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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	06 February 2020	Agenda Item	4.4
Report Title	Update position on Deprivation of Liberty Safeguards, Q3		
Report Author	Tanya Spriggs Interim Director of Nursing, Primary and Community Service Delivery Unit, Diane Fletcher, Interim Head of Long Term Care.		
Report Sponsor	Gareth Howells Director of Nursing and Patient Experience		
Presented by	Tanya Spriggs		
Freedom of Information	Open		
Purpose of the Report	To provide an update and assurance around the management of Deprivation of Liberty Safeguards (DoLS)		
Key Issues	<ul style="list-style-type: none"> • Moving to a directly employed model has improved the Assurance role of the Supervisory Body; • The Supervisory Body is more informed around the quality of training, application of process and procedures used by the managing Authorities; • Internal Audit finding Reasonable assurance; • The Supervisory Body will not be able to fully meet its responsibilities without additional assessment capacity; • New legislation comes into force in October 2020, impact review required to ensure the Health Board is able to comply with its legal requirements under Liberty Protection Safeguards (LPS). 		
Specific Action Required <i>(please choose one only)</i>	Information	Discussion	Assurance
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Recommendations	<p>Members are asked to note :</p> <ol style="list-style-type: none"> 1. Supervisory Body will be required to exceed its financial allocation in order to discharge its 		

	<p>obligations. Currently between models due to the new legislation, further guidance expected in April 2020.</p> <ol style="list-style-type: none"> 2. Support the ongoing work to reduce unnecessary referrals & the number of unnecessary urgent requests and note the Quarter 1 and 2 performance (Appendix 1) 3. In preparation for LPS establish a focus group to Scope the impact and implementation for LPS including LPS objectives, costings, and timescales for the training and development needs. SBUHB to identify required workforce for the new LPS and deliverables to ensure SBUHB is able to meet the new legislative requirements
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Update position on Deprivation of Liberty Safeguards

1. INTRODUCTION

The purpose of this report is to provide an update to the Committee on the Quarter 3 position in relation to Deprivation of Liberty Safeguards.

2. BACKGROUND

The Mental Capacity Act Deprivation of Liberty Safeguards provides a legal framework to protect vulnerable adults, who may become, or are being deprived of their liberty in a care home or hospital setting. These safeguards are for people who lack capacity to decide where they need to reside to receive treatment and/or care and need to be deprived of their liberty, in their best interests, other than under the Mental Health Act 1983 (MCA Code of Practice). The safeguards came into force in Wales and England on the 1st April 2009.

The Health Board has a statutory responsibility to ensure patients under its care can be assessed within agreed time scales. The Corporate Safeguarding Team is working with the Supervisory Body (Primary Care & Community Services Delivery Unit) and the Managing Authorities (Singleton, Morriston, Neath Port Talbot, Gorseinon, Mental Health & Learning Disabilities Service Delivery Units) to address some of the issues which are contributing to the delays.

3. GOVERNANCE AND RISK ISSUES

To enable the Primary and Community Services Delivery Unit to discharge its functions as the Supervisory Body the following actions have been completed.

Internal Audit Action Plan

The DoLS Team and DoLS Improvement group have continued to work on and completed actions as identified by the audit. The audit has lifted the level of assurance from Limited Assurance to Reasonable Assurance and reflects the level of improvement work undertaken by the team. The outstanding actions are addressed in the body of this report

Supervisory and dedicated BIA Functions

BIA's have been in post since April 2019 as part of the ongoing responsibility of the Supervisory Body to improve safeguards.

There are currently 2 dedicated Supervisory Body BIA's and 14 BIA's from Delivery Units (currently 2 on long term sickness) . From the 1st of April 2019 to December 2019 (first 3 Quarters of 2019/2020) the Swansea Bay University Health Board (SBU HB) received 657 referrals; 368 assessments were completed by external Best Interest Assessors (BIA's), 253 by internal BIAs of those 179 undertaken by the 2 full time dedicated BIAs.

Activity performance had only marginally improved in Quarters1 and 2, compared to the same period last year, this is due to the overall lack of capacity from the internal BIA resource.

In Quarter 3 there were 206 referrals received: internal BIA's completed 70 assessments of those 56 were completed by the 2 dedicated BIA's, and external BIA's completed 68. 126 assessed within time, 49 breaches, 2 out of area (completed within time frame). Last years figures will not give a comparable figures due to Health Board boundary changes, however there has been a significant increase in number of assessments completed within time frame 61% as compared with 26% . (See **Appendix 1**)

Breaches: Although the number of breaches are greatly reduced, the breaches are due to a continuing lack of BIA Assessors, 6 more internal staff have been trained but not yet fully operational.

