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Welsh Government

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Implementing the Mental Health (Wales)
Measure 2010

Guidance for Local Health Boards and
Local Authorities on the Establishment of
Joint Schemes for the Delivery of Local
Primary Mental Health Support Services

February 2012

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1. Introduction

About this Guidance

This document has been developed by the Welsh Government and is intended to provide guidance to Local Health Boards and local authorities in Wales to support the implementation of Part 1 of the Mental Health (Wales) Measure 2010 (“the Measure”).

This document provides:

- an overview of the Measure, and the draft subordinate legislation and extant guidance which the Welsh Government has issued in relation to Part 1;
- a suggested list of content and key points for consideration by the local mental health partners to support them in developing their schemes which are required under Part 1 of the Measure.

Who should use the Implementation Guidance?

This guidance has been developed for use by Local Health Boards and local authorities, but it may also be of assistance to third sector organisations, service users and carers and statutory sector staff to support them in understanding the nature and implications of the new legislation.

Supporting documentation

The following documents may also be helpful to organisations in preparing for implementation of the Measure:

- a) The Mental Health (Wales) Measure 2010 and accompanying Explanatory Notes¹.
- b) Explanatory Memorandum, incorporating the Regulatory Impact Assessment².
- c) National Service Model for Local Primary Mental Health Support Services³.
- d) Draft regulations on regional provision and accompanying documents⁴ and the subsequent final regulations.
- e) Draft regulations on primary care referrals and eligibility to conduct primary mental health assessments⁵ and the subsequent final regulations.
- f) Draft order amending the definition of secondary mental health services⁶ and the subsequent final Order.
- g) Implementing the Mental Health (Wales) Measure 2010: Guidance for Local Health Boards and Local Authorities December 2011⁷.

¹ Available at <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-mhs-2.htm>

² Available at <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-mhs-2.htm>

³ <http://wales.gov.uk/topics/health/publications/health/guidance/national/?lang=en>

⁴ <http://wales.gov.uk/consultations/healthsocialcare/regulations2012/?lang=en>

⁵ <http://wales.gov.uk/consultations/healthsocialcare/regulation2012/?lang=en>

⁶ <http://wales.gov.uk/consultations/healthsocialcare/order/?lang=en>

⁷ <http://wales.gov.uk/topics/health/publications/health/guidance/mental/?lang=en>

2. The Mental Health (Wales) Measure 2010

Background

A Measure – such as the Mental Health (Wales) Measure 2010 – is a piece of law made by the National Assembly for Wales. It has similar legal status to an Act of Parliament. The Measure introduces a number of important changes relating to the assessment and treatment of people with mental health problems in Wales.

The Measure is divided into six Parts and two Schedules:

- Part 1 – Local Primary Mental Health Support Services;
- Part 2 – Coordination of and Care and Treatment Planning for Secondary Mental Health Users;
- Part 3 – Assessments of Former Users of Secondary Mental Health Services;
- Part 4 – Mental Health Advocacy;
- Part 5 – General;
- Part 6 – Miscellaneous and supplemental;
- Schedule 1 – Consequential amendments to the Mental Health Act 1983;
- Schedule 2 – Repeals.

Part 1 – Local Primary Mental Health Support Services

The Welsh Government recognises the crucial role that primary care plays in delivering effective mental health care and treatment. The aim of Part 1 of the Measure is to strengthen that role by ensuring that throughout Wales there will be local primary care mental health support services. These will be delivered by Local Health Boards and local authorities in partnership, and it is expected that these services will operate either within, or alongside, existing GP practices.

Part 1 of the Measure requires that the following elements be delivered as part of local primary mental health support services:

- a) comprehensive mental health assessments for individuals who have first been seen by their GP, but for whom the GP considers a more detailed assessment is required (in some cases, individuals may be referred into the primary care service by secondary mental health services);
- b) treatment, by way of short-term interventions, either individually or through group work, if this has been identified as appropriate following assessment. Such treatment may include counselling, a range of psychological interventions including cognitive behavioural therapy, solution-focussed therapy, stress management, anger management and education;
- c) provision of information and advice to individuals and their carers about treatment and care, including the options available to them, as well as 'signposting' them to other sources of support (such as support provided by third sector organisations);

- d) provision of support and advice to GPs and other primary care workers (such as practice nurses) to enable them to safely manage and care for people with mental health problems, and improve the mental health services they provide or arrange;
- e) supporting the onward referral and co-ordination of next steps with secondary mental health services, where this is felt to be appropriate for an individual.

