Mental Health Bill

House of Lords, Committee of the whole House, 14, 20, 22 and 27 January 2025

NHS Providers is the membership organisation for the NHS hospital, mental health, community and ambulance services that treat patients and service users in the NHS. We help those NHS foundation trusts and trusts to deliver high-quality, patient-focused care by enabling them to learn from each other, acting as their public voice and helping shape the system in which they operate. NHS Providers has all trusts in England in voluntary membership, collectively accounting for £104bn of annual expenditure and employing 1.4 million staff.

This briefing covers amendments tabled ahead of the Committee of the whole house up to and including 9 January 2025. You can find the briefing we published ahead of the bill's second reading in the House of Lords here.

Key points

- We support proposals to amend the Mental Health Act 1983 (MHA) to maintain appropriate safeguards, while enabling greater individual rights and liberties and service users to have a more active role in their care planning with a focus on recovery.
- As part of the consideration of Bill, we would welcome clarification of a number of its implications, in particular:
    - The role of hospital managers, particularly regarding the use of discharge powers and their roles in renewal decisions. While some trust leaders support the removal of manager panels, their removal needs to happen alongside an increase in tribunal powers and providing adequate resource to tribunals so patients' rights and access to timely reviews are not affected. Trusts must be resourced to deliver changes and/or additional duties the reformed Act places on hospital managers.
    - Arrangements relating to the principle of the 28-day limit on transfers from prison or immigration removal centres to a secure hospital (clause 35), given that trust leaders have highlighted successful delivery depends on bed and transport capacity, as well as hospital location. We would welcome the government clarifying how it intends to ensure services are

able to achieve the 28-day transfer from prisons and hospitals, how services' ability will be independently assessed before the 28-day limit is commenced, and the government will monitor and report on delivery and impact.

- All changes to the Act and associated regulations and guidance that will result in increased costs to trusts and their partners must be fully and promptly funded, on a sustainable basis, to ensure that they can be appropriately taken forward. We are further concerned that some of amendments risk duplicating existing mechanisms or creating overly burdensome reporting requirements. We would welcome particular clarity from the government on how it intends to ensure trusts and their system partners can meet the new requirements on them arising from the nearest relative provisions, removing police stations and prisons as places of safety, and the introduction of risk registers and changing the detention criteria for people with a learning disability and autistic people. The proposed reforms will require additional funding and expansion of the workforce, over and above current commitments, and the sector receiving its fair share of capital funding is also crucial.
- Full funding, on a sustainable basis, of the expansion of community-based specialist mental health, learning disability and autism care capacity is required to meet the demand for services and to ensure these services meet the needs of their local populations. We know this investment is key to reducing the need to detain under the MHA and providing the most appropriate, high quality care in the least restrictive setting.
- The lack of clarity around the interface between the MHA and the Mental Capacity Act 2005 has been a broader, longstanding cause for concern for trusts. The previous government planned to assess the impact of Liberty Protection Safeguards (LPS), introduced in the Mental Capacity (Amendment) Act 2019, before introducing reforms to the MHA to ensure that any gaps can be addressed. The current government needs to provide an update on its approach given LPS have yet to be implemented. Trust leaders have stressed the importance of the codes of practice for each Act providing clear guidance and case studies, including flow charts, to assist in practitioners' decision-making regarding which legal framework would be most appropriate.
- Reform of the MHA alone will not be enough to improve how and where good quality mental health services are accessed. NHS trusts are working hard to bring about cultural change within mental health services, and sufficient ongoing funding and investment in high quality, accessible mental health services are crucial to addressing the underlying issues driving the pressures on services and compounding the rising severity and complexity of people's needs. Longstanding system and financial pressures, combined with inconsistent investment in mental health services at local levels, continue to exacerbate bed capacity pressures and increase the likelihood that a person may reach a crisis point and need to be detained under the MHA. Public health and social care also need additional support given the crucial role these services play in providing

people with the wider care and support they need and helping many avoid reaching a crisis point.

Clauses and amendments covered in this briefing

This briefing covers amendments tabled on **clauses 4, 5, 6, 20, 22, 38, 42, after 45, after 50** and **clause 53**. It also covers amendments tabled on **Schedule 3**.

Clause 4

Amendments

BARONESS TYLER OF ENFIELD

Member's explanatory statement

The amendment inserts a new subsection that extends the duty on integrated care boards to establish and maintain a register for those at risk of detention to all children and young people under the age of 18.

