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Submission from the Irish Association of Social Workers (IASW) special interest group of Social Workers in Child and Adolescent Mental Health Services (CAMHS), in response to the

Review of the Mental Health Act (2001) – Request for Submissions by the Department of Health and Children

Edited by:

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Introduction

Social Workers in Child and Adolescent Mental Health Services (CAMHS) form an interest group under the auspices of the Irish Association of Social Workers (IASW), the national representative organisation of the profession of social work in the Republic of Ireland. A representative committee of social workers in consultation with others have developed a response to the call from the Mental Health Unit of the Department of Health for submissions relating to a review of the Mental Health Act (2001). This committee included Roberta Mulligan Senior Social Worker Warrenstown House Dublin, Declan Coogan NUI Galway, David Hughes Principal Social Worker Brothers of Charity, Cork City and others.

This submission focuses primarily on those sections of the Mental Health Act (2001) that relate to the admission and treatment of children in approved centres.

Submission Overview:

This submission deals with a number of issues arising from the implementation and operation of the Mental Health Act 2001, concerning children and adolescents.

- I) The current application of and legal opinion about the use of Section 25 (MHA 2001) orders for involuntary admission of children in the care of the State following a court order under the Child Care Act (1991).
- (II) The lack of legislation for assisted admission procedures for children and the concerns about the use of section 25 (MHA 2001) to bridge this gap.
- (III) The use of the concepts of voluntary and involuntary admissions in child mental health.
- (IV) The Guardian ad Litem provision.
- (V) Advocacy

Submission:

(I) The first principal issue arising, pertains to the use of section 25 (MHA 2001) where it is viewed as necessary for a child in non voluntary (i.e. without parental consent) court ordered state care under the Child Care Act (1991) to receive inpatient assessment and /or treatment. It seems that different areas of the country may have received differing legal opinion. Specifically it seems that some CAMHS teams and Child Protection and Family Welfare Social Work teams may have been advised that an order under Section 25 (MHA 2001) must be sought on all children in court ordered state care under the Child Care Act (1991). Others appear to have been advised that as long as all parties agree and the child concerned is assenting then an order under Section 25 (MHA 2001) is not required as the HSE can give consent in loco parentis where a child is in court ordered care under the Child Care Act (1991).

If it is required that children in court ordered care under the Child Care Act (1991) cannot be admitted to an approved child mental health in-patient facility without recourse to a section 25 order under the Mental Health Act (2001), then children in care will be unjustly subject to an involuntary admission when a voluntary one would suffice and as such are being discriminated against.

It can also be argued that the current practices requiring a court order for admission to an approved in-patient centre for all children in care under a court order subsequent to the Child Care Act (1991) incurs significant and unnecessary time delays and financial costs to the state.

Recommendations:

- Children subject to care orders should be treated in the same way as children living with their parents. An alternative mechanism must afford the ability to admit a child in state care to an approved mental health inpatient centre on a voluntary basis, without recourse to admission under section 25 (MHA 2001). This will require an amendment to legislation.
- It should also be noted that as currently framed, legislation relating to children and mental health are spread throughout the Mental Health Act (2001). We suggest that a separate section in the Act would be more user friendly and would create a space within the legislation for a specific set of principles relating to children.

This following section relates primarily to the use of section 25 in relation to children/young people who are in the care of their parents/guardians at the time of admission.

(II) In some areas of the country a Mental Health Act (2001) section 25 involuntary admission is utilised to facilitate the admission of a child where the parent is consenting. This has arisen in an effort to support the parents in admitting their child.

This would seem to be a very blunt legislative instrument to use to respond to a situation where parents are unable to admit a child to an in-patient centre due to the child's high level of resistance or aggression. The Mental Health Act (2001) should be amended to incorporate a broader understanding of the issue of consent, as detailed later in this submission.

Recommendation:

A mechanism of assisted admission for children that is appropriate to a situation where parents are consenting to the admission, but the child is not, is needed. The Mental Health Act should be amended accordingly. Provision should also be made for the development of a service for assisted admission for children.

