Westminster Hall debate – Reforming the Mental Health Act White Paper

Wednesday 16 June 2021

NHS Providers is the membership organisation for the NHS hospital, mental health, community and ambulance services that treat patients and service users in the NHS. We help those NHS trusts and foundation trusts to deliver high-quality, patient-focused care by enabling them to learn from each other, acting as their public voice and helping shape the system in which they operate.

NHS Providers has all trusts in voluntary membership, collectively accounting for £92bn of annual expenditure and employing more than one million staff.

Key points

- We welcome the publication of the Reforming the Mental Health Act White Paper and look forward to the government prioritising the introduction of new legislation, and taking the necessary steps to progress the broader changes to policy and practice required without delay.
- Reform of the Act is more important now than ever: the COVID-19 pandemic has placed profound pressures on all parts of the NHS and accelerated an increase in demand for mental health care in particular, intensifying the challenges facing services as a consequence.
- We support proposals to simplify the Act and make changes that maintain appropriate safeguards while also enabling greater individual rights and liberties, as well as service users having a more active role in their care planning with a focus on recovery.
- However, reform of the Act alone will not be enough to improve how and where good quality mental health services are accessed. As the White Paper makes clear, further work is needed – and in some areas work is already planned or underway – to reform policy and practice more broadly.
- Reform will require additional funding and an expansion of the workforce, over and above current commitments. Sufficient funding and investment in mental health services, as well as public health and social care more broadly, are crucial to addressing the underlying issues driving the pressures on services and compounding the rising severity and complexity of people’s needs.
- All changes to the Act and associated regulations and guidance that will result in increased costs to providers need to be fully and promptly funded, on a sustainable basis, to ensure that they can be appropriately taken forward.
NHS Providers’ views on key proposals

This section summaries our views on aspects of the White Paper of most significance strategically and operationally to NHS trusts and foundation trusts. Our response to the government’s consultation on the White Paper provides further detail and can be accessed here.

Funding and workforce implications

The government rightly acknowledges that the proposed reforms will require additional funding and expansion of the workforce, over and above current commitments. Sufficient funding and investment are crucial to addressing the underlying issues driving the pressures on services and compounding the rising severity and complexity of people’s needs. Longstanding system and financial pressures on providers, combined with inconsistent investment in mental health services at local levels, continue to exacerbate bed capacity pressures and increase the likelihood that a person may reach crisis point necessitating use of the Act to admit.

The needs of mental health services must be adequately prioritised going forwards. A key indicator will be fully and promptly funding the expansion of community-based specialist mental health care capacity that meets local needs on a sustainable basis. We know this investment is key to reducing the need to detain under the Act and providing care in the least restrictive setting. Adequate investment over the long term to maintain and build on the steps being taken to grow the mental health workforce, and the sector receiving its fair share of capital funding, are both also crucial.

There must also be increased support for public health and social care given the vital role these services play in providing people with the wider care and support they need and helping many avoid reaching a crisis point in the first place.

Guiding principles and detention criteria

We welcome the spirit of the new guiding principles. However, the capacity to detain without consent is an important provision in the Act for the safety and wellbeing of individuals and, in certain occasions, for the safety of those around them, which may need to be made clearer. How the principles will impact the practical application of the Act must be fully considered by the government and any issues of compatibility with its underlying philosophy addressed before further progress on reform is made.

We also welcome the aspirations behind the proposed reforms to the detention criteria and processes for challenging detention, though a number of elements require further clarification to fully understand the implications of any changes in practice and to ensure consistent interpretation by all parties.
While the proposals for more stringent criteria may help reduce detention rates and use of the Act, we need to address the underlying issues driving the pressures on services and the rising severity and complexity of people’s needs at the point at which they present to services.

Distinctions made between Part II and Part III of the Act

The distinction made between Parts II and III of the Act in the White Paper may cause some confusion, given some people detained under Part II of the Act can present with extremely high associated risks.¹ There may also be a risk of pushing a significant number of people into the criminal justice system unintentionally, or the unintended consequence of people who are a significant risk to themselves or others needing to be more acutely unwell in order to access the care and treatment they require. This is a particular concern for people with a learning disability and autistic people given these individuals may remain vulnerable wherever they are, but in particular if they have entered the criminal justice system as a consequence of inequalities in access to care and support.

We need to ensure people who may be slowly deteriorating at home, but not posing any obvious significant risk in the short term, are able to access care and support that meet their needs as soon as possible. This is about fully investing in high quality, community based mental health support including crisis care, delivered in a way that meets the needs of local populations and particularly those groups of individuals who have been historically under-served.

There will be a particular need for improved collaborative working between trusts, community partners and multi specialist agencies to support patients who will not meet the criteria for detention under a reformed Act and when using least restrictive approaches. We also need to ensure that there is enough capacity for people who do require care and treatment under the Act in an inpatient setting, and investment to ensure these settings are fit for purpose in all parts of the country.

Interface with the Mental Capacity Act

A number of trusts have expressed concern with the White Paper’s proposal to address the uncertain interface between the MHA and the Mental Capacity Act (MCA). Some have suggested that the demarcation should be instead based on the nature and purpose of the detention, so that all those being detained in hospital for assessment or treatment for a mental disorder receive MHA safeguards. There must be very clear guidance to support practitioners when making decisions on the correct legal frameworks to apply. It will also be important to assess the impact of the implementation of the latest reforms to the MCA before introducing MHA reforms to ensure that any gaps can be addressed.

¹ Part II of the Mental Health Act is focused on patients who are detained in hospital but have no criminal proceedings against them. Part III of Act is focused on patients who have been involved in criminal proceedings.
Role of the Care Quality Commission

We believe that the Care Quality Commission (CQC) has an important role to play, as a national regulator, in drawing attention to systemic barriers and would be able to do this more effectively if its monitoring powers were extended to consider the effectiveness of local joint working.

Clear lines of responsibility, accountability and decision making within systems and for their constituent organisations will be important in developing this proposal. It will be important not to add unnecessary bureaucracy and burden for trusts or duplicate other work already underway nationally. We also need to be clear about how the government envisages CQC assessing and responding to issues that lie outside of its remit or a system’s control.

Impact assessment

All changes to the Act and associated regulations and guidance that will result in increased costs to providers need to be fully and promptly funded, on a sustainable basis, to ensure that they can be appropriately taken forward. There are a number of recommendations for which costs have not been provided because further consultation or work is required to provide reliable estimates. It will be important to take into account the impacts of the COVID-19 pandemic on mental health and services as well as wider transformation work underway within the NHS.

Implementation

We welcome the government commitment to working with the sector to understand the impact of reform and to develop a robust and achievable plan for implementation. It is right to recognise that other demands placed on the system, and the capacity of health and care staff to deliver what is required, need to be carefully considered as this work progresses.

It will be important for the government to prioritise decisions around funding and required changes to data monitoring and national documentation, and provide that clarity to trusts as early as possible. This is vital to assisting the preparations trusts will need to make, and the consistency of recording, data monitoring and reporting on the use of the Act, as well as implementation of reform more broadly going forwards.