NHS Providers view

Trusts are keen to ensure reform of the 1983 Act considers the impact on children and young people alongside that on adults. We broadly welcome proposals that all legislative changes will be available to children and young people, and that care and treatment plans are provided to all children and young people receiving inpatient mental health care. We also welcome the introduction of a duty on integrated care boards (ICBs) to establish and maintain a register of people the ICB considers to be autistic or have a learning disability and who are at risk of detention under Part 2 of the 1983 Act. However, trusts would welcome clarity on how the government envisages local registers being resourced, supported and monitored.

LORD SCRIVEN

Member's explanatory statement

This amendment and other amendments related to this issue in Lord Scriven's name impose duties on commissioning services and local authorities regarding the care provisions for people with autism or a learning disability.

NHS Providers view

We support a focus on ensuring the right services for people with a learning disability or autistic people are commissioned, and would add the importance of improving funding mechanisms and transparency to help ensure that funding reaches frontline services for people with a learning disability and autistic people, and is invested in establishing the full range of high-quality services needed. Prioritising the NHS long term plan's ambition to give people a personal health budget where possible, with the appropriate governance and safeguards, is also important so that funding follows service users and the bespoke packages of care required can be created.

Clause 5

Amendment

LORD SCRIVEN
BARONESS HOLLINS

Member's explanatory statement

This amendment prevents patients from being detained under the Mental Capacity Act 2005 where they would not meet the criteria for detention under the Mental Health Act 1983.

NHS Providers view

We support the principle of the provisions in clause 3 that change how people with a learning disability or autistic people are treated under the MHA to make it clear individuals will not be detained unless they also have a mental illness. However, concerns have been raised by a number of trusts that an unintended consequence of the proposed changes might be these groups of individuals staying in hospital for long periods of time but held under the Mental Capacity Act, which will provide them with fewer legal safeguards. More focus and resource need to be dedicated to ensuring high-quality, resilient community-based alternatives and wider support packages are available to enable people to live independently in their local communities fundamentally.

The lack of clarity around the interface between the MHA and the Mental Capacity Act 2005 has been a broader, longstanding cause for concern for trusts. A number of trusts have previously suggested the demarcation between the two Acts should be based on the nature and purpose of the detention, so that all those being detained in hospital for assessment or treatment for a mental disorder receive MHA safeguards. One trust believed that the existing nuanced case law position would ensure more appropriate options for patients than an unsuitable, artificial simplification.

The previous government planned to assess the impact of Liberty Protection Safeguards (LPS), introduced in the Mental Capacity (Amendment) Act 2019, before introducing reforms to the MHA to ensure that any gaps can be addressed. The current government needs to provide an update on its approach given LPS have yet to be implemented. Trust leaders have stressed the importance of the codes of practice for each Act providing clear guidance and case studies, including flow charts, to assist in practitioners' decision-making regarding which legal framework would be most appropriate.

Clause 6 and Clause 22

Amendments

LORD SCRIVEN

Member's explanatory statement

This amendment ensures that community treatment orders align with the principles of therapeutic benefit outlined in the code of practice and establishes a maximum duration of 12 months. It introduces safeguards for extensions beyond 12 months, requiring consultation, review, and oversight to evaluate their necessity and effectiveness.

LORD KAMALL
EARL HOWE

Member's explanatory statement

This amendment requires the Secretary of State to initiate a review of the continued use of community treatment orders and their impacts.

NHS Providers view

We welcome the Bill's provision to revise the criteria for the use of CTOs and enhance the professional oversight required for any CTOs. Trusts have previously told us that the changes proposed should ensure a more rigorous approach to the making and extension of CTOs. Nevertheless, some trusts have also shared concerns that the additional requirements may result in the unintended consequence of a small number of individuals becoming 'revolving door' patients, or an increase in the use of section 17 leave. Some trusts have highlighted concerns that the Bill does not take up the proposal to time-limit or remove CTOs from the statute, which could have helped reduce black, Asian and minority ethnic patients being disproportionately treated via CTOs.

It will be important that the government monitors the effects of the changes, particularly the impact of increasing evidence requirements (clauses 6 and 22). Full funding, on a sustainable basis, of the expansion of community-based specialist mental health, learning disability and autism care capacity to deliver services that meet the needs of local populations is required more broadly to reduce need to detain under the MHA and provide the most appropriate, high quality care in the least restrictive setting.

