Irish Institute of Mental Health Nursing

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SUBMISSION TO THE DEPARTMENT OF HEALTH AND CHILDREN ON THE NEED FOR A SUBSTANTIVE REVIEW OF THE MENTAL HEALTH ACT 2001

Please find below the submission of the Irish Institute of Mental Health Nursing (IIMHN). The IIMHN welcomes the Government's commitment to conduct a comprehensive review of the Act.

Although the IIMHN acknowledge that people in distress require safe places, current practices of detention and forced treatment only adds to people's distress. There surely are more humane ways in supporting people in their distress than approved centres and the current systems in place in supporting people requiring support and safety.

The comments and recommendations in this submission are structured along Parts 1, 2, 3 and 4 of the current Act**.**

Part 1 Preliminary and General

- Give serious consideration to the need for a Mental Health Act, given the ongoing questions and concerns about the nature of mental distress, with the 'illness' explanation increasingly being seen as seriously flawed, and contemporary human rights legislation and conventions, with mental health acts now in contravention of Article 14 of the United Nations Convention on the Rights of People with Disabilities (see http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1928600). The UN Convention on the Rights of People with Disabilities recognizes that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person. It is now time for Ireland to ratify the Convention, thereby ensuring for example:
    - Article 12 UNCRPD – Equal recognition before the law
    - Article 14 UNCRPD – Liberty and security of the person
    - Article 15 UNCRPD – Freedom from torture or cruel, degrading punishment
    - Article 17 UNCRPD – Protecting the integrity of the person

- The Mental Health Act gives too much power to one section of society over another, as recently highlighted in the RTE documentaries 'Behind the Walls' (Sept 2011).
- If there has to be Act, then apply principles of UN Convention on the Rights of People with Disabilities as a basis for the Act, and the European Court of Human Rights. There is now an urgency to move away from a medical to a social disability model, and apply key principles and values as espoused in Vision for Change.
- Applying the above legislation and conventions will then necessitate a complete rethink how terms such as 'mental disorder', 'mental health services', 'patient', 'treatment', 'voluntary patient', and 'best interests of the person' as set out in s.4 of the Act should be defined.
- Broaden decision making procedures rather than investing all decision making powers with psychiatrists in all aspects of the Act
- Implement advance directives in mental health care as a matter of urgency.

Part 2 Involuntary Admission of Persons to Approved Centres

- Make access to legal representation explicit in the act stating that a person will have access to a legal representation from the outset and not at a distant removed from the admission date usually on the morning of a tribunal.
- The appointment of a legal representation should happen in a specified time and not on the basis of 'as soon as possible' as it is currently in the act.
- Improve information giving procedures particularly in the early days of the admission process namely between initial contact and admission to the approved centre.
- Address the choice of treatment and the need for more information and representation, with particular reference to medication, seclusion, tribunals and relationships with staff.
- On receipt of the faxed admission forms, the commission could screen these for any errors and notify the approved centre as soon as possible, rather than wait for the sitting of the tribunal where the care needs of the patient may take second place to the legal technicality of the forms.
- The focus relating to involuntary admission should be on 'assessment', and not detention.
- The service of the Authorised Officer (AO) is at best a very patchy service and the HSE and staff representatives are still at variance with each other in negotiations regarding same. The range of duties and responsibilities expected of an Authorised

Officer as set out in the policy is onerous, to say the least. The Mental Health Commission had an expectation that 75% of all involuntary admissions would be by an AO but there has been very little improvement since the new Act came into being. There is often too much of a connection between the AO and the Approved Centre and that the appointed AO is not independent enough of mental health services. Conversely the AO should have a very solid grounding in mental health assessment and it is expected of them by the MHC that they are trained to a certain competence in the process.

- Improve information for family members about role and responsibility of Authorised Officers.
- There is a need for more dialogue between gardai and patients/clients to improve admission procedures, especially in light of the increase in number of applications to the garda from 16% to 23% between 2007 and 2010 (Mental Health Commission, 2010).
- Voluntary patients have reported that they have, by virtue of refusing treatment, been 'menaced' by the possibility of being the subject of an involuntary admission application. The Act makes no reference at all to voluntary patients and their rights. It would be helpful if specific mention was made in the act of the rights of voluntary patients apart from allowing common law, UN and EU principles to vindicate these rights. Voluntary patients often feel as vulnerable as involuntary patients in a system where they feel they have very little control of issues that affect them.
- Approved centres should inform the MHC every time a voluntary patient is prevented from leaving a centre under Section 23.
- Approved centres should inform the MHC every time a person arrives at an approved centre under the Act but is subsequently not detained or admitted as a voluntary patient.
- Put formal structures in place to support people who have been detained to assist them in dealing with the trauma and subsequent fear of having experienced an involuntary admission.

Part 3 Independent Review of Detention

- Put a mechanism in place for tribunals to be held at a service user's or an advocate's request, or if the commission have concerns about detention on foot of receipt of admission forms

- Examine the composition of the tribunal. The Act intended that a lay person should be exactly that, however the so called 'lay' person is very often a health care professional.
- There does not appear to be a good rationale for nurses being excluded as members of the tribunal team.
- Consider ways of making tribunals more sensitive to the needs of service users, as tribunals can be intimidating places.
- Consider advocacy representation to accompany patients to tribunal hearings
- Make work of tribunals more transparent and accountable.

Part 4 Consent to Treatment

- Consider the use of all forced treatments/interventions, especially in light of the Convention on the Rights of People with Disabilities and the cogent arguments provided by Tina Minkowitz, American Human Rights lawyer (see http://www.youtube.com/watch?v=0w89Rh9pCIk).

On behalf of the Board of the Irish Institute of Mental Health Nursing

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