

**Mental Health Bill - 2nd Reading House of Lords
Tuesday 28 November 2006**

Executive Summary

- The RCN acknowledges the steps that Government has taken to accommodate many of our concerns on earlier drafts of Mental Health Legislation and the progress that has been made. However, there are still particular areas of concern in this Mental Health Bill for mental health nurses.
- We believe that the proposals for Supervised Community Treatment Orders (SCTOs) are too simplistic and coercive. The criteria for SCTOs is too vague and should be limited to a very specific client group. Furthermore, there is a real danger that SCTOs, as currently proposed, will pose a real threat to the nurse patient relationship and could endanger the therapeutic alliances that currently enable clients to engage with services.
- We remain concerned that SCTOs could be used as a means to ease bed and financial pressures in the NHS. Compulsory medication cannot be used as a substitute for adequate, accessible and appropriately funded mental health care.
- We welcome proposals to ensure that patients are not detained in the absence of “appropriate treatment”. However, we do have particular concerns about the vague nature of the term “appropriate treatment” and would stress that any treatment should be assessed in terms of the therapeutic benefit it will incur for an individual.
- The RCN welcomes the new roles for nurses proposed in the legislation. However, we would like to see a strong commitment to appropriate training, support and mentoring provision for nurses and other staff taking on advanced responsibilities.

Introduction

The Royal College of Nursing (RCN) is the world’s largest professional association and trade union for nurses. With a membership of over 390,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets the RCN is the voice of nursing across the UK. The RCN promotes patient and nursing interests on a wide range of issues by working closely with Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

The RCN is a member of the Mental Health Alliance, a coalition of 78 organisations working together to secure humane and effective mental health legislation. It is a unique group representing service users, psychiatrists, social workers, nurses, psychologists, lawyers, voluntary associations, research bodies and carers’ associations. The RCN shares the Alliance’s concerns regarding many of the proposals in the Bill as it is currently drafted.

The RCN acknowledges that the Government has taken on board many of the concerns that we have raised about previous drafts of Mental Health Legislation and has taken into account many of our comments put forward in evidence to the Joint Committee on the Draft Mental Health Bill in 2004. However, the Mental Health Bill as currently drafted continues to present particular concerns to many mental health nurses within the RCN. We are keen to work with Government to make the necessary amendments and improvements to the Bill to ensure that it is effective in practice and fulfils its aim to modernise mental health legislation.

Part 1

Chapter 1

Clause 1

Removal of Categories of Mental Disorder

The RCN believes that the present definition of mental disorder has been afforded a greater degree of clarity in the Bill. However, we would support the Mental Health Alliance view that if a single definition is to be used the conditions for compulsion should be strict. We would also support the call for the definition to be limited by an impaired decision making criteria and therapeutic benefit test for all detention in hospital.

Clause 2

Learning Disability

The RCN is pleased that Learning Disability has not been interwoven with 'Mental disorder' in the Bill. We strongly believe that people with learning disabilities should not be subject to the provision of the Bill because it should apply to all citizens with parity. If a person has need for the provisions of the Bill it should be on the basis of their mental state and not because of impaired cognitive or intellectual development.

However, there are opportunities for the language in this clause to be strengthened to improve the clarity of some definitions. In particular we would be keen to see greater explanation of the term "abnormality" which in our view is very unhelpful. We would also welcome greater clarity about the definition of "aggressive or seriously irresponsible" in relation to people with learning disability.

Clause 4

Replacement of "treatability" and "care" tests with appropriate treatment test

The RCN welcomes measures in the Bill to support good practice in avoiding detention in the absence of appropriate treatment. However, this does raise the issue of how clinicians can detain patients for clear benefit when the necessary treatment is unavailable. We would hope that this section of the Bill will eventually be used as a lever to commission services but until such a time it remains of concern. Appropriate treatment should always be of clear benefit to the individual and not exercised in the interests of others. The RCN would welcome clarification that any treatment considered will be tested on the basis of whether it will or is likely to incur therapeutic benefit to the individual. We support the Mental Health Alliance statement that "*appropriate treatment* is too vague a basis for using coercive powers".