Clause 20

Amendment

BARONESS TYLER OF ENFIELD
LORD SCRIVEN

Member's explanatory statement

This amendment ensures that individuals turning 18 during a care and treatment plan have their plans reviewed to maintain continuity of care while transitioning from child to adult services.

NHS Providers view

Children and young people, and their families and carers, often face challenges when they transition from children and young people's mental health services to adult mental health services. Four out of five trust leaders (80%) we surveyed in 2024 reported concerns about the gaps in service delivery between paediatric and adult services, and a recent Health Services Safety Investigations Body report also noted these challenges. In addition to any legislative changes, NHS England should undertake a full review of transitions between paediatric and adult services to understand where there are common gaps. This would build on existing national work around delivering a 0-25 service and inform the development of nationally led policy and guidance to support providers and systems to improve the experience and outcomes of children and young people as they make the transition to adult mental health services.

Clause 38 and Schedule 3

Amendments

BARONESS MURPHY

Member's explanatory statement

The amendment to Clause 38 removes informal patients from qualifying for help from Independent Mental Health Advocates. The amendments to Schedule 3 remove lines relating to informal patients and their ability to qualify for help from Independent Mental Health Advocates and the duty to give information to English qualifying informal patients.

BARONESS TYLER OF ENFIELD
LORD SCRIVEN

Member's explanatory statement

This amendment extends the provision of opt-out advocacy services in England to informal inpatients under 18.

NHS Providers view

There are several amendments related to – some in favour and others in opposition – the extension of the provision of advocacy services for informal patients in England. Trust leaders recognise the importance of culturally competent advocacy for detained patients and have stressed the importance of building on the learning from pilot schemes and having access to appropriate funding and resources in order to deliver in practice. There is a need more broadly for investment and additional training to deliver the expanded role proposed for independent mental health advocates (IMHAs) (clause 38), and address the variation in advocacy services more broadly. Drawing a clear distinction between IMHAs and the role of the legal representative has also been raised by trusts as important.

Clause 42

Amendment

EARL HOWE
LORD KAMALL

Member's explanatory statement

This amendment gives all eligible patients the statutory right to create an advance choice document if they so wish.

NHS Providers view

The Bill's introduction of duties in clause 42 on ICBs to arrange for people at risk of detention to be informed of their ability to make an advance choice document, and (if they accept) supported to make one is a welcome update, particularly in light of research showing this type of measure reduces detentions for black people, and is also most cost effective for this group compared to those of other ethnic backgrounds. However, we would welcome further clarity to understand how this would work in practice, for example, how will those at risk of detention be effectively and equitably identified. Previous questions trusts have raised regarding advance choice documents we would welcome further engagement with the government on when the code of practice is developed include, what their obligation would be to accept a patient in situations where they had not been involved in developing the advance choice document. We have also stressed previously the importance of making sure the language used in matters regarding advance decision making is consistent (e.g. with the Mental Capacity Act and National Institute for Health and Care Excellence [NICE] guidelines and quality standards) to ensure clarity for service users and clinical staff. Consistency will also provide stronger safeguards and protection from misuse: advance decision-making options are supported by quality standards for which compliance can be audited.

BARONESS BARKER

Member's explanatory statement

This amendment ensures that patients receive advance choice documents and relevant information in electronic format.

NHS Providers view

We support the principle of patients receiving advance choice documents and relevant information in electronic format. However, the digital fundamentals need to be in place for trusts and their partners to be able to deliver this in practice. These fundamentals include: strong digital infrastructure (e.g. reliable wi-fi); secure data environments which store and allow access to data; effective electronic patient record systems; and shared care records. A broader approach also needs to be taken to digital funding, with clarity provided to trusts about how they can expect to make longer term, sustainable investments in digital ways of working, that recognises both the revenue and capital implications. Sufficient and sustained funding is needed to increase the baseline digital maturity of trusts, and trust leaders themselves will often be best placed to make investment decisions. We would also stress the importance of advance choice documents and relevant information being given in a format according to patient preference and steps being taken to mitigate the risks of digital exclusion.

After Clause 45

Amendment

BARONESS BROWNING

Member's explanatory statement

This amendment would recreate the powers the Court of Protection has under section 49 of the Mental Capacity Act 2005, in section 72 of the MHA 1983 to assist discharge.

