

## **Reforming the Mental Health Act - update**

### **Purpose of report**

For information.

### **Summary**

The Government proposes to reform the Mental Health Act to put patients at the centre of decisions about their own care and ensure everyone is treated equally. The reforms aim particularly to reduce detentions in inpatient units, tackle the racial disparities in mental health services, better meet the needs of people with learning disabilities and autism and ensure appropriate care for people with serious mental illness within the criminal justice system.

This report updates Members on the proposed changes and highlights the LGA work in shaping the new Act.

### **Recommendation**

For the Board to agree the course of action.

### **Action**

The LGA will continue to work with the DHSC and other stakeholders to shape the Act and highlight any financial and other implications arising.

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## Reforming the Mental Health Act - update

### Background

1. In 2017 the government commissioned an independent review of the Mental Health Act 1983 (MHA), to look at how it was used and to suggest ways to improve it. The review looked at why:
  - 1.1. rising numbers of people are being detained under the act
  - 1.2. disproportionate numbers of people from black, Asian and minority ethnic (BAME) groups are being detained
2. It also considered how the Act could better meet the needs of people with learning disabilities and autism and people with serious mental illness within the criminal justice system.
3. The review team attended a Community Wellbeing Board meeting in 2018 to capture Board members' views. We also made a submission to the review in 2018.
4. The review's [final report](#) published in December 2018 said that the MHA does not always work as well as it should for patients, their families and their carers. They recommended greater safeguards and a greater respect for wishes and preferences and changes to accountability, challenges, and transparency.
5. The review recommended 4 principles to be put into law to underpin the new Mental Health Act, these are:
  - 5.1. choice and autonomy – ensuring service users' views and choices are respected
  - 5.2. least restriction – ensuring the MHA's powers are used in the least restrictive way
  - 5.3. therapeutic benefit – ensuring patients are supported to get better, so they can be discharged from the MHA
  - 5.4. the person as an individual – ensuring patients are viewed and treated as individuals
6. In practice changes suggested include; Advance care planning documents built into care planning, extension of choice of nominated person, detention only if suffering from a 'mental disorder' that can be treated in hospital, reduction in Section 3 treatment order time limits, new care and treatment plans, more frequent tribunal access and a reduction in Community Treatment Orders.
7. The review noted that the recommendations need to be seen in the context of wider investment in, and reform of, services for people with severe mental illness, learning disability, and/or autism. And that compulsory treatment must be a last resort which places an additional responsibility to ensure the quality of services is high.

8. The government's White Paper on [Reforming the Mental Health Act](#) was published in January 2021 and a consultation on the proposals ran from January to April 2021. The Government published its response in August 2021, which proposed supporting most of the independent review recommendations and stated that they will develop a new Bill to reform the Mental Health Act.
9. In April 2021 the Community Wellbeing Board discussed the White Paper and the LGA made a [formal submission](#) to the Consultation. The White paper proposed to rebalance the Mental Health Act - to put patients at the centre of decisions about their own care and ensure everyone is treated equally. The reforms aim also to tackle the racial disparities in mental health services, better meet the needs of people with learning disabilities and autism and ensure appropriate care for people with serious mental illness within the criminal justice system.
10. The DHSC is now developing the Bill to go to parliament. The aim is for it to be introduced to parliament this year with view to implementation in 2023. However, this schedule is subject to parliamentary time.

### **LGA View – key points**

11. The LGA strongly supports the reform of the Mental Health Act and the four principles that will underpin the new Act. Local government has a history of leading a person-centred approach to joining-up services around the needs of individuals, their families, and carers. We welcome the ambition to achieve meaningful change for people living with severe mental illness, and the central role of local government in supporting this.
12. We support the emphasis on treating people as individuals as a fundamental principle. We welcome the intention of the Act to address the rising rates of detention and experiences of people from Black, Caribbean, and African backgrounds. It is important that the Act reflects the needs of people with lived experience of mental health needs.
13. The new Act needs to recognise the local leadership role of councils and the roles and responsibilities of councils in respect of both statutory and non-statutory mental health duties, working in partnership with the NHS and local voluntary and community services. At implementation, it needs to reflect the impact of the pandemic which is predicted to cause an increase in new or additional mental health support .
14. We strongly support the proposals to revise the detention criteria to be clearer that autism and learning disabilities are not considered to be mental disorders for this purpose, and the requirement that there must be a probable mental health cause to behaviour that warrants assessment in hospital. We want to see people with learning disabilities and/or autism receiving personalised care in the community whenever possible. To achieve this, it is important that there is additional funding for councils and

