

## **Review of the Mental Health Act 1983 Code of Practice for Wales**

**May 2014**

### **Briefing Paper**

The Mental Health Act 1983 (MHA) Code of Practice for Wales was last published in 2008. Since then there have been some major changes in legislation, in particular the Mental Health (Wales) Measure 2010, and a new Mental Health and Wellbeing strategy for Wales, 'Together for Mental Health', published in 2012.

There have also been other changes in case law and professional practice, and the Welsh Government has decided to revise the existing Code of Practice in 2014 to reflect changes in legislation, policy, case law and professional practice. The Code applies to all those that may be affected by the MHA and associated legislation.

The Minister for Health and Social Services has agreed the need to revise the Code of Practice for Wales which gives guidance to staff regarding the care and treatment of patients suffering from a mental disorder and or/subject to the MHA. The Minister has also determined that the revised Code of Practice shall include a statement of the principles which the Welsh Ministers think should inform decisions under the MHA and in particular ensure that each of the following matters is addressed:

- Respect for patients' past and present wishes and feelings,
- Respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation (within the meaning of section 35 of the Equality Act 2006),
- Minimising restrictions on liberty,
- Involvement of patients in planning, developing and delivering care and treatment appropriate to them,
- Avoidance of unlawful discrimination,
- Effectiveness of treatment,
- Views of carers and other interested parties,
- Patient wellbeing and safety
- Public safety.

The Welsh Government is seeking views at preliminary meetings being held in late May 2014 that will provide an open forum to discuss initial views on the current Code of Practice and what may need to be updated. Three separate initial meetings have been arranged to discuss initial views and ideas with service users and carers, statutory staff and the third sector and advocacy services.



Below we have identified some initial points and suggestions for the Welsh Government to consider, and where it needs strengthening what needs to be included in a revised Code of Practice for Wales:

- The existing Code of Practice for Wales is very well and clearly written and had a lot of input from service users, carers and the third sector in Wales. What is still up to date and relevant in the existing Code should not be lost
- Specific aspects of the existing Code that do require revision should be collaboratively identified by service users and carers, professionals and Welsh Government
- The new legislation that has been specifically developed in Wales, e.g. the Mental Health Measure 2010, the Social Services and Well-being Act 2014, etc. and the new Mental Health and Wellbeing Strategy, 'Together for Mental Health' needs to be fully reflected in the new Code of Practice for Wales
- The 'Guiding principles' set out at the beginning of the existing Code of Practice includes the following point; Practitioners ... should pay particular attention to ensuring the maintenance of the rights and dignity of patients, and their carers and families, ...". We think the revised Code should significantly strengthen this guiding principle and should state that there will be zero tolerance of any lack of dignity or respect shown to patients, carers and families, and that any breach of this will result in disciplinary action being taken
- The findings of the DH review relating to Winterbourne View Hospital should have a major impact on revised Code. Although located in England and primarily relating to people with LD, 75% of patients there were detained under the MH Act, and some were from Wales. The recent report ('Trusted to Care') of a review into 2 hospitals in the ABMU Health Board area also has a far wider impact than on just those 2 hospitals, and work is needed to see how both of these reports' findings and recommendations can be included within the revised Code
- Assessing whether there are any effective alternative ways of providing support and/or treatment (alternatives to formal admission) should always be considered, and guidance in the current Code of Practice (2.27) should be significantly strengthened. How alternatives to formal admission have been pro-actively considered should always be included in the assessment documentation
- The Code of Practice should also require authorities to ensure that any requests from either the patient or their carer or family for care, support and/or treatment prior to the person being detained under the MH Act be included within the documentation whether this care, support and/or treatment was delivered or not
- Chapter 14 of Welsh Code needs completely rewriting as it relates to Care and Treatment Planning, and the revision within this part should draw heavily on the legal requirements set out in the Mental Health (Wales) Measure 2010. The 8 areas for inclusion in the Care and Treatment Plan (CTP) should be set out in full in the revised Code. The Code should make clear that it is essential that CTPs for people detained under the MHA are as detailed and comprehensive as possible as patients are likely to have highly complex needs and very high requirements. The Code should also be clear that it is very likely that outcomes relating to all 8 areas will need to be included in the CTP
- The existing Code points out the need to plan 'after-care' when the patient is first admitted to hospital. The revised Code needs to place a much higher emphasis on integrated services and provide clearer guidance on integrated working. In particular the revised Code should highlight the need for Local Authorities and the Third Sector to be fully involved with the patient at all stages of their care and treatment, and the need to have clear plans in place to ensure there is appropriate support available immediately the person is discharged from hospital
- In providing direction on the involvement of patients in planning, developing and delivering care and treatment appropriate to them, the revised Code should include how the provision of Direct payments can best be used in accordance with the Social Services and Well-being (Wales) Act 2014
- The revised Code should include clear, evidence based information and guidance on the use of physical intervention/restraint procedures.

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