These services are aimed at individuals of all ages who are experiencing mild to moderate, or stable severe and enduring mental health problems.

Joint schemes for the provision of local primary mental health support services

Section 2 of the Measure sets out the requirement that the local mental health partners for a local authority area must take all reasonable steps to agree a scheme:

- a) which identifies the treatment which is to be made available for the area (local primary mental health treatment); and
- b) for securing the provision for that area of the local primary mental health support services (described in section 5 of the Measure).

Duty to provide local primary mental health support services

Section 3 of the Measure sets out the requirement that (unless a scheme cannot be agreed between the partners and a scheme has not been determined by the Welsh Ministers) the local mental health partners must provide local primary mental health support services in accordance with either a scheme for their area agreed under section 2, or a scheme for their area determined by the Welsh Ministers under section 4.

Failure to agree schemes

Section 4 of the Measure sets out the arrangements which will apply if the local mental health partners are unable to agree a scheme for their area:

- a) For so long as there is no agreement the Local Health Board must decide what local primary mental health treatment is to be made available in the local authority area and will be responsible for providing local primary mental health support services for that area.
- b) The Local Health Board must inform the Welsh Ministers that agreement cannot be reached.
- c) The Welsh Ministers may determine a scheme and, if they do so, must record it in writing.

Section 4 also states that if one partner wishes to alter a scheme, but the other does not, either partner may request intervention by the Welsh Ministers; the Welsh Ministers may alter the scheme to the extent that they think fit, and if they do so, the alterations must be recorded in writing.

Part 5 – General

Cooperative and joint working between Local Health Boards and local authorities

Section 41 of the Measure provides that the local mental health partners may, for the purposes of their functions under Part 1, provide staff, goods, services, accommodation or other resources to each other and may establish a pooled fund. A pooled fund is defined as a fund which is made up of contributions by the local mental health partners and out of which payments may be made towards expenditure incurred in the discharge of functions under Part 1.

Section 41 also states that the local mental health partners may, if they think fit, exercise any of their functions under Part 1 jointly.

(Whilst joint working under this section also applies to Parts 2 and 3 of the Measure, for the purposes of this guidance only joint working under Part 1 is addressed.)

Information sharing

Section 42 of the Measure provides that a local mental health partner may supply another partner with information which the first partner has obtained in the discharge of its functions under Part 1 of the Measure and which relates to an individual for whom the local primary mental health support services are being, or might be, provided by the other partner, where this information is not prevented from being disclosed by any other Measure, Act of Parliament or Act of the National Assembly for Wales.

(Whilst information sharing under this section also applies to Parts 2 and 3 of the Measure, for the purposes of this guidance, only information sharing under Part 1 is addressed.)

Duty to Review

Section 48 of the Measure sets out the requirement for the Welsh Ministers to review the operation of the Measure, and that a report on the review of the operation of Part 1 must be published within four years of the commencement of all the duties contained in specified sections.

The Welsh Government will in due course determine the information required from LHBs and local authorities to support this review.

3. Related Subordinate Legislation and Guidance

National Service Model

The Welsh Government has published a National Service Model to support LHBs and local authorities in developing and delivering their local primary mental health support services⁸. The National Service Model sets out the legislative requirements of Part 1 of the Measure and provides strategic and operational guidance for service planners and providers.

National Mapping Report

In addition, a National Mapping Report of the local mental health services identified during a Welsh Government review, undertaken during 2011, will be issued to provide baseline information and to help identify the changes to existing services or systems which may be required to meet the requirements of Part 1 of the Measure.

Regulations on regional provision

The Welsh Government has introduced draft Regulations on regional provision, under the Measure, for consultation. If approved, these regulations would facilitate named Local Health Boards and local authorities to enter into partnerships and to agree schemes which relate to an area which is wider than a single local authority area. Following formal consultation the final version of these Regulations is expected to be laid before the National Assembly for approval in April 2012.

Regulations on primary care referrals and eligibility to conduct primary mental health assessments

The Welsh Government has also introduced further draft Regulations, under Part 1 of the Measure, for consultation. These set out proposals regarding the range of practitioners who may undertake local primary mental health assessments. They also set out proposals regarding access to local primary mental health support services for individuals who are not registered with a GP and/or do not have a permanent address in the local authority area. Following formal consultation the final version of these Regulations is expected to be laid before the National Assembly for approval in May 2012.