NHS Providers view

Sufficient resources will be required to enable delivery of this change given the impact on practice. Adequate resources for ICBs and local authorities to be able to provide aftercare services as recommended by the Tribunal is also vital. For some people, especially those who have complex needs, there is often very limited appropriate out of hospital provision to discharge to. We also understand housing is one of the main reasons for delayed discharges from mental health services nationally, although this varies at regional level. Partnership working, alongside sufficient provision of the right out-of-hospital services, is key to successfully discharging individuals and avoiding inappropriate readmissions.

After Clause 50

Amendments

LORD ADEBOWALE

Member's explanatory statement

This amendment requires a costed plan to ensure that ICBs and LAs are able to provide adequate community services for individuals with learning disabilities and autistic people at risk of detention under Part 2 of the 1983 Act, informed by a consultation with a range of stakeholders.

NHS Providers view

We welcome the principle of this amendment given the concerns a number of trusts have raised about the unintended consequence of the changes to the Act for people with learning disability and autistic people. There is clear evidence of a historical inequity in the development, commissioning and provision of care and support for people with a learning disability NHS and autistic people, which

means that many individuals are not able to access the care and support that they need, from diagnosis and throughout their lives, in a timely way. We have long stressed the importance of addressing the historical under-investment in the NHS' core capacity to deliver services for people with a learning disability and autistic people, exacerbated by a sustained period of cuts to local authority support. Further significant challenges impacting trusts' ability to consistently provide the right level and nature of support for these groups of individuals that need to be addressed include: increasing demand, disjointed and fragmented approaches to commissioning, workforce shortages (particularly of specialist staff) and constrained funding for high-quality services in the community and social care.

BARONESS TYLER OF ENFIELD

Member's explanatory statement

This amendment requires the Secretary of State to publish a review of the impact of the provisions of the Act on under-18s and those in state funded schools and to assess whether the Act provides for adequate support for ongoing treatment and care in these settings.

NHS Providers view

Trusts are keen to ensure reform of the 1983 Act considers the impact on children and young people alongside that on adults. We broadly welcome proposals that all legislative changes will be available to children and young people, and that care and treatment plans are provided to all children and young people receiving inpatient mental health care.

There are broader key issues that need to be addressed when it comes to children and young people's mental health services including: shortfalls in child and adolescent mental health services (CAMHS); increasing demand for mental health services and support for children and young people; lack of access to specialist CAMHS Tier 4 beds; and often protracted waits for children and young people in suboptimal areas in general hospitals. These issues are worsening, and trust leaders are clear that the need to prioritise children and young people, and develop more effective models of care for them, is greater than ever.

BARONESS TYLER OF ENFIELD
LORD SCRIVEN

Addressing and reporting on racial disparities and other inequalities in the use of the Mental Health Act 1983

Mental health units and services to have a responsible person

Policy on racial disparities and other disparities based on protected characteristics

Training in racial disparities and other disparities based on protected characteristics

Annual report by the Secretary of State

NHS Providers view

Trust leaders agree that more must be done to tackle structural racism, bias and discrimination and they are committed to doing all they can to address systemic inequality. During the development of proposals for the draft Bill, the previous government rightly emphasised that a targeted, multipronged approach is crucial to improving the experience, care and treatment under the Act of people from black, Asian and minority ethnic backgrounds, as well as their earlier interactions with the mental health system more broadly. We need to see sustained support for work already underway by local health systems to better address inequalities in access, experience and outcomes of mental healthcare.

While we are supportive of the principles behind the amendment, we have concerns about how effectively some of the proposals would operate in practice. There is also the risk of duplicating policy and training already in place and/or that could be enforced to be produced and delivered via the application of existing legislation, and creating additional reporting burdens, as well as duplicating the existing monitoring powers of the CQC. It is also important that measures support embedding race equality as a core part of trust boards' business, where it is recognised by all board members as a priority and their responsibility.

Trusts have told us they would welcome national support to take effective action on race equality by providing challenge, sharing best practice resources and holding boards to account. There is also the need to consider wider inequalities experienced by the communities they serve, including in housing, employment, public health and other areas that have a profound effect on life chances and mental health.

BARONESS TYLER OF ENFIELD

LORD SCRIVEN

Member's explanatory statement

This amendment places a general duty on integrated care boards to ensure that services in the community have the necessary level of resource to meet demand on services to ensure that the provisions of the Bill function as intended.

