

CONSULTATION NOTE

Text in square brackets “[]” is included as a marker, and will be replaced with the necessary details in the final version.



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

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 Affairs Committee	3
3. Legislative background	3
4. Purpose and intended effect of the legislation	4
5. Consultation.....	5
PART 2 – REGULATORY IMPACT ASSESSMENT	6
6. Options	6
7. Costs and benefits	8
8. Consultation.....	8
9. Competition assessment	9
10. Post implementation review	9
Annex A – Contact information.....	10

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

This Explanatory Memorandum has been prepared by the Health and Social Services Directorate General and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

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.

Edwina Hart MBE OStJ AM

Minister for Health and Social Services

[Date]

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. the eligibility of persons who may be appointed as a care coordinator for patients receiving secondary mental health services;
 - b. where a Local Health Board (LHB) or a Local Authority is responsible for appointing a care coordinator for a patient (other than provided for in the Mental Health (Wales) Measure);
 - c. the form and content of care and treatment plans;
 - d. when those plans must be reviewed or revised;
 - e. who must be consulting in making or reviewing the plans and who should receive a copy of the plan;
 - f. what information should be provided to a patient when they are discharged from secondary mental health services; and
 - g. 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 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.

3. Legislative background

5. These Regulations may be made in exercise of powers conferred on the Welsh Ministers by sections 15(4), 15(5), 18(1)(c), 18(8), 18(9), 47(1)(b) and 52(2) of the Mental Health (Wales) Measure 2010, and by section 26(3) of the Welsh Language Act 1993.
6. These Regulations are made subject to the approval of the National Assembly for Wales, as noted previously.

4. Purpose and intended effect of the legislation

7. Part 2 of the Mental Health (Wales) Measure seeks to provide that all individuals (of any age) accepted into secondary mental health services in Wales have a dedicated care coordinator and that service providers (LHBs and local authorities) to 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 service user;
 - b. the plan will be developed by a care coordinator in consultation with the service user (so far as practicable, taking into account their capacity and cooperation) and service provider(s), and overseen by the care coordinator;
 - c. the plan will record the expected outcomes of services, and how those outcomes are to be achieved;
 - d. the plan will be in writing;
 - e. the plan will be subject to periodic review and variation to reflect any changes in the type of care and treatment which may be required by the service user over time.
8. These regulations support these policy objectives, by providing detailed practical arrangements to support the operation of Part 2 of the Measure.
9. 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 will 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 appoints the care coordinator (in the case of the Regulations this applies where both an LHB and a Local Authority provide services).
10. 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;

- c. prescribe the circumstances when care and treatment plans must and may be reviewed and, if necessary, revised.
- 11. 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 service user and the mental health service providers, who should be consulted in making and reviewing care and treatment plans;
 - b. 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 the care and treatment plans.
- 12. To help identify the support individuals who leave secondary mental health services may need, these Regulations require certain information to be provided on discharge.
- 13. It is anticipated that statutory care and treatment planning will lead to the greater involvement of service users in decisions which are made in relation to their care and treatment, and better outcomes for them.
- 14. In addition, 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.

5. Consultation

- 15. 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

6. Options

16. 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.
17. The options are:
- Option 1 - Do nothing
 - Option 2 - Deliver the policy objectives through the Regulations

Option 1 – Do nothing

18. 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.
19. The Welsh Assembly 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).
20. 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.
21. 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

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)

treatment plans. There are also risks that ineffective consultation with relevant individuals, professionals and organisations take place.

22. 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

23. This option proposes that the Regulations will provide the necessary underpinning detail to the Measure, and that the Regulations will set out:
- a. the eligibility of persons who may be appointed as a care coordinator for patients receiving secondary mental health services;
 - b. where a Local Health Board (LHB) or a Local Authority is responsible for appointing a care coordinator for a patient (other than provided for in the Mental Health (Wales) Measure);
 - c. the form and content of care and treatment plans;
 - d. when those plans must be reviewed or revised;
 - e. who must be consulting in making or reviewing the plans and who should receive a copy of the plan; and
 - f. what information should be provided to a patient when they are discharged from secondary mental health services.
 - g. transitional arrangements in respect of patients within secondary mental health services at the coming into force of the Regulations.
24. Using legislation in this way will ensure that individuals 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.
25. 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 Assembly Government to redirect the focus of care planning and achieve a position whereby all service users 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.
26. 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.

7. Costs and benefits

Costs and benefits of Option 1 (do nothing)

27. 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 Mental Health (Wales) Measure), may well not be realised with the 'do nothing' option.

Costs and benefits of Option 2 (make regulations)

28. 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 Mental Health (Wales) Measure (as set out in the Explanatory Memorandum to the Measure), but these Regulations do not add to those costs.
29. It is anticipated that these Regulations, in association with the Measure, will lead to greater involvement of service users in decision-making around their care and treatment, and better outcomes for those individuals. 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.
30. 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 service users, 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

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

8. Consultation

32. [Note: this information will be included in the final draft of this Explanatory Memorandum, and will include information on who has been consulted; why

those organisations/individuals were consulted; how long the consultation lasted (ie from 21 February 2011 to 16 May 2011); a summary of the outcome of the consultation; and whether any changes or amendments were made to the legislation as a result of consultation.]

9. Competition assessment

33. 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.

10. Post implementation review

34. Section 48 of the Measure places the Welsh Ministers under a duty to the review the operation of Measure, and to publish a report of the findings of the review. The report must be published no later than four years after the commencement of the principal provisions of Part 2 of the Measure.
35. It is intended that the review relating to Part 2, will take account of these Regulations.
36. 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:

Mental Health Legislation Team
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

Telephone: 029 2082 6988

Email: mentalhealthandvulnerablegroups@wales.gsi.gov.uk