Chapter 2

Professional Roles – Approved Clinicians and Responsible Clinicians

The RCN welcomes new roles for nurses in the Bill but would stress that there is a corresponding need for appropriate training and support for staff when taking on new roles and responsibilities. In particular the nominated clinician role denotes a clear advance in responsibility. We would expect to see nurses who adopt such roles to be supported by good quality mentoring from already experienced practitioners. The RCN would welcome the opportunity to be involved in the development of any scheme for preparation, training and support of staff and will endeavour to support nurses in these new and challenging roles.

There is a serious need for the Department to consider the numbers of mental health nurses requiring training to support this legislation. Post registration budgets for education and training have been reduced by up to 30% which has led to a significant reduction in opportunities for nurses to undertake the specialist post registration education that would equip them for the roles envisaged by the Bill. Whilst the intention for advanced roles is welcomed we would like to see greater detail on training and support packages and more focussed workforce planning.

Chapter 4

Supervised Community Treatment

SCTOs continue to be a real concern for mental health nurses. Issues surrounding non-compliance with medication are complex and the proposed solution in the Bill is simplistic and coercive. Criteria surrounding supervised community treatment should be so specific as to limit its use to a very specific, clearly defined client group. Whilst it may be argued that community psychiatric nurses have always had a supervisory role in compliance, SCTOs will make that process so overt that it may endanger critical therapeutic alliances with clients. It is essential that difficult to engage clients are not dissuaded from engaging with mental health services. We find that the conditions for recall are too vague and do not demonstrate that patient care should be at the centre of the process. We would welcome further clarification of this area.

Compulsory medication should not be used as a substitute for adequate mental health care. We have specific concerns that SCTOs could become a tool to ease bed pressures when a patient ought to be receiving hospital care. In common with other aspects of the Bill, SCTOs greatly reinforce the need for a skilled, trained and supported workforce. The ability to fully engage in such roles requires professional maturity and skill that experienced nurses demonstrate. Such skills are demonstrated in areas such as community forensic nursing, court diversion and assertive outreach services. We remain concerned that many of the key practitioners in these roles now find themselves, having achieved Band 7 and 8 on agenda for change (AfC), at risk of losing their posts due to pressure created by deficits and financial recovery plans. We need to ensure that these nurses are retained in services and not considered as a disposable asset in a workplace eager for fiscal balance.

Chapter 5

Mental Health Review Tribunals

The RCN is supportive on the Mental Health Alliance position which; *“broadly supports the proposed new power which will allow the Government to reduce the time delay before patients get automatic referrals to the Mental Health Review Tribunal. It is important that sufficient resources are made available to put this into effect”*.

Other areas for comment not included in the Bill

Statutory Principles

The RCN is supportive of the Mental Health Alliance’s position that the proposed legislation should contain a set of general principles on the face of the Bill. In particular, we would welcome a statement similar to that in Scottish legislation that *“service users should be provided with any necessary care, treatment and support in the least invasive manner and in the least restrictive manner and environment compatible with the delivery of safe and effective care, taking account, where appropriate, of the safety of others”*. Such a set of principles can translate into values based practice and education for service providers. It would also provide a benchmark for an ethical audit of care and treatment.

Advocacy

The RCN is disappointed that rights to advocacy have been removed from the Mental Health Bill. In previous drafts of mental health legislation the RCN has welcomed the commitments to advocacy and particularly called for advocacy to be available at the point of consideration of detention as opposed to the commencement of detention. We do welcome the commitments that Government has made to advocacy services but believe that including advocacy in the Bill would demonstrate the strength of such commitments.

If you would like further information please contact the RCN parliamentary office on 0207 647 3628