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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	04 August 2022	Agenda Item	3.2
Report Title	Update on the Health Board implications and preparedness surrounding Liberty Protection Safeguards (LPS)		
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Presented by	Carol Killa Head of Nursing for Liberty Protection Safeguards		
Freedom of Information	Open		
Purpose of the Report	<p>This paper provides an update on progress against the Health Board preparedness for the introduction of Liberty Protection Safeguards.</p> <p>It outlines progress against the outstanding actions identified in the paper Health Board Management of Liberty Protection Safeguards and the Mental Capacity (Amendment) Act 2019 presented to the May committee.</p>		
Key Issues	<p>The aim is to ensure that people who may lack capacity have their care and treatment planned and implemented within the requirements of the Mental Capacity (Amendment) Act 2019</p> <p>To prepare Swansea Bay Health Board for the transition from Deprivation of Liberty Safeguards (DoLS) to Liberty Protection Safeguards (LPS)</p> <p>While there is no fixed date for the transition, the Consultations from Welsh Government and the UK Government have been submitted and dependent on the outcome, it is likely that that LPS will be progressed in 2023.</p> <p>The Welsh Government are supporting Health Boards to be prepared with provision of sustained funding up to 2025. Swansea Bay have significant workforce constraints in relation to oversight and implementation of the Mental Capacity Act, which are hampering the ability to effectively prepare for the transition.</p>		

	Significant legal issues exist related to this area of care and are resulting in increased Court of Protection workload. The process to manage this within the Health Board is fragmented and until placement of this work is agreed it remains a risk.			
Specific Action Required <i>(please choose one only)</i>	Information	Discussion	Assurance	Approval
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recommendations	Members are asked to note the update			

Update on the health board's implications and preparedness surrounding Liberty Protection Safeguards

1. INTRODUCTION

Information to date on progress on all the relevant areas relating to preparations for the introduction of LPS

2. BACKGROUND

Following the passing of the Mental Capacity (Amendment) Act 2019 work began to introduce the new Liberty Protection Safeguards (LPS) to replace the existing Deprivation of Liberty Safeguards (DoLS)

The initial date for introduction was April 2022, however this has been delayed by Welsh Government until a full consultation with stakeholders has been undertaken and no new date has been announced but likely to be 2023.

Consultation

As the regulations to the Act are a devolved matter the Welsh Government has been consulting on four sets of draft Regulations for Wales to support the implementation of the Mental Capacity (Amendment) Act 2019 and the Liberty Protection Safeguards. These relate to:

- Independent Mental Capacity Advocates
- Approved Mental Capacity Professionals
- Who can undertake assessments, make determinations and carry out pre-authorisation reviews
- Monitoring and reporting of the Liberty Protection Safeguards

The Code of Practice is also being revised for the first time since its publication in 2007 to reflect changes in legislation, case law, organisations and good practice which have developed over time. This is a UK Government consultation but will impact on practice across all areas of Health Board delivery.

Both consultations were launched on March 17th 2022 and closed on the 14th July 2022. All areas of the Health Board were engaged via the established LPS DoLS subgroup, and direct contact with relevant leads and professional groups. The Health Board was also represented on regional groups with Local Authority partners and the National group, led by Public Health Wales.

The key factor is that the changes to MCA and the move away from DoLS places far greater emphasis on using the Mental Capacity Act in practice. All staff need to have basic awareness of the rights of patients. The Health Board needs to be assured that for individuals who may lack capacity all care and treatment is planned and delivered within the requirements of MCA.

Not to do so leaves the health board open to challenge and so the need to develop the resource and expertise in managing MCA in practice across the Health Board remains.

Update on progress against identified concerns

a. The siting of the supervisory body and DoLS processes

This decision is outstanding with discussions planned in the next 2 weeks. Management Board is to be updated at the next Quality Management Board in August of the current work being undertaken and any outstanding risks.

b. Staff competence, training and education

In line with WG expectations, WG funding has been used to commission a bespoke training package from our current providers, University of Wales Swansea and we have also funded our multiagency integrated teams to attend bespoke training commissioned by our Local Authority partners.

Feedback from both training options has been good and we have used further WG funding to extend the training throughout the year to support the release of staff in a planned way during these challenging times.

c. Court of protection cases

Work has begun with the Corporate Governance team to identify how we manage processes and timescales relating to Court of protection referrals. Issues of concern are requests for Section 49 reviews (reviews required by the court) and the quality of baseline assessments, documentation and the management of complex cases. There is scope to improve the scrutiny and support available within the Health Board, before we commission legal services. There is also a need to ensure we have the appropriate quality of assessment and documentation required by the courts to prevent information being returned to be re submitted.

d. Management of the Independent Mental Capacity Advocacy provision

The Health Board has been contacted to begin work on an all Wales IMCA contract. This will form the basis for IMCA services across Wales with the opportunities for local providers to bid to provide IMCA services for defined geographic regions (a similar model to IMHA provision). It is anticipated that this new contract will come into place in 2024. There is a need to review our provision in the interim, and as there is no written agreement with the current provider, work is due to begin on drafting an interim agreement to improve clarity of expectations and reporting this will be led by the Head of Nursing LPS with support from procurement colleagues. The Welsh Government is providing a substantial uplift in funding from £82K to £280K for each of the next three years, however to manage demand we currently spot purchase separate advocacy sessions in excess of the funded agreement. This also applies to the Local Authorities.