clinical commissioning groups to support the development of alternative resources for people with autism and learning disabilities in the community.

15. The Act will have significant resource implications for councils which need to be fully funded on a long-term basis. The Act needs to reflect the operational needs and resource pressures on local government, and partners, who will need to be resourced to support effective implementation. For many years mental health services at all levels have been reduced despite rising demand.
16. New Section 117 guidance needs to be developed in partnership with councils, the LGA and ADASS. It should clearly identify the responsibilities of the NHS and councils in meeting health and social care aftercare.
17. We support the changes to the current act to increase choice and improve autonomy. The extension of choice must be supported through investment in the funding for partners to develop a broader range of appropriate specialised mental health support in the community.
18. We welcome the recognition of the role of councils in the commissioning of culturally appropriate advocacy services and the intent to work with ADASS, the LGA and the Association of Mental Health Providers to develop this.
19. Commissioning of mental health services should reflect local needs and knowledge; the process should not be overly prescribed by central government. We support improved quality in service delivery, but it is important that the proposed Quality Improvement programme makes links with the mental health role of councils, not just the NHS.
20. The new Mental Health Act should also outline on how it will interact with other legislation such as the Care Act, the Human Rights Act, the Mental Capacity Act, the Equality Act, and the Children Act 2004 and the new Health and Care Bill, the Autism Strategy and the Liberty Protection Safeguards.
21. Achieving a reduction in detentions is not solely about legislative change. There also needs to be alternative treatments and services available commissioned by councils in the community, as well as NHS services. There needs to be a system-wide shift in policy and resources away from medicalisation and treating mental ill health, to early intervention, prevention, and support for recovery through integrated community-based services.
22. The success of the new Act will require the NHS and councils working in partnership. More needs to be done to fully embed mental health into integrated care teams, primary care, urgent and emergency care pathways. The recent Health and Social Care white paper provides a base on which to build a more collaborative culture.

### **Implications for Wales**

23. The current MHA applies in both England and Wales. Although health policy is devolved to Wales, justice matters remain reserved to the UK government. The Welsh government will continue to engage with the UK government on the proposals set out in the White Paper.

### **Financial Implications**

24. The increase in duties for Approved Mental Health Professionals (AMHPs) and expansion of Independent Mental Health Advocacy (IMHA) services will have financial implications for councils. The LGA is currently engaged in a new burdens process with DHSC.

25. There may be further implications of the new Mental Health Act in terms of developing and commissioning community services, workforce training, communications and improvement support. We continue to scope and highlight potential additional financial implications with DHSC.

### **Next Steps**

26. A new Mental Health Act, and accompanying guidance, will represent a significant and complex change with wide-ranging practice, workforce, service delivery and funding implications for councils.

27. The LGA have established a regular Mental Health Act planning meeting with DHSC this will enable us to feed in issues from the sector and understand progress of the Act.

28. Some areas of the new Act are not yet clarified, and this will impact upon the resource implications for councils– a key area is learning disabilities and autism, and this is an area of our focus. The White Paper proposes is to create a new duty on local commissioners (NHS and local government) to ensure adequacy of supply of community services for people with a learning disability and autistic people. And a further duty on commissioners that every local area should understand and monitor the risk of crisis at an individual level for people with a learning disability and autistic people.

29. We continue to engage with DHSC on any new burdens arising from the Act. New financial burdens that have been identified and costed include; AMHPs and IMHA services. But some of the Act implications are not yet clear and some proposals may have further cost implications for councils.