⁸ <http://wales.gov.uk/topics/health/publications/health/guidance/national/?lang=en>

4. Timescale for Implementation

It is expected that the provisions in all parts of the Measure will be brought into force during 2012 and the statutory duties around Part 1 of the Measure will commence on 1 October 2012. This timescale, which was agreed by the Minister for Health and Social Services in July 2011, is not negotiable.

5. Guidance on the Development of Joint Local Health Board and Local Authority Schemes

As stated in section 2 above, Section 2 of the Mental Health (Wales) Measure sets out the requirement that the local mental health partners for a local authority area must take all reasonable steps to agree a scheme:

- a) which identifies the treatment which is to be made available for the area (local primary mental health treatment); and
- b) for securing the provision for that area of the local primary mental health support services (described in section 5).

Also, as indicated above, secondary legislation, which is expected to be finalised in April 2012, is likely to provide for schemes to cover more than one local authority area.

It is expected that LHB and local authority partners will agree and have their schemes in place by May 2012.

The following section provides guidance for LHBs and local authorities in developing joint schemes for the delivery of local primary mental health support services in their area, whether on a local or regional basis. It provides a suggested list of content and key points for consideration by the local mental health partners to support them in developing their schemes.

1. Introduction

It is suggested that the introduction to the Scheme may:

- set out the legal requirement for the scheme – this could be done by referring to the requirements of section 2 of the Measure, as discussed above;
- provide an overview of what the scheme is (e.g. an enabling agreement for the partnership to meet the requirements of section 2 of the Measure), and is not (e.g. operational detail);
- provide an overview of the treatment and services which are to be provided by the Scheme in order to meet the requirements of section 2(1) of the Measure;
- define the relationship between the scheme and the National Service Model and any local/regional service models and operational policies which may be developed;
- set out the context and principles for the scheme e.g. partnership, equality, Welsh language, inclusivity;

- set out the context and principles for the delivery of the local mental health support services which it enables, e.g. partnership with primary care and the third sector, maintaining trust, good communication, person-centredness, equality, Welsh language, inclusivity, respect, empowerment, promoting resilience, integral part of the wider mental health system, operating within tiered models of care.

2. Partners

- Details of the local mental health partners, as defined under the Measure and any subsequent regulations.
- Details of others (e.g. third sector, primary care practitioners) who will be involved in the provision of services, and the capacity in which they will be involved.

3. Purpose/scope of the Scheme

- To identify the treatment and define arrangements for securing the provision of services in accordance with section 2(1) of the Measure.
- To support and secure the provision of local primary mental health support services for people of all ages.

4. Vision for the Local primary mental health Support Services

- The aspirations and objectives for the service, including those set out in the National Service Model (enhancing access to and the availability of services for individuals in primary care, flexibility and responsiveness for individuals, supporting recovery and movement through local services, fit with other tiers of the mental health system, close working with primary care practitioners), and any further local objectives. If aspirations for the service are included, the Scheme must make clear that these "aspirational" services are desired, but the provision of these services is not guaranteed, for the future.
- Statement on joint working.
- Relationship with other services, e.g. third sector, housing, education, employment.
- Relationships with primary care practitioners.

5. Responsibilities

- The extent of the responsibility(ies) of each of the local mental health partners for the provision local primary mental health support services (section 2(3) and section 2(4)(a)).
- The responsibilities of third sector partners and how these will be secured.
- The responsibilities of primary care practitioners in relation to the provision of the local primary mental health support services (services which support, not supplant the general medical services), e.g.
 - other options for GPs to consider in the management of their patients with mental health conditions,
 - clinical responsibility shared between the GP and the local primary mental health support services in respect of individuals referred by the GP.

6. Eligibility for assessment by the local primary mental health support service

- All ages.
- Clinical criteria (based on the criteria set out in paragraph 3.7 of the National Service Model).
- Cross boundary and cross GP boundary issues.