The existing plan has been to reduce the reliance on the externally contracted BIA roles and use internal Health Board BIA's who are currently employed in substantive roles within Service Delivery Units. This model has been challenging as due to staffing pressures. The Delivery Units have not been able to release staff particularly during winter pressures. The allocated 2 days a month has not been released to the Supervisory Body and does not allow functions of the body to be delivered. This results in the Supervisory Body having to fund external BIA's and there is insufficient capacity to deliver assessments within the agreed time scales.

Since April 2019 the following have been completed:

Actions/Improvements

- **The DoLS dashboard** : Identifies the referral trends which indicated inconsistencies in practice and approach.
- Strengthened process in place for paying external Assessors.
- **BIA support group**: Has been established, led by the Supervisory Body (F/T BIA's); provides support to internal BIA's around existing responsibilities, compliance with legislation and preparation for the implementation of LPS. There have been two support sessions to date, however, there has been limited uptake by internal staff , plan to extend invitation to attend to external BIA's ; feedback from those that have attended have found it positive and a helpful resource.
- **MA support**: Regular visits to Managing Authorities to support with training: MCA and DoLS, process and compliance and provide bespoke workshop sessions (awareness raising & theory to practice).
Impact: These visits have highlighted the need to strengthen training around legislation, procedures and to review the existing training contracts. BIA's have met with trainers from Swansea University to discuss adjustments to existing training programs to strengthen links between theory to practice, identifying when to use MCA v DoLS.

- **DoLS Audit for Managing Authorities (MA):** BIA's have implemented audits of MAs, one completed in July 2019 (See **Appendix 2**), a current audit is in process. The audit is to support MA's with knowledge and confident in compliance with legislative requirements, using appropriate care plans, and patients requiring safeguards for DoLS are appropriately protected.

Impact: BIA recommendations have generally been positively received. This is a key quality assurance requirement of the Supervisory Body. The second audit is being undertaken with a different focus from the first to capture additional information relating to patients not known to the Supervisory Body who should have the protection of DoLS authorisation.

- **Improved Care Plans:** A designed DoLS care plan was implemented in Q2 and is now an established part of DoLS paperwork.

Impact: Anecdotal evidence from MA's easier and less time consuming to complete, there is some evidence that they are being used as part of working care plans on some wards and are focused on DoLS and restrictions to liberty that are in place to protect patients, majority of referrals are made using the correct care plan, some further work with some wards to correctly identify specific restrictions in place but generally improved quality and consistency. Quality of information in the care plans has improved and is more focused on the restrictions in place and how they are being managed and reviewed.

- A Referral Prioritisation Tool was ratified at Safeguarding Committee and has been in place since Q2. This has been circulated to all Service Areas and BIA's have attended senior staff meetings on main hospital sites, it is also available on the intranet. BIA triaging is challenging inappropriate urgent referrals but no evidence that MA's are (without prompting) reducing number of urgent referrals.

Triaging: To help manage referrals and develop further information around referral trends. The dedicated DoLS team have implemented a professional referral triage function where all referrals are discussed with the Managing Authorities.

Impact: Identifying incomplete / incorrect information in referrals which would undermine authorisation – incorrect dates/ not identifying criteria for DoLS, improved information provided to assessors.

- Providing advice and support DOLS and MCA, which is improving appropriateness and quality of referrals.
- Identifying when standard assessments not required i.e. discharged, regained capacity, no longer Deprived of Liberty.
- Identifying when the referral only requires a BIA which supports saving on Section 12 (s12) allocation;

- Offering advice prior to a referral – diverting need for a referral.
- Offering support and advice to other BIA's - improving quality and compliance.
- Questioning appropriateness of urgent referrals – reducing number of urgent referrals.
- Identifying when we can rely on previous assessments or where we may not require a s12 Assessor this has resulted in 42 assessments being undertaken where we have not commissioned a s12 Assessor. It is unlikely that we can progress alternative ways of reducing reliance on s12 Assessors under current legislation.

Other functions of 2 designated BIA's

- Supporting MA's not only with advice about DoLS but also with MCA, which is an additional function for DoLS Team in the absence of a dedicated MCA lead. Designated BIA's are providing a significant level of support in relation to MCA support and guidance to frontline staff.

Impact: improving compliance with MCA; staff feel more confident and have skills and knowledge to undertake mental capacity assessments/ best interest meetings. Feedback from staff is very positive, across the directorates as the two BIAs have a flexible approach to supporting frontline staff not only with DOLS but also MCA compliance.

- Supporting MA's and Community Nurse Assessors to undertake Mental Capacity Assessments where there have been complexities or colleagues have lacked confidence or experience.
- Chaired Best Interest Meetings where there have been complex issues which has aided evidenced decision making and prevented elongated disputes; avoided Court of Protection proceedings; Bringing about an earlier end to DoLS and reducing the time patients have spent in hospital
- Presentations across service areas raising awareness about process and compliance with DoLS

National and Local Networking

- BIA's are attending National Forums: NHS Wales Review of DoLS, MCA, LPS Network T & G Group; MCA/DoLS/LPS Network.
- BIA's are attending meetings with neighbouring LA's and HB's in preparation for LPS ensuring consistency of practice and utilising resources and shared knowledge.

