Patient Safety First
Working together for quality services

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MHC
Coimisiún Meabhair-Shláinte | Mental Health Commission

Mental Health Act 2001 - 10 years from 1 Nov 2006

27 June 2017
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Head of Legal Services Mental Health Commission

Mental Health Act 2001

Section 33

"The principal functions of the Commission shall be to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres under the Act."

Relevant Legislation

- Mental Health Act 2001 (+ associated Statutory Instruments & Regulations)
- Mental Health Act 2008 – Sections 15(2)&(3)
- Health (Miscellaneous Provisions) Act 2009 – Sections 13(2)&(3)
- Mental Health (Amendment) Act 2015 – Sections 59&60
- Assisted Decision Making Capacity Act 2015 – Section 144 (amends Sections 17 and 33 of the 2001 Act) (plus other sections referring to the 2001 Act)

Main Functions of MHC under the 2001 Act

- Mental Health Tribunals
- Registration / Inspection / Enforcement of Approved Centres
- Quality and Improvement / Guidance

Mental Health Tribunals

The aim is that a person should be treated on a voluntary basis if possible but this is not always possible.

If a person has to be involuntarily detained this will be done

by way of –

- Section 14 - admission order or
- Sections 23 /24 - referred to as regrading or
- Section 15 – renewal order

Continued

Who makes the applications?

- Spouse etc – 44%
- An Garda Siochana – 25 %
- Any other person – 18 %
- Authorised Officer (AO) – 13%

In **2007**, 69% of applications were made by spouses etc. In **2016** this was 44%.

Both the MHC and the HSE would encourage applications to be made by AOs and the HSE has provided training in this regard.

Continued

Two of the keys sections of the 2001 Act that deal with Tribunals are Sections 17 and 18 –

- Tribunals must sit within 21 days of the “making” of an order
- Patient is assigned a legal rep (this is now being done within two working days in 95% of cases)
- Independent consultant psychiatrist is appointed to provide a report
- Three member panel appointed – legal person (chair), consultant psychiatrist and lay member - to review mental disorder and documentation

Continued

2016 Data

Total Cases	3703
Involuntary Admission	1808
Re-grade Admission	606
Renewals	1289
Proposals to Transfer	2
Orders revoked before MHT	1648
Total Hearings	2079

Continued

Involuntary Admissions for the Ten Years 2006 – 2016

2006 - 207(S14) and 105 (S23/24)
2007 - 1503 (S14) and 623 (S23/24) - Total = 2126
2008 - 1420 (S14) and 584 (S23/24)
2009 - 1434 (S14) and 590 (S23/24)
2010 - 1406 (S14) and 546 (S23/24)
2011 - 1471 (S14) and 586(S23/24)
2012 - 1574 (S14) and 567(S23/24)
2013 - 1591 (S14) and 541(S23/24)
2014 - 1655 (S14) and 507(S23/24)
2015 - 1755 (S14) and 608(S23/24)
2016 - 1808 (S14) and 606(S23/24) - Total = 2414

Continued

Section 28 provides that the RCP must revoke the order if the patient is no longer suffering from a mental disorder.

While the RCP might revoke they may not discharge the patient –discharge must be appropriate.

