

Queen's Speech Motion on the Address

House of Lords

Education, welfare, health and public services

Tuesday 17 May 2022

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 foundation trusts and 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 England in voluntary membership, collectively accounting for £104bn of annual expenditure and employing 1.2 million staff.

Draft Mental Health Act Reform Bill

NHS Providers view on the key proposals for reform

Guiding principles

We welcome the announcement of a draft Mental Health Act (MHA) Reform Bill and support the spirit of the new guiding principles. We support proposals to simplify the MHA and make changes that maintain appropriate safeguards, whilst 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. Putting patients at the heart of how they access care and treatment is vital to high quality care. How the guiding principles impact on the practical application of the MHA must be fully considered.

Changes to detention criteria

We welcome the aspirations behind the proposed reforms to the detention criteria and processes for challenging detention, though a number of elements require clarification to fully understand the implications of any changes in practice and to ensure consistent interpretation by all parties. It will be important for the Bill to make clear that the capacity to detain without consent is an important

provision for the safety and wellbeing of individuals and, in certain occasions, for the safety of those around them. While the proposals for more stringent criteria may help reduce detention rates and use of the MHA, 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.

A focus on prevention and risk

The MHA focuses in Part II on patients who are detained in hospital but have no criminal proceedings against them, and in Part III on patients who have been involved in criminal proceedings. We are concerned that the proposed distinction between Parts II and III of a reformed Act in relation to the detention criteria may cause some confusion: it is not necessarily the case that patients detained under Part III of the Act are inherently more risky than patients detained under Part II. The proposal to tighten Part II criteria may also risk inadvertently pushing people into the criminal justice system, as well as potentially raising the access threshold, with people who are a significant risk to themselves or others needing to be more acutely unwell in order to access care and treatment.

We need to ensure that 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 meets their needs as soon as possible. This is about investing in 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.

Tackling disparities in Black, Asian and minority ethnic communities' experiences

The inequalities in experiences of people from Black, Asian and minority ethnic backgrounds is a significant source of concern for trust leaders, and they are supportive of the proposal to legislate for culturally competent advocacy to be available to detained patients, subject to successful learning from pilot schemes and appropriate funding and resources following.

However, there is more that needs to be done. The government has **rightly emphasised** that a targeted, multi-pronged approach is crucial to improving these groups of individuals' care and treatment under the Act, as well as their earlier interactions with the mental health system more broadly. We need to see sustained support and focus on delivering, and taking further, plans NHS England and NHS Improvement **has already set out** to support local health systems to better address inequalities in access, experience and outcomes of mental healthcare. Trusts have also told us they

would welcome national support to take effective action on race equality by providing challenge, sharing best practice resources, and holding boards to account.

Trust leaders agree that more must be done to tackle structural racism, bias and discrimination and they are committed to doing all they can to address systemic inequality. They have also emphasised the need to consider wider inequalities experienced by the communities they serve, including in housing, employment, public health and other areas which have a profound effect on life chances and mental health.

People with a learning disability and autistic people

We support the proposals to change how people with a learning disability and autistic people are treated under the MHA. Making it clear that someone with a learning disability or an autistic person will not be detained unless they also have a mental illness is a long overdue step. We also welcome in principle the creation of new duties on local commissioners to ensure adequacy of supply of community services, and to understand and monitor the risk of crisis at an individual level.

However, to have the intended effect, these legislative changes must be accompanied by substantial, sustainable levels of investment, and appropriate support and priority at national and local levels, in the full range of services these groups of individuals rely on, at levels which reflect the significant structural inequities they and services have suffered historically. Discussions and decision making regarding the best approach to delivering high-quality, person-centred care in highly specialist and forensic settings also needs to be more balanced and evidence-based, taking into better account the nature of the care and support provided by these services and the geographic spread of their service user populations, as per the approach taken for specialist physical health services.

Key issues to address in the implementation of the new Act

Workforce

The government has previously **acknowledged** that its proposed reforms to the MHA will require an expansion of the workforce, over and above current commitments. While there has been a welcome focus, and some good progress made, to grow the mental health workforce in recent years, adequate investment is crucial and retention is also a significant challenge, with thousands more staff required to deliver the ambitions for the sector. Moreover, with 110,000 vacancies across the NHS as a whole, greater robustness and transparency in support of long-term workforce planning is essential. We are disappointed that provisions in the Health and Care Act 2022 remain limited to the Secretary of State

reporting on workforce responsibilities, when the opportunity was there to help find a way forward to ensure the NHS and social care workforce could be put on a sustainable footing.

Funding

The government has also **acknowledged** that the proposals will require additional funding over and above current commitments. Funding will be needed for training to enable compliance with a new Act, as well as to deliver specific proposals, for example expanding and improving advocacy services, making them culturally competent, and removing police stations as designated places of safety. Sustained funding for community-based specialist care will be crucial to mitigating the potential unintended consequences of some proposals. For example, caring for people who will not meet the new criteria for detention, and in particular specific vulnerable groups of individuals such as people with learning disability and autistic people. Capital investment will also be required to ensure there is capacity for people who require care and treatment under the Act in an inpatient setting, as well as more broadly to ensure mental health care settings are fit for purpose across the country.

Funding and investment are also fundamental to addressing the underlying issues driving the pressures on services and compounding the rising severity and complexity of people's needs. Longstanding pressures on providers, combined with inconsistent investment in mental health services at local levels, continue to exacerbate capacity pressures and increase the likelihood that a person may reach crisis point necessitating use of the Act to admit. 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 crisis point.

Wider reforms to the health and care system

Reform of the MHA takes place within the context of the reforms made in the Health and Care Act 2022, as well as wider transformation work underway within the NHS and across government. We welcome the provisions in the Health and Care Act to increase transparency in mental health spending, with the Secretary of State now required to publish government expectations as to increases in mental health spending by NHS England and integrated care boards (ICBs). ICBs are also required to report on mental health spending and include in their membership an individual with expertise and knowledge of mental illness. Wider strategic changes like the triple aim will also have an impact, alongside broader government policy such as the forthcoming mental health plan.

System working is a key vehicle for supporting health and care organisations to improve and co-ordinate local planning, better integrate services, and to maximise the use of collective resources.

However, we also need to address how mental health services and other system partners delivering interdependent services are resourced, commissioned and funded. At the moment, services struggle to consistently intervene early enough to meet the needs of people with mental illnesses and prevent crises or more serious illness developing, making use of the MHA to admit more likely.

Further information

- Our [response to the consultation](#) on the white paper on reforming the Mental Health Act.
- Our [briefing on the government's response](#) to the consultation.