To help with the meaning of “usually resident” (e.g. in section 6(6)) of the Measure), it may be helpful to consider The Local Health Boards (Directed Functions) (Wales) Regulations 2009⁹. These regulations provide that the persons for whom a Local Health Board is responsible in any year are the persons usually resident in the area for which the LHB is established (regulation 2(2)). Regulation 2(3) provides a “test” to establish where a person is usually resident (subject to any directions which are given by the Welsh Ministers):

- a) a person is to be treated as usually resident at the address given by him or her to the person or body providing him or her with services, as being that person’s usual residence;
 - b) where a person gives no address under paragraph (a) above, he or she is to be treated as usually resident at the address which he or she gives to the person or body providing him or her with services, as being that person’s most recent address;
 - c) where a person’s usual address cannot be determined under paragraphs a or b, he or she is to be treated as usually resident in the area in which that person is present.
- Persons covered by the regulations on primary care referrals.
 - Whether the scheme will include some or all of the persons listed at s8(1), i.e.
 - individuals detained under the Mental Health Act 1983;
 - individuals subject to guardianship under the Mental Health Act 1983;
 - community patients within the meaning of 17A of the Mental Health Act 1983;
 - individuals receiving secondary mental health services.
 - If primary mental health assessments are to be made available to some or all of the persons listed at s8(1) of the Measure, the scheme should define the staff working in secondary mental health services who are able to refer such individuals to the local primary mental health support service for assessment.
 - Referral process and documentation.
 - Arrangements for review of referral protocols.

⁹ S.I. 2009/1511 (W. 147)

7. Equality

- The mental health partners will need to ensure that an Equality Impact Assessment of the scheme is undertaken and this will need to be referenced in the scheme.
- Measures that the mental health partners will take to address misconceptions and discriminatory attitudes towards people with mental health conditions in the area(s) covered by the scheme.
- Commitment of the mental health partners to meet the provisions of the Public Sector Equality Duties¹⁰ to deliver services which genuinely meet the needs of the people they serve.

8. Provision of services in English and Welsh

The Welsh Government is positive about the Welsh language and the benefits of bilingualism. Mental health services in Wales must be underpinned by the principle that the Welsh and English languages be treated on an equitable basis.

Local Health Boards and local authorities should therefore ensure that their schemes reflect this commitment.

9. Where services are to be provided

- Philosophy – operate within or alongside existing GP practices.
- Focus of delivery: individual GP practices or groups of practices, community networks.
- Static: peripatetic.
- GP practice: other.
- Arrangements for the provision of services to special groups (e.g. homeless, prisoners).
- Arrangements for the provision of services individuals referred from secondary care.

10. Local primary mental health support services

- Planned scheduled services that sit within primary care.
- Provide specialist mental health expertise in primary care.
- Links with other parts of mental health and social care system, pathways of care, fluidity.
- Capacity.
- The services to be included in the local primary mental health support services to which the scheme relates. This will be key, should the provisions of the Order amending the definition of secondary mental health services for certain purposes be approved. This Order proposes (amongst other matters) that those services and treatment identified within joint schemes as being part of the local primary mental health support services within the local authority area(s) covered by the scheme will not be recognised as secondary care services for the purposes of

¹⁰ www.equalityhumanrights.com/wales/publications/guidance-on-the-equality-duty-for-the-welsh-public-sector/

Parts 2 and 3 of the Measure in that/those area(s), despite falling under the definition of “secondary mental health services” provided in section 49 of the Measure. Hence the care and treatment of individuals who only access services which are included in the joint scheme for local primary mental health support services will not be subject to care and treatment planning, and these individuals will not be eligible for assessment under Part 3 of the Measure. It is not expected that services and treatments will be identified in Part 1 schemes simply to avoid the requirement for care and treatment planning.

Please note that a scheme may identify “aspirational” services provided that the scheme makes clear that these services are desired, but their provision is not guaranteed, for the future. However, as detailed on page 5, in order to fulfil its statutory requirement, a scheme must identify the treatment which is to be made available for the local authority area (local primary mental health treatment), and secure the provision for that local authority area of the local primary mental health support services (as described in section 5 of the Measure).

- Assessment – how the local mental health partners will be assured of the suitability (appropriate experience and/or skills and/or training, as proposed in the draft regulations) of individuals who are eligible to undertake primary mental health assessments.
- Arrangements for the provision of assessments through the medium of Welsh, where requested.
- The local primary mental health treatments to be provided (as required under section 2(1)(b) of the Measure).
- The likely percentage of time which the local primary mental health support service will spend in supporting primary care practitioners to develop their mental health capacity (as required under para 3.31 of the National Service Model).

11. Joint working arrangements

As explained in section 2 of this Guidance, section 41 of the Measure provides for cooperative and joint working between Local Health Boards and local authorities. It provides that the local mental health partners may, for the purposes of their functions under Part 1, provide staff, goods, services, accommodation or other resources to each other and may establish a pooled fund. Under the Measure a pooled fund is defined as a fund which is made up of contributions by the local mental health partners and out of which payments may be made towards expenditure incurred in the discharge of functions under Part 1.

