Mental Health Legislation in Ireland: A Lot Done, More To Do

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Mental health legislation is necessary to protect the rights of people with mental disorders, a vulnerable section of society. Ireland's new Mental Health Act 2001 was fully implemented in 2006 with the intent of bringing Irish legislation more in line with international standards, such as the European Convention on Human Rights and United Nations Principles for the Protection of Persons with Mental Illness. The new legislation introduced several important reforms in relation to involuntary admission, independent reviews of involuntary detention, consent to treatment, and treatment of children and adolescents. It also presented significant challenges in terms of service delivery and resources within Irish mental health services. Both mental health service users and providers reported a range of difficulties with the new legislation. In this article, we analyze the Irish Mental Health Act focusing on the enhanced protection that it provides for patients, but also highlighting some areas of concern such as the conduct of mental health tribunals, consent and capacity problems, resource allocation, and disruptions in mental health service delivery.

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Mental health legislation provides for the protection of the basic human rights of people with mental disorders and deals with treatment facilities, personnel, professional training, and service structure. These laws are concerned with the restraint and protection of individual patients, regulation of compulsory admission, discharge procedures, appeals, and protection of property, among other things. The World Health Organization (WHO) has reported on several developments in mental health law around the world.[1] Seventy-eight percent of countries that account for 69.1 percent of the population have laws in the field of mental health. In the Eastern Mediterranean region only 57.1 percent of countries have mental health laws, compared with 91.8 percent of countries in the European region. More than half of the existing legislation is recent, having been enacted since 1990. Of these laws, one-fourth was enacted after 2000. About 16 percent of mental health legislation dates from before 1960, when most of the current effective methods for treating mental disorders were not available,[1] making it less likely that the laws are effective in dealing with contemporary challenges in mental health.

Mental health legislation is necessary to protect the rights of people with mental disorders, a vulnerable section of society. They face stigma, discrimination, and marginalization in all societies and an increased likelihood that their human rights will be violated.[2] Legislation can play an important role in promoting mental health and preventing mental disorders. It can provide a legal framework for addressing critical topics such as community integration of persons with mental disorders, the provision of high-quality care, the improvement of access to care, the protection of civil rights, and the protection and promotion of rights in other crucial areas such as housing, education, and employment.

Mental disorders can sometimes affect people's decision-making capacities, and they may not always seek or accept treatment for their problems. Rarely, people with mental disorders pose a risk to themselves and others because of impaired decision-making abilities. The rare risk of violence should not be allowed to influence mental health legislation.[2]

The presence of mental health laws, however, does not in itself guarantee respect and protection of human rights.[3] Ironically, in some countries, particularly where the law has not been updated for many

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years, mental health legislation has resulted in the violation, rather than the promotion, of human rights of persons with mental disorders. For example, in some countries outdated laws can be misused to silence political dissent. Much of the mental health legislation initially drafted has been aimed at safeguarding members of the public from dangerous patients and isolating such persons from the public, rather than in promoting the rights of persons with mental disorders as people and citizens.[3]

Countries that have signed international human rights conventions are obliged to respect, protect, and fulfill the rights enshrined in those conventions. The European Convention for Protection of Human Rights and Fundamental Freedom, backed by the European Court of Human Rights, provides more binding protection for the human rights of persons with mental disorders residing in the countries that have ratified it.[2]

History of Mental Health Legislation in Ireland

The Mental Treatment Act 1945 took effect on January 1, 1947. It allowed for the voluntary admission of patients to public hospitals; before this legislation, there had been provision for voluntary admission only to private hospitals. The Act also had provisions for involuntary admission of persons of unsound mind (PUM) and temporary patients. In the language of the Act, temporary patient means one who has a mental illness or addiction, is believed to require not more than six months of suitable treatment for recovery, and is unfit on account of his mental state for treatment as a voluntary patient. A person of unsound mind is one who is certified as needing detention in a mental institute and who is unlikely to recover within six months. The admission procedure was the same for both groups of involuntary patients. Involuntary public patients were admitted after application from a family member, recommendations from a general practitioner, and approval from a psychiatrist, but private patients required two general practitioners' recommendations for detention.