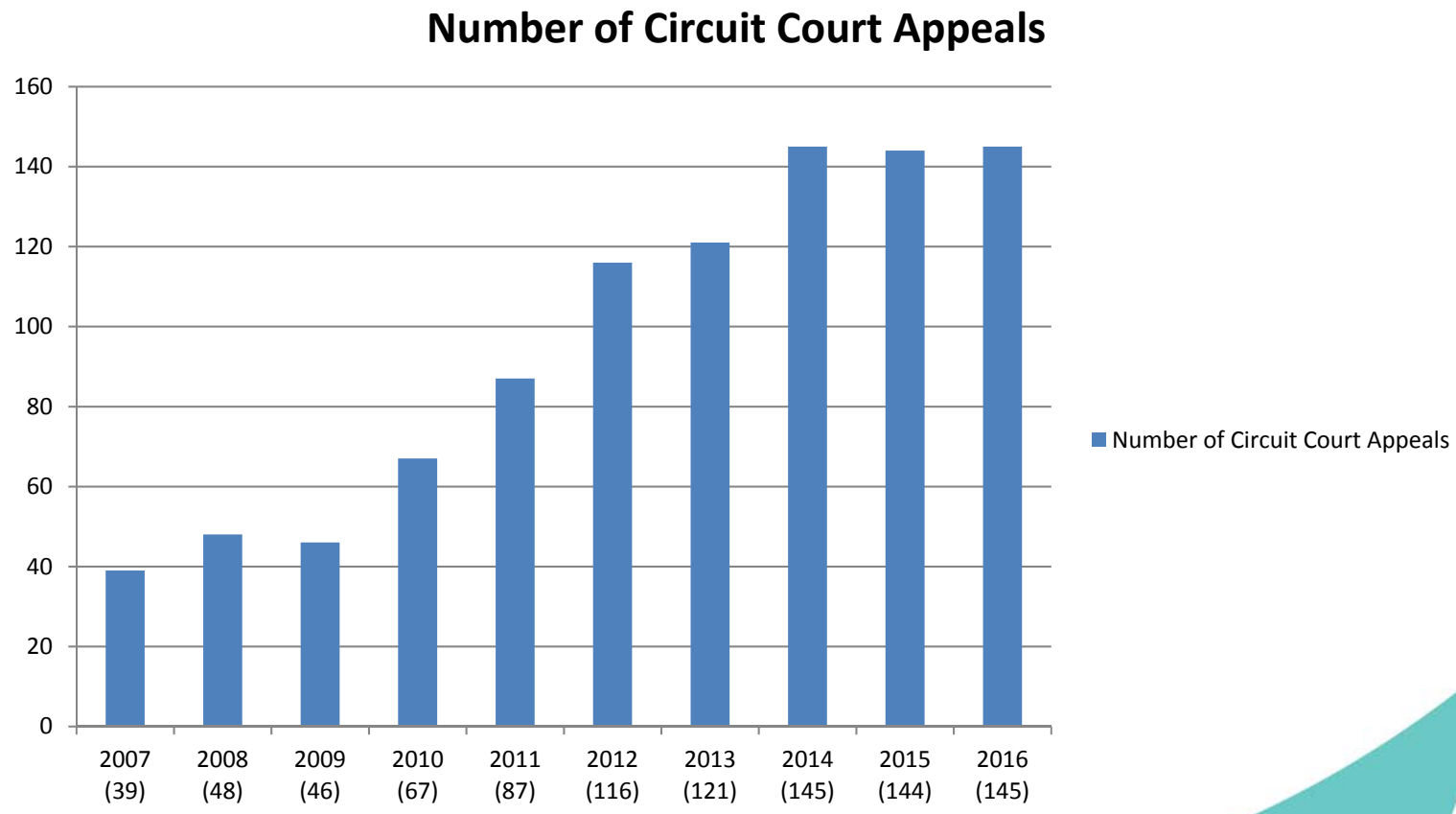
Section 28 also provides that if an order is revoked before a Tribunal the patient is still entitled to have the Tribunal.

In **2016**, 1648 (44.5%) of orders were revoked before the Tribunal but only a limited number of those cases went on to have a section 28 Tribunal.

In **2017**, the requests for Section 28 Tribunals has risen.

Circuit Court Appeals

Section 19 - Appeal of the Decision of the Tribunal *but in fact* Appeal relates to mental disorder as of the date of the appeal



Children

Children can be involuntarily detained –

1. If not already in an approved centre directly under Section 25 or
2. If already in an approved centre they can be regraded under Section 23 and detained under Section 25

Some Stats on Vol and Involuntary patients

2012 – 436 of which 107 to AU (Adult Unit)

2013 – 415 of which 98 to AU

2014 – 434 of which 92 to AU

2015 – 502 of which 96 to AU

2016 – 509 of which 68 to AU

Issues

There is a lack of visibility surrounding Section 25 applications / Improved services are required for children / The legislation needs to be urgently updated.

Registration and Enforcement

Principles of Responsive Regulation

- Proportionality
- Accountability
- Consistency
- Transparency
- Targeting

Continued

Key statutory provisions:

Part 5 of the MHA 2001 relates to approved centres.

Section 62: "centre" means a hospital or other in-patient facility for the care and treatment of persons suffering from mental illness or mental disorder.

Section 63: cannot "…carry on a centre unless the centre is registered…" (offence)

Section 64:

- MHC establishes a register of approved centres.
- Registration is for a three year period.
- Conditions may be attached to an approved centre's registration: e.g. maximum number of residents; essential maintenance; reporting requirements.
- MHC can refuse registration, or remove an approved centre from the register:
  - When the premises do not comply with the Regulations
  - When the carrying on of the centre does not (or will not) comply with the Regulations.

Inspections

Sections 51 and 52 sets out functions and duties of the Inspector of Mental Health Services to include –

- Visit and inspect every approved centre each year and furnish a report in writing in relation to compliance with
  - the 2001 Act
  - the Codes of Practice
  - the Regulations under Section 66
  - the Rules under Sections 59 and 69
  - Consent to Treatment under Sections 60 and 61
- Review all other mental health services and furnish a report in writing to address (not done in 2016 due to lack of resources)
  - the care and treatment provided
  - information obtained by the Inspector
  - compliance with Codes of Practice

Continued

Judgement Support Framework –

- provides guidance on how to comply with legislation and all ancillary / related requirements
- promotes continuous improvement of the quality of services
- provides clarity and transparency in relation to inspections

All AC inspections unannounced

Continued

Main areas of non compliance in 2016 were

- **Individual Care Plans / Therapeutic Services and Programmes** – Regulations 15 /16
- **Privacy and Dignity** – Regulation 21
- **Premises** – Regulation 22
- **Staffing** – Regulation 26

Continued

- **Seclusion** – Rules

- **Consent / Administration of treatment** – Sections 59 /60/ 61

In July 2016 the MHC issued guidance on this issue to ACs

- **Physical Restraint** – Code of Practice

- **Absence with leave** – Section 26

Leave is very important as part of phased plan for discharge or otherwise

Continued

The Standards and Quality Assurance Division (S&QA) monitor findings made by the Inspector to identify areas of good practice / agree plans to address non-compliances.