Section 41 also states that the local mental health partners may, if they think fit, exercise any of their functions under Part 1 jointly.

Schemes will need to describe the arrangements which will apply between the mental health partners to ensure a cohesive service which meets the requirements of the Measure. Schemes will also need to describe the governance and financial arrangements which will support the partnership in ensuring that the legal requirements for the delivery of the local primary mental health support services are met, and may include:

a) Details of the partnership arrangements:

- the nature of the partnership;
- the objectives of the partnership;
- a statement of how the partners will 'do business together';
- the duration of the partnership;
- the roles of the key individuals/roles involved;
- How decisions will be made and varied between the partnership.

b) Management arrangements for the local primary mental health support services

- how the local primary mental health support services will be managed (Paragraph 4.8 of the National Service Model);
- the degree of integration envisaged, both initially and for the future, in relation to the management and delivery of the local primary mental health support service, e.g. integrated management and/or staff delivery roles;
- how the services of other providers, such as third sector providers, will be secured, for example through lead commissioning or integrated commissioning.

c) Funding

- the cost of the service;
- how this cost will be met between the respective parties, the resources (financial or otherwise) which each partner will contribute, and how any new monies from the Welsh Government or other sources will be managed and utilised;
- how the budget will be managed, e.g. whether there will be a pooled fund, as permitted under section 41 of the Measure, and/or whether any other mechanisms will be used, such as those of the National Health Service (Wales) Act 2006, in particular Section 33, and the National Health Service Bodies and Local Authorities Partnership Arrangements (Wales) Regulations 2000 (as amended)¹¹. It will be for the local partners to take their own legal advice on whether it is appropriate to use such mechanisms;
- what will happen in the case of over- or under-spends;
- plans for the resolution of any disputes which may arise in regard to financial matters.

¹¹ S.I. 2000/2993

d) Governance of the joint partnership arrangements

- accountability arrangements;
- relationship of the partnership arrangements to individual organisational governance frameworks;
- monitoring, evaluation and review of the partnership arrangements;
- information sharing protocol;
- local measurements being used for assessing the impact of the joint scheme annually, based on outcomes for local people (as well as any organisational imperatives);
- responsibilities for performance management of the local primary mental health support services.

12. Performance management of the local primary mental health support services

- Arrangements for the establishment of the performance measures required under the National Service Model (para 4.16):
 - number of practitioners per 20,000 population (all ages);
 - number of assessments undertaken;
 - waiting time for assessment (in calendar days) against the target of 28 calendar days;
 - waiting time for interventions, where indicated (in calendar days);
 - number of completed interventions (to include treatment, referral or information);
 - user, carer and GP satisfaction levels.
- Additional quality standards against which the local primary mental health support service will be measured in relation to the specific intentions of the Measure, and to demonstrate service user outcomes, efficiency and value for money and how these will be audited.
- Evaluation of arrangements for the provision of services.
- Audit of staffing, training and supervision in relation to need.
- Relevant requirements of local government performance improvement frameworks and NHS Wales Annual Quality Framework.

13. Governance of the local primary mental health support service

- Relationship with primary care/community networks.
- Risk management.
- Training and supervision.
- Record keeping/documentation – ownership, standards, where records are kept, information sharing between agencies/professionals, information sharing with service users.
- Confidentiality.
- Shared care protocols.

- Caseload review.
- Audit.
- Handling complaints.
- Inclusion in Children and Young People's Plans.
- Link with Health, Social Care and Wellbeing Plans.
- Requirements to support the Welsh Government's duty to review.

14. Promoting the local primary mental health support services

- How the local primary mental health support services will be publicised to communities and to staff.
- How promotion of these services will link with the emerging communications hubs under "Setting the Direction" for the provision of information and advice to primary care practitioners.
- The requirements of the Carers Measure with regard to the provision of information and advice for carers.

15. Arrangements for Review of the Scheme

- How the scheme will be reviewed.
- Frequency of review.
- Disputes resolution.
- Arrangements for altering a scheme (s2 (6) and (7)).

6. Further Information

Further information on the Mental Health (Wales) Measure 2011 is available from:

Mental Health Legislation Team

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Telephone: 029 2082 3294

Email: mentalhealthlegislation@wales.gsi.gov.uk

Further information in relation to Part 1 of the Measure can be obtained from:

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