There were very few safeguards for detained patients and no provisions for independent review of such patients by mental health tribunals, but patients admitted under the Act were allowed to write a letter of appeal to the Inspector of Mental Hospitals, the president of the High Court, and the Minister of Health. Amendments were made to the Act in 1953 and 1958. A new Health (Mental Services) Act 1981 was passed by the Irish House of Oireachtas (parliament) but was never enacted, because of political opposition from various stakeholders.

Mental Health Act 2001

The Mental Health Act 2001[4] was signed into law in July 2001 and implemented in a phased fashion with the establishment of a Mental Health Commission and the new Inspectorate of Mental Hospitals in April 2002. The Act, which replaced the 60-year-old Mental Health Act 1945, was fully implemented on November 1, 2006. Its purpose was to provide a modern framework within which people who are mentally disordered and who need treatment or protection, either in their own interest or in the interest of others, can be cared for and treated. It also put into place mechanisms by which the standards of care and treatment in our mental health services can be monitored, inspected, and regulated.[5] The establishment of mental health tribunals allows for the automatic independent review of all involuntary admissions to approved centers.[6] With the implementation of the Act, a range of rules and regulations relating to approved centers and the establishment of a register of centers approved for inpatient admission has also come into force. The regulations include a requirement for formal registration of approved centers.

The Act also makes provision for requirements governing consent to treatment, including electroconvulsive therapy (ECT) and administration of medicine to involuntary patients.[5] It also outlines circumstances in which a second opinion from an independent psychiatrist or review by a mental health tribunal is required regarding consent to treatment of involuntary patients. There are no clear regulations governing the administration of medication to voluntary patients. In the Act, consent means that the consultant psychiatrist has given the patient adequate information about the treatment as well as the diagnosis and is satisfied that the patient is capable of understanding the nature, purpose, and likely effects of the proposed treatment.[4]

The Act has rules for prescription and administration of ECT. A program of ECT cannot be administered to an involuntary patient unless the patient gives his consent in writing or a second opinion is obtained from another consultant psychiatrist on a specified form following a referral by the treating

consultant if the patient is unwilling to give consent.[4] There are also rules governing physical and mechanical restraint and seclusion.[5]

The implementation of the Act provided Ireland with a significant piece of legislation that protects the rights of all involuntary patients of our mental health services and brings Ireland into line with its obligations under the European Convention on Human Rights Act 2003.[6] The current Mental Health Act has brought immense changes to involuntary inpatient treatment of persons with mental disorders. Involuntary admission is not allowed if a person has a personality disorder or is socially deviant or addicted to drugs or alcohol.[4] For an involuntary admission, an application that the person be so admitted may be made in a form specified by the commission to a registered medical practitioner by the spouse or a relative of the person, an authorized officer (an officer of a health board, who is authorized by the chief executive officer), or a member of the Garda Siochana[4] (police). If a registered medical practitioner is satisfied after an examination that the person has a mental disorder, then he makes a recommendation in a form specified by the commission that the person be involuntarily admitted.[4] After recommendations from a medical practitioner, a consultant psychiatrist from an approved center carries out an examination within 24 hours, and if he is satisfied that the person has a mental disorder, he makes the admission order.[4]

In the Act, the term mental disorder means mental illness, severe dementia, or significant intellectual disability because of which there is a “likelihood of serious harm” to the person or to others or that failure to admit will lead to severe deterioration in the person’s condition or prevent the administration of appropriate treatment and that treatment in an approved center would be likely to benefit or alleviate the condition to a material extent. An admission order is for a period of 21 days from the date of the making of the order and the first renewal order is for a further period not exceeding 3 months. A second renewal order is for a period not exceeding 6 months and thereafter may be extended for successive periods, each of which does not exceed 12 months.