When the Inspector issues a draft inspection report, SQ&A also write asking for a 'Corrective and Preventative Action (CAPA) Plan' to address each individual finding of non-compliance.

Corrective Actions (CAs) – Address the actual non-compliance (i.e. putting up curtains around beds)

Preventative Actions (PAs) – Prevent the non-compliance from recurring (i.e. staff training)

CAPA plans must be S.M.A.R.T. = Smart, Measurable, Achievable, Realistic & Time-bound.

Continued

S&QA monitor the CAPAs. This process of ongoing monitoring allows the MHC to monitor approved centres throughout the year, not just following an inspection.

S&QA seek an update on the implementation of all CAPA plans after 3 months and seek further updates as necessary.

S&QA monitor trends in non-compliance, to identify areas of concern where guidance might be needed, or where enforcement action is necessary.

They also monitor ‘Other Mental Health Services’ e.g. community residences, through Quality Improvement Plans (reactive), or Quality Initiative Plans (proactive).

Continued

Enforcement action is taken where the MHC is concerned that an element of care and treatment provided in an approved centre, may be a risk to the safety, health and wellbeing of residents, or where there has been a failure to address an ongoing area of non-compliance.

Key statutory provisions:

- Request for any information necessary under Part 5 (s64(8))
- Attach conditions (s64(6))
- Propose to remove from register (s64(5))
- Prosecute (12 offences)

Quality and Improvement

Service User information Booklets – 14 to date

Rules: Required by Sections 59 and 69

- Seclusion (2009, 2011 addendum)
- Mechanical restraint (2009)
- ECT for involuntary patients (2016)

Codes of Practice: Section 33

- Physical restraint (2009)
- Intellectual disability (2009)
- Notifications (2008, 2014 addendum)
- Admission of children to adult units (2006, 2009 addendum)
- Admission, transfer & discharge (2009)
- ECT for voluntary patients (2016)

Continued

Quality Framework for Mental Health Services in Ireland (2007)

- Applies to all mental health services (not just approved centres)
- Eight themes centre around the service-user

Judgement Support Framework (v4 2017)

- Applies to approved centres
- Guidance to achieving compliance with Regulations
- Quality assessment around four pillars:
    - *Processes*
    - *Training & Education*
    - *Monitoring*
    - *Evidence of Implementation*

Continued

Communications
- Guidance on mandatory training
- Guidance on consent and capacity assessments
- Audit templates

Consultations submissions
- Quality and Qualifications Ireland
- Pharmaceutical Society of Ireland
- Health information standards

Collaborations
- National Standards on the Conduct of Review of Patient Safety Incidents

Committees
- National Clinical Effectiveness Committee
- National Healthcare Quality Reporting Committee
- Health complaints
- Technical Group of Experts on drafting the Codes under the ADM (Capacity) Act 2015

ADMC Act 2015 / DSS

Relevant Legislation

- Assisted Decisions Making Capacity Act 2015

- S.I. 515 and S.I. 517 of 2016

- Various related / interconnected Acts / Regulations

The purpose of the SIs were twofold –

1. To recruit the Director so at to get the DSS operational, and
2. To commence work on the Codes

Continued

The **Directors Functions** are extensive – they include –

1. General Functions of the Director are set out in Part 9 of the Act
2. Regulatory Functions of the Director - the Director has a number of specific regulatory functions under the 2015 Act in respect of six different types of decision-making support arrangements:
    1. Decision making assistance agreements;
    2. Co-decision making agreements;
    3. Decision-making representatives;
    4. Individuals exercising enduring powers of attorney;
    5. Advanced healthcare directives;
    6. Wards of Court who are being transitioned from the Wards of Court system.
3. Maintenance and Regulation of a Register of Agreements
4. Financial and Property Management Functions
5. Codes of Practice
6. Central Authority for the purposes of the operation of the Convention on the International Protection of Adults 2000

Continued

Recruitment of Director and a Project Manager are underway

They will then prepare the **Action Plan** for getting the DSS operational

Funding will be agreed by the relevant Departments (DJE / DOH and DPER) later this year

DJE, DOH, OWC and MHC are all working together to progress matters

At the same time there are **two Groups** tasked with preparing drafts Codes – healthcare (HSE) and non-healthcare (NDA) which will be sent as drafts to the Director (who will then have to undertake a consultation process).

Thank you

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