CONSULTATION QUESTIONS

CONSULTATION QUESTIONS

1. Proposals for regulations

Our first proposal for legislative change is that we bring forward regulations in the following terms:

Section 268 of the 2003 Act gives a right of appeal against levels of excessive security for qualifying patients in qualifying hospitals. We propose that a qualifying patient would be -

- an individual who is subject to an order requiring them to be detained in a hospital which operates a medium level of security; and

- who has a report from an approved medical practitioner (as defined by section 22 of the 2003 Act, who is not the patient's current RMO,)which supports the view that detention of the patient in the qualifying hospital involves the patient being subject to a level of security which is excessive in the patient's case.

A qualifying hospital would be one of the following-

- the Orchard Clinic in Edinburgh, and the regional medium secure component of Rohallion in Tayside and Rowanbank in Glasgow

Please tell us about any potential impacts, either positive or negative you feel these proposals for regulations may have.

Comments

We believe that there should be regulations to allow the right of appeal for those in medium secure units as this would allow:

- Reassurance that individuals can challenge decisions that impact on them and their families and that reduces fear and stress
- Greater likelihood that the impact of detention on individuals relating to their own circumstances would be taken into consideration when considering reviews and when making decisions as this right would be part of the consideration
- Opportunities to gather evidence of entrapment in medium secure units and how well the flow of patients through forensic health services is working. This will inform whether or not further legislation is required.

The negative implications are that this applies to only a narrow group of patients and this may create additional expectations for others outwith this narrowly defined group. Having the right to appeal in this narrow set of circumstances will help to build an evidence base of need, but creates a further inequity in the system that may then need to be addressed – unless

the evidence shows that a repeal of the legislation is in fact the preferred outcome.

2 .Our second proposal is that we do not bring forward regulations but instead repeal section 268 at the earliest opportunity. At the same time we will consider the review undertaken by the National Forensic Network of patients detained in the high, medium and low secure estates, which we hope will clarify whether there is an issue with entrapped patients held in these settings. The outcome of this could result in changes to primary legislation in early course. To take that proposal forward we seek views on the following:

- The current appeal provision in section 268 is restrictive and in particular does not allow for a change in security levels within the same hospital setting. Is there a need for a wider provision for an appeal against excessive levels of security?

Comments

- If an additional appeal provision is created, do we need to provide for a preliminary review to consider the merits of the appeal before proceeding to a full hearing?

Comments Creating a process that allowed for a review prior to a full hearing would be beneficial as this would better incorporate considerations of the impact of excessive security on individuals and allow for detailed consideration of the ways in which the situation disadvantaged or impacted on individuals. Proceeding to a full hearing without a review could cause unnecessary distress, particularly if the appeal were then unsuccessful. A review would give an opportunity for the individual and the RMO to consider the impact of both the level of security and the process itself.

- Compulsory Treatment orders, compulsion and restriction orders and transfer treatment directives are currently reviewed by the Mental Health Tribunal at least once every two years. Levels of security are not necessarily discussed at these reviews. Should there be a requirement for the Tribunal to consider levels of security as a matter of course, with an accompanying right of appeal if the question of level of security has not been considered?

Comments Yes. This would build the right into the process and remove much of the doubt and distress.

- Can more effective use be made of recorded matters by the Tribunal with regard to levels of security in Compulsory Treatment Order cases ?

Comments

• Are there other changes to the review system that you consider may help to support and develop further the effective movement of patients through the secure system?

A review also highlights the lack of facilities for people in the community and this may be one of the factors that inhibits someone's ability to move from the current level of security. Different parts of the country face different challenges and depending on where the person may be located on being moved, there will be fewer or less appropriate facilities for them that will still meet their needs, than they can have in hospital.

Although this will drive service development and change, particularly if a review of security becomes part of the routine review process, it may create problems in the short to medium term if the number of appeals (or possible appeals highlighted at a review stage) increases.

A consideration of the impact on providers as a result of extending this right to a review/appeal should take place as part of changing this system.

Any further comments

In summary, we agree that the regulations should be introduced for the narrow group of patients as described, but that thought should be given to how we:

- Extend that right to others should a complete repeal of the legislation not go ahead
- Ensure that a development/identification of appropriate community resources is part of the review process