NHS Providers view

We support the principle behind this amendment of aiming to ensure that services in the community have the necessary level of resource to meet demand on services to ensure that the provisions of the bill function as intended. Investing in community-based mental health support, including crisis care, delivered in a way that meets the needs of local populations and particularly those groups of individuals who have been historically under-served, is critical to successful implementation.

We must also address the underlying issues – such as inconsistent investment in mental health services at local levels, lack of investment in wider public services and widening socio-economic inequalities – driving the pressures on services and the rising severity and complexity of people's needs at the point at which they present to services.

Clause 53

Amendments

LORD STEVENS OF BIRMINGHAM
BARONESS TYLER OF ENFIELD
LORD KAMALL
BARONESS NEUBERGER

Member's explanatory statement

This amendment ensures that the Act will come into force no later than five years after Parliament has agreed it. This allows flexibility for phased implementation, while ensuring that the measures in the Act cannot be deferred excessively or indefinitely.

NHS Providers view

We welcome the principle behind this amendment and have previously called for the government to reform the Act and take the necessary, broader steps required to improve how and where people from all backgrounds access high quality mental health and care services as soon as possible.

However, it is also important to note that the proposed reforms will require additional funding and expansion of the workforce, over and above current commitments, to deliver in practice and there needs to be clarity from the government that trusts and their wider partners will be sufficiently resourced to deliver the measures in the Act no later than five years after Parliament has agreed to it. Despite growth in the mental health workforce in recent years, there remain significant shortfalls in both the number and skill mix of staff. The number of mental health nurses has only recently (2023-24) returned to 2009-10 levels and half of trusts leaders have told us they are worried or very worried (50%) about whether their trust has the right numbers, quality and mix of staff to deliver high quality health care.

LORD STEVENS OF BIRMINGHAM
BARONESS TYLER OF ENFIELD
LORD KAMALL
BARONESS NEUBERGER

Member's explanatory statement

This amendment ensures that mental health funding is not cut as a share of overall health service funding until this Act is fully implemented. The amendment supports the principle of "parity of esteem" by putting a "floor" under aggregate mental health services funding shares in England.

NHS Providers view

We strongly encourage the government to establish mechanisms which will ensure mental health care is appropriately prioritised financially and in policy in inpatient, community and primary care. Stronger national expectations are also needed for ICBs to achieve sustained development of high-quality mental health services, designed around a commitment to substantially reducing the level of unmet need in mental health and mental health inequalities.

The mental health investment standard (MHIS) has been a critical safety net that has ensured share of total NHS spend on mental health services has, albeit only gradually, grown since its introduction in 2015/16. This growth has supported a significant expansion and transformation of mental health services over the last decade: latest annual NHS England data show 3.8 million people were in contact with mental health, learning disabilities and autism services during 2023-24, which is up almost two fifths compared to before the pandemic. This includes over one million children. New services, such as specialist mental health support to new and expectant mothers, 24/7 psychiatric liaison services in

every A&E and 600 crisis care alternatives, are all also now available thanks to recent increased focus and investment.

However, there remains significant unmet need and we remain concerned about overall levels of funding for, and the prioritisation of, mental health services. Trusts have also raised concerns with us that, despite the MHIS, funding for the mental health sector is not always making its way to the frontline services that need it most, with the MHIS being seen in some cases as a maximum limit based on affordability, rather than a minimum based on need. We have heard mental health is being seen by some ICBs as 'negotiable' and the MHIS as 'a cost pressure' given the significant system financial pressures in recent years, along with concern about a lack of visibility of mental health spend. We therefore support efforts to underpin adequate and equitable investment in mental health services.

Lord Darzi emphasised in his recent report to the government that "there is a fundamental problem in the distribution of resources between mental health and physical health. Mental health accounts for more than 20% of the disease burden but less than 10% of NHS expenditure". Lord Darzi also stressed the need to lock in financial flows to enable the shift of care closer to home in the community.

We must continue to protect share of spend for mental health services, otherwise we risk exacerbating the challenges of patient flow, providing adequate resourcing to maintaining lifesaving services, and transforming models of care. When asked about top priorities for the new government to enable improved patient care over the next decade, nearly a third (32%) of trust leaders from all sectors cited the need to prioritise investment in mental health. Mental health services contribute to reducing pressure across wider hospital, community and health services, and will support the return to constitutional standards. Meeting the need in mental health supports the whole health and care sector to deliver high quality care.