



Mental Health Alliance

Amendment to create a duty to assess needs

Insert the following new Clause-

“Assessment of needs for community care services

After section 1 of the 1983 Act insert-

“Part 1A

Assessment of needs for community care services

1A Assessment of needs for community care services

(1) Where –

- (a) it appears to an approved mental health professional that any person with a mental disorder within the meaning of this Act should be assessed under section 47 of the NHS and Community Care Act 1990; and
- (b) that professional notifies the local authority that the patient may be in need of community care services,

the patient shall for the purposes of that section be deemed to appear to the local authority to be a person who may be in need of any such services.”

(2) Where –

(a) a –

- (i) local authority receive a request in writing for the needs of a person to be assessed under section 47 of the NHS and Community Care Act 1990; or
- (ii) a health authority receives a request in writing for the needs of a person for services which are provided by the health authority in respect of mentally disordered persons to be assessed; and

(b) any of the circumstances mentioned in paragraphs (a) to (c) of subsection (3) below apply,

the local authority or, as may be the case, the health authority shall comply with the requirement in subsection (4) below.

(3) The circumstances referred to in subsection (2) (b) are-

(a) that the request bears-

- (i) to be made by a mentally disordered person; and
- (ii) to be a request for the needs of that person to be assessed;

(b) that the request bears-

- (i) to be made by the primary carer, or nearest relative, of a mentally disordered person; and
- (ii) to be a request for the needs of the mentally disordered person to be assessed;

(c) though the request does not bear to be made as mentioned in paragraph (a) of (b) above, it appears to the local authority or, as the case may be, the health authority that the request-

- (i) is a request for the needs of the mentally disordered person to be assessed; and
- (ii) is made by that person, or by that person's carer or nearest relative.

(4) The requirement referred to in subsection (2) above is to give notice, before the expiry of the period of 14 days beginning with the day on which the request is received, to the person who made the request-

(a) of whether-

- (i) the local authority intends or
- (ii) the health authority intends,

to undertake the assessment; and

(b) if the intention is not to undertake the assessment, of the reason why that is the case.

Purpose of this amendment

- This amendment reinforces the existing duty on local authorities to provide a community care assessment for a person who appears to be in need of services (under Section 47 of the 1990 NHS and Community Care Act).
- It enables an Approved Mental Health Professional to refer a person for such an assessment.

- It also provides that where a request for assessment is made by the patient, their carer or their nearest relative – and the local authority decides not to carry out an assessment – then written reasons must be provided.
- This is the approach taken in the Scottish Mental Health Act which refers to the existing right to assessment under their equivalent of the NHS and Community Care Act.
- It does not create a right to receive a service but it does reinforce the right to be assessed and makes it more relevant than at present to people with mental health problems.

Reasons for this amendment

The key reasons for this amendment are:

- People with mental health problems frequently experience difficulties getting care and support. According to research by Rethink, up to one person in four is turned away by services when they or their family seek help. The result for those denied help can be that their condition deteriorates, making compulsion more likely. Up to one half of people with psychosis find compulsion their first experience of specialist care.
- A duty to assess would incentivise commissioners to build services that are more responsive to those in earlier stages of a mental illness and those with long-term conditions that are beginning to relapse.
- Many service users report that they have not received an assessment under section 47 of the NHS and Community Care Act – mainly because the majority of mental health professionals are NHS employed and not familiar with social services assessments. Replicating the existing right to assessment in mental health law would help to remind all mental health professionals of this duty.
- There is also confusion between a right to assessment under CPA (which is a right to assessment under specialist psychiatric services) and a right to assessment under the Community Care Act (which is a more general right to assessment for support services – even if the person is not ill enough to need specialist psychiatric care). This means that many people receive a CPA assessment but not a community care assessment.
- The Mental Health Bill will create additional powers of compulsion, including for the first time within community services. This is likely to have an impact on service provision, further directing resources towards acute care. A duty to assess would help to redress this imbalance.

The Mental Health Alliance, May 2007