(111) The third issue in this submission relates to the use of the concepts of “voluntary” and “involuntary” admissions in child mental health. To use these concepts implies that the children and adolescents concerned are in a position to volunteer to be admitted (i.e. consent) when the legislation is very clear that even those over the age of 16 and under 18 are not of legal age to give their consent. This practice was criticised in 2008 by the Law Society of Ireland’s Law Reform Committee who stated that as a young person/child cannot consent to admission, then a child admitted by parental consent should not be called a voluntary admission. All admissions hinge on the consent (or not) of the adults, not the children.

The concept of voluntary and involuntary admissions belongs to adult mental health and do not migrate well to child mental health in the context of legislative provision or social policy. The result of the use of these concepts in child and adolescent mental health has been that where *adults* do not consent the *child* becomes subject to an ‘involuntary order’. The Irish Human Rights Commission (5/2/2010) recommended that the definition of a voluntary patient be amended to include only those who have the capacity to make such a decision. Whilst this in essence highlights the same issue we are raising (that we should not behave as though a capacity exists where it legally cannot) we have reservations about the IHRC suggestion that all persons who have been declared to lack legal capacity (i.e. all children/adolescents) should be admitted as involuntary patient to provide sufficient safeguards. However we do support that calls for change in legal categories indicated by the IHRC and by Amnesty International Ireland in their Mental Health Act Review Report (October 2011). One response is the identification of three categories of patient in mental health legislation,

- A) Voluntary
- B) Involuntary
- C) Minor

This could create a separation of all minors under the age of 18 from the adult mental health concepts of voluntary and involuntary patients. We also endorse the recommendation by Amnesty International Ireland in their Mental Health Act Review Report that the Act should require that the admission of children to in-patient units should be subject to a regular review process, whether the admission is a voluntary or involuntary status.

Recommendations

That a third legal category of “minor” be created to reflect the legal status of the admission of a minor who, legally, cannot give consent.
This submission proposes the framework outlined below for admission of children:

a) **Admission with parental consent (with or without assisted admission)**

b) **Admission without parental consent.**

And

c) **Admission of children in court ordered state care by consent of those acting in loco parentis.**

(IV) Guardian ad Litem

Consideration should be given to establish mechanisms to ensure the views of the child are known and represented. This would be in keeping with the principle enshrined in the Child Care Act (1991) and in other legislation relating to children that the best interests of the child are the paramount concern and that the child should be consulted in relation to any matter relating to them, insofar as is appropriate in relation to their age and abilities.

Recommendations

We recommend including the facility in the Mental Health Act 2001 to appoint a Guardian ad Litem for children subject to section 25 orders to represent the child’s views and rights in hearings relating to them.

(V) Advocacy

Amnesty International Ireland in the Mental Health Act (2001) Review Report, called for the establishment of an advocacy service for all children and young people in inpatient mental health facilities. Social workers on community and inpatient teams are well placed to advocate on behalf of children requiring mental health inpatient admission. However consideration could be given to the development of an advocacy service for children.

Conclusion

We welcome the review of the operation of the Mental Health Act (2001) and the openness to meaningful consultation that this process signifies. This submission represents the highlighting of shortfalls of the Mental Health Act (2001) in relation to the rights of children adolescents and their families. The submission also proposes some means by way of rectifying these limitations. Our hope is that children and families can benefit from the most effective and efficient service from CAMHS teams and other agencies within the context of a balanced and facilitative legal framework.

The authors of this paper and representatives from the Irish Association of Social Workers (IASW) special interest group of social workers in Child and Adolescent Mental Health Services (CAMHS) are willing to meet with the members of the review group in the Mental Health Unit to assist in addressing the concerns detailed in this submission. Contact can be made through Sheila McKenna, chairperson of this group through the IASW offices.

Sheila McKenna
Chair IASW Special Interest Group CAMHS

Dated: 4th October 2011.