This new funding will be expected to cover all services relating to DoLS / LPS going forward for the Health Board and Local Authorities and so work is

beginning on reviewing current usage as a region working with our current providers to ensure they are able to best utilise any increase in funding to meet the needs identified.

e. The authorisation of DoLS applications

This forms part of the DoLS process managed within the PCC&T DSU, each application takes approximately 2 hours to review and sign off to authorise the legal deprivation of someone's liberty. However, if there is further information required or any challenge to this, it can take longer.

Currently there is no funded resource in place for this and it is provided with the use of Welsh Government monies funding overtime payments for the senior practitioners in the Long Term Care Team. We need a long term sustainable solution so risks to timely authorisations are made.

f. RESOURCE

The current substantive resource remains limited and insufficient to meet demand. This is being managed by the use of agency Best Interest Assessors, but this is not sustainable long term and there is a need to build our resource to ensure we are able to meet the requirements of LPS in the future.

g. BACKLOG

This has been managed and reduced by Primary Care Community and Therapies Service Group with support from Welsh Government funding. The current situation is outlined in the quarterly report.

The plan is to continue to use the agency providers funded from Welsh government funding to manage ongoing work so that we do not continue to accrue a backlog.

h. WELSH GOVERNMENT FUNDING

The Health Board was successful in its bid for a further £102K of funding and has the opportunity to apply for a further £152K in phase two. The bid will be submitted by the 1st August and funding will be used to support the agency BIA resource, fund the overtime payments for sign off, to further extend the bespoke training for Health Board staff and consideration is being given to creating a senior administrative post to support the oversight of workforce and training development. There is an expectation that Health Boards begin to consider workforce and resource requirements and so WG have provided longer term assurance for the funding. The funding will be in place for 2022/23, 2023/24, 2024/25 to support resource planning and training. (Appendix 1).

3. GOVERNANCE AND RISK ISSUES

The Health Board is open to a breach of human rights challenge from service users if people are deemed to be being held against their wishes. This includes less obvious restriction, such as when the individual is subject to continuous

supervision and control and is not free to permanently leave the care setting. This must be managed lawfully with DoLS authorisations being signed off and in place within the agreed timescales.

Currently there are insufficient numbers of Best Interest Assessors in post, which is managed with a higher cost agency workforce. This is not sustainable longer term and if resource issues are not addressed prior to the implementation of LPS the health board will again be at risk of backlogs and breaches of cases.

Certainty of a clear management structure for the MCA within the Health Board needs to be agreed so the planning and assurance required to transition from DoLS to LPS occurs smoothly. The delays in Court of Protection cases and lack of one clear process for managing these gives rise to inefficient use of legal services and the risk of Court penalties, the costs of which can be substantial.

Using WG monies to manage current risks relating to MCA is working in the short term but is not going to meet WG expectations for the long term. Swansea Bay UHB will need to be ready and prepared for the transition to LPS when the date is announced.

4. FINANCIAL IMPLICATIONS

Costs of MCA lead, increase in BIA resource and sign off process
Training budget

5. RECOMMENDATION

The committee is asked to note the progress and barriers and continue to monitor the proposed development and transition in line with Legislation and Welsh Government expectation.

Governance and Assurance		
Link to Enabling Objectives (please choose)	Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities	
	Partnerships for Improving Health and Wellbeing	<input checked="" type="checkbox"/>
	Co-Production and Health Literacy	<input checked="" type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input type="checkbox"/>
	Deliver better care through excellent health and care services achieving the outcomes that matter most to people	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input checked="" type="checkbox"/>
	Excellent Staff	<input checked="" type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
Health and Care Standards		
(please choose)	Staying Healthy	<input type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>

	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
Quality, Safety and Patient Experience		
Effective proportionate care based on choice and necessity with the person at the centre of decision making should be the norm within any statutory organisation. For those people who lack capacity to make time specific decisions it is essential that the Health Board has the infrastructure, processes and expertise in place to ensure this is the case for all its citizens.		
Financial Implications		
Current budgeted resource Band 7 DoLS Lead Band 6 Best Interest Assessor Band 4 Administrator Unbudgeted Health Board level 2 and 3 MCA DoLS training, Best Interest Assessor annual update training Supervisory body annual update training MCA Lead Authoriser role		
Legal Implications (including equality and diversity assessment)		
MCA is a vital piece of UK legislation with clear WG regulations to be fulfilled. Currently the Health Board cannot yet provide assurance on compliance and is open to challenge.		
Staffing Implications		
Need for a future dedicated MCA team as outlined above. Need for adequate number of Best Interest Assessors to convert into AMCP roles for complex and contentious cases with enough Pre authoriser roles to support the delivery areas in day to day practice.		
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)		
Increasing numbers of our service users have problems with capacity to consent and make decisions about their care and treatment with predictions indicating this is likely to rise in the future. The Health Board has a duty of equality to ensure the wellbeing of the population and to support those most vulnerable and ensure they have the same rights as others. The Mental Capacity Act is fundamental to protecting the human rights of the citizen and requires ongoing partnership work between the statutory bodies to enact and		

develop MCA practice. The Health Board needs to harness and develop its expertise to support the protection of rights for all taking a joined up approach to caring for our most vulnerable clients who cannot make decisions for themselves. Developing this area of service is essential to achieving this.

Report History

Mental Health and Legislative Committee May 2022

Appendices

Appendix 1 Welsh Government Funding Letter

Appendix 2 Liberty Protection Safeguards (LPS)
National Workforce Planning Document