Each detained patient now has an automatic right to a mental health tribunal within 21 days of each admission order or subsequent renewal order. Before a hearing can take place, the patient must be appointed a legal representative by the commission under its legal aid scheme which is free to the patient.[5] The legal representative meets with the patient to prepare the case. The commission must also appoint a consultant psychiatrist to conduct an independent medical examination and prepare a report for the tribunal within 14 days.[5] The mental health tribunals consist of a lawyer as chair, a consultant psychiatrist, and a lay person.[5] Mental health tribunals also approve transfers of patients to the Central Mental Hospital of the National Forensic Services in Ireland. No patient can be transferred to the National Forensic Services in Ireland unless approved by a tribunal. A patient may appeal to the circuit court against the decision of a tribunal on the point of law that the patient does not meet the criteria for a mental disorder. There is no provision for an appeal against an order of the circuit court, but an appeal to the High Court can be made under the rules of *habeas corpus*.[4] The act also provides that, when a patient is discharged before the mental health tribunal convenes, the patient can request a tribunal to see whether he was detained lawfully, by submitting a notice in writing within 14 days.[5] If the tribunal determines that the patient has been unlawfully detained, he is released.

The Mental Health Act 2001 has no provision for compulsory community treatment. The consultant psychiatrist responsible for the treatment of a detained patient may grant permission in writing to the patient to be absent from the approved center, and this absence with leave can be used as a form of conditioned discharge or as a community treatment for patients who are out of the hospital, but the provision is not designed to be used to enforce treatment in the community on an ongoing basis.

The Act also has rules for psychosurgery, despite the fact that such surgery is not available in Ireland. Psychosurgery is defined as any surgical procedure that destroys brain tissue or the functioning of brain tissue and that is performed for the purpose of ameliorating a mental disorder.[4] The Act states that psychosurgery shall not be performed on a patient unless the patient gives consent in writing and the procedure is authorized by a tribunal after referral of the matter to the Mental Health Commission by the treating consultant psychiatrist.[4]

The Mental Health Act 2001 has no provisions for the assessment of capacity. The Irish Mental Capacity and Guardianship Bill, which will replace the

Wards of Court system, is currently being debated in the Irish Parliament.

The Mental Health Commission has also established a database of mental health service research in Ireland, and it is hoped that a mental health service research center will be established on an all-island basis.[5]

Discussion

Mental health legislation should be viewed as a process rather than as an event that occurs just once in many decades. This approach would allow it to be amended in response to advances in the treatment of mental disorders and to developments in service delivery systems.[2] In Ireland, there is generally a broad acceptance of the need to update existing legislation to provide better protection of patients' rights and to increase adherence to the United Nations' Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.[7] Although the Mental Health Act 2001 goes a long way in addressing some of these concerns and has been generally welcomed, a range of stakeholders in Ireland's mental health services have expressed apprehension about several aspects of the Act. It has been pointed out that the Irish mental health system, especially in the rural areas, may be under-resourced for the full implementation of the Act.[8] There are logistic problems, such as the ongoing difficulties of providing escorts for patients[9] and the timing of mental health tribunals, that may not be revealed until just before the patient is discharged.[10] Furthermore, the tribunals are not always conducted in a fashion that takes account of the therapeutic implications of proceedings.[11] It is also interesting to note that Ireland's new legislation does not address in detail the process of voluntary admission to approved psychiatric centers; clearly establish a minimum standard of care to which patients are entitled[12]; contain provision for involuntary treatment as an outpatient; and allow for shorter periods of detention explicitly for assessment purposes. Finally, it does not regard a personality disorder as a form of mental disorder (for the purpose of involuntary admission).[13]

In conclusion, the Mental Health Act 2001 is certainly a much needed legal advancement for the rights of detained patients. The new legislation introduced several important reforms in relation to involuntary admission, independent reviews of involuntary detention, consent to treatment, and treatment of children and adolescents, but there are still many unanswered questions, as pointed out herein. The Act also presents significant challenges in terms of service delivery and use of resources within the Irish mental health services.

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