out who must be consulted by the care coordinator (in addition to the relevant patient and service providers) when agreeing the outcomes for services, agreeing the care and treatment plan or reviewing and revising the plan.
- f) The circumstances, and timescales, for review and revision of care and treatment plans (as set out in Regulation 7).

- g) The persons who must be provided with a copy of the care and treatment plan, including where such a plan is revised, together with provisions about how such a plan is to be considered as delivered (Regulation 8).
 - h) The Regulations also prescribe the information that must be given to a person on their discharge from secondary mental health services (Regulation 10).
 - i) Because there will be a number of existing individuals receiving secondary mental health services when these Regulations come into force, Regulation 11 sets out the requirements for ensuring that an eligible care coordinator is appointed for such persons, and for ensuring that care and treatment plans (as prescribed in the Regulations) are prepared. These 'transitional provisions' include timescales for appointment of care coordinators and the making of care and treatment plans.
12. A copy of the draft Regulations are included in Annex 2. Your views on these draft Regulations are welcome as part of this consultation.

Care and treatment plan

13. Included at Annex 3 is a *sample* care and treatment plan, based on the text set out in Schedule 2 to the draft Regulations. The final design will depend on the final draft of the text of Schedule 2, but you are welcome to comment on layout and format as part of this consultation.
14. It is intended that the final document will be available in a format suitable for word processing, and as such box sizes will be able to expand to accommodate as much information as necessary.

A note on further guidance

15. The Welsh Assembly Government currently intends to prepare a Code of Practice for the guidance of local authorities, Local Health Boards and care coordinators, in accordance with section 44 of the Measure. This Code will take into account the final form of these draft Regulations, and it is anticipated that this Code will address principles of person-centred, holistic, recovery-based care and treatment planning.
16. The Code will be subject to full consultation by the Welsh Assembly Government before it is made, and current expectations are that this consultation will take place in the Autumn of 2011.

Overview of the Explanatory Memorandum and Regulatory Impact Assessment

17. The Standing Orders of the National Assembly for Wales require that an Explanatory Memorandum be laid before the Assembly to accompany Regulations, such as the Regulations being consulted upon here.

18. In some cases the Explanatory Memorandum must include a regulatory impact assessment (RIA). Amongst other matters an RIA will include an option appraisal, setting out the costs, benefits and risks of making the proposed legislation.
19. A draft Explanatory Memorandum (including an RIA) has been prepared for these Regulations, and is included at Annex 4. Your views on this draft document are welcome as part of this consultation.

Equality Impact Assessment

20. The Welsh Assembly Government is committed to making sure that as policies, strategies, action plans and legislation are developed, every effort is made to actively contribute to an environment that is free from discrimination. Part of this is about assessing the impact that policies and actions may have on the people of Wales, to make sure that the Welsh Assembly Government does not discriminate but takes every opportunity to promote equality and good relations.
21. As part of the consultation on these Regulations we would welcome your views on the potential impact of the proposed legislation on:
- a) Disability
 - b) Race
 - c) Gender and gender reassignment
 - d) Age
 - e) Religion and belief and non-belief
 - f) Sexual orientation
 - g) Human Rights
22. Further information on 'Inclusive Policy Making', the Welsh Assembly Government's version of Equality Impact Assessment, can be accessed at: <http://wales.gov.uk/topics/equality/publications/ipmguide2/?lang=en>

Consultation questions

23. In relation to the draft Regulations, the Welsh Assembly Government would welcome your views on the following questions:
- a) Are the proposed arrangements for identifying the service provider with responsibility for appointment of a care coordinator, in cases where both the LHB and the Local Authority provide services, appropriate (Regulation 3)?
 - b) Do you agree with the eligibility requirements for care coordinators set out in Regulation 4 and Schedule 1?
 - c) Should other persons also be included as eligible to be appointed as a care coordinator, or should particular requirements (such as training, experience, competence) be included, and if so what requirements would you wish to see included?

- d) Do you agree that there should be a prescribed form for care and treatment plans, such as that set out in Regulation 5 and Schedule 2?
- e) Are there any further matters, over and above those set out in Regulation 5(3), which should be included in all care and treatment plans?
- f) Regulation 6 contains a list of persons who must be consulted in agreeing the outcomes of services provision, agreeing the care and treatment plan or reviewing and revising that plan.
 - i) Have the correct persons been identified in this Regulation?
 - ii) Should further persons be included in this Regulation?
 - iii) Do you agree with the proposed circumstances in which the relevant patient may withhold their consent to consultation with certain persons?
- g) Do you agree with the arrangements for reviewing and revising care and treatment plans (Regulation 7)?
- h) Regulation 8 contains a list of persons who must be provided with a copy of the care and treatment plan when it is made or revised.
 - i) Have the correct persons been identified in this Regulation?
 - ii) Should further persons be included in this Regulation?
 - iii) Do you agree with the proposed circumstances in which the relevant patient may withhold their consent to certain persons receiving a copy of the plan?
 - iv) Do you agree that certain persons may decline to receive a copy of the plan?
- i) Has all of the information which must be provided to a patient on their discharge from secondary mental health services been identified in Regulation 10?
- j) In relation to the transitional provisions set out in Regulation 11 –
 - i) Are the proposed arrangements, including timescales, for appointing eligible care coordinators appropriate (see Regulation 11(2) and (3))?
 - ii) Do you agree with the arrangements, including timescales, for agreeing outcomes of services and recording the care and treatment plan for patients without any plan at the time of the regulations coming into force (see Regulations 11(4) and (5))?

- iii) Do you agree with the arrangements for reviewing existing care and treatment plans, and preparing a new care and treatment plan in Regulation 11(6)?
- iv) Are there any other relevant matters which should be covered within the transitional provisions of this Regulation?

24. In relation to the draft Explanatory Memorandum, the Welsh Assembly Government would welcome your views on:

- a) Whether there is sufficient information in the Explanatory Memorandum to understand the purpose and effect of these Regulations?
- b) The preferred option in the Regulatory Impact Assessment (option 2 – make regulations)? If you do not agree with this option, please provide further details.
- c) Whether you are content with the estimated costs/benefits regarding the implementation of these Regulations? If not, please supply evidence to support your views.

25. We would welcome your views on the potential impact of the proposed legislation on:

- a) Disability
- b) Race
- c) Gender and gender reassignment
- d) Age
- e) Religion and belief and non-belief
- f) Sexual orientation
- g) Human Rights

26. If there are any other matters relating to these Regulations or Explanatory Memorandum that you wish to raise, please do so as part of your response.

27. A sample questionnaire for completion is given at Annex 1, together with the details for replying to this consultation.