- BIA's are forging links with colleagues across SBUHB: Have met with Lynda Rogan Mental Health Act Manager and will be meeting with Janet Williams (Head of Operations Mental Health and Learning Disabilities) with the aim of improving interaction between the Mental Health Act and Deprivation of Liberty Safeguards, (BIA's have identified risk areas such as patient ineligibility for authorised detention under either scheme, smoother transfer between authorisations, reduction in referrals which do not lead to an authorisation.
- BIA's networking with our Local Authority colleagues, leading to consistency of practice and a potentially shared resource. Consideration of reliance on previous assessments would reduce the need to commission new assessments, shared information will support transition to LPS.
- Building professional relationship with IMCA service - has resulted in improved communication and ensuring patients have support to access their Rights to review or challenge their DoLS. While under DoLS and identifying risk areas resulting in earlier resolution and reducing need for COP referrals and prolonged DoLS in hospital.

DoLS Training:

Since April 2019 around 400 Health Board staff have undertaken DoLS Level 2 training, 235 staff have undertaken the MCA Level 3 training. The BIA's have had feedback through their engagements with MA's that although the training is very informative it is very theoretical and front line staff find it difficult to relate to the theory to practice.

BIA's have provided some additional support in terms of workshops across SBUHB, (Singleton, Morriston and Neath Port Talbot Hospitals and for Community Nurse Assessors, support has been in relation to MCA and DoLS, as no dedicated MCA lead BIA's are also supporting the internal BIA's with practice groups, shadowing opportunities and 1:1 advice. BIA's have linked with corporate trainers in Swansea University regarding feedback received from MA's with the aim of amending the training to incorporate links between theory to practice to increase staff confidence and improve practice.

Future Development work

The DoLS Team have had a significant impact on the Health Boards ability to meet legal their obligations. This has resulted in audit giving reasonable assurances, there are further areas identified which need to be addressed in Q4:

- Standard Operating Process (SOP) for raising Datix incidents relating to DoLS breaches is being redrafted.

- SOP for processing payments for DoLS assessors has been drafted and circulated for comment and compliance it will be presented to PC&SCS Board in February 2020 for approval. (**Appendix 3**).
- SLA's for BIA's and S12's have been amended and circulated to relevant departments for scrutiny, it had been listed for presentation at the Safeguarding Committee but is more appropriate to be presented to PC&SCS Board, the next Board meeting is in February 2020 for approval. (**Appendix 4**)
- Access for service units to the DoLS dashboard remains an IT challenge, however, the DoLS administrator has a comprehensive database of all referrals.
- Develop a process to check MA's are implementing 'conditions' and if not, ensuring MA's are requesting a review of the DoLS.
- Continuing to work with MA's and other assessors (external and internal) to ensure patients who require a DoLS authorisation are identified and assessed in a timely manner , referrals and assessments are of a consistently high quality and we are complying with our legal obligations.
- Further work to put in place a Quality Assurance process for completed Assessments.

Ongoing Identified Risks

MA compliance: Evidence of inconsistent understanding and implementation of MCA/DoLS across the service areas, compliance and application is significantly better where ward leads have an interest in MCA/DoLS and have attended training or are BIA trained. In other areas there is a clear deficit where frontline staff are not confident or are lacking the skills and knowledge to undertake mental capacity assessments and complete best interest meetings. There is a concern particularly for future as there will be greater responsibilities on MA's when LPS is implemented.

Breaches: significant improvement in compliance but still 39% of referrals breach: wards are encouraged to submit Form 1a (providing further 7 day extension).

Theme: There is a common understanding that patients require a DoLS authorisation in order for MA's to access additional support (1:1) or access support from onsite security services: risk that this may trigger inappropriate referrals and evidence the lack of knowledge and application of the use of MCA without need for DoLS .

Undertake Impact Assessment Meeting Around Proposed Liberty Protection Standards (LPS)

There are new legislative changes moving from Deprivation of Liberty Safeguards to Liberty Protection Safeguards (expected date for implementation of new scheme is October 2020) SBUHB is between models, awaiting further guidance in April 2020 in order to determine the future DoLS team structure.

At present the Welsh government is currently working on the LPS code of practice, drafting regulations. Timescales when this will be made publicly available is spring 2020.

LPS scheme arrangements will cover hospitals, care homes; supported living, shared lives and private and domestic settings. The LPS can also provide authorisation of day centre and transport arrangements. Authorisations can also be for multiple settings built into the person's care plan.

LPS will apply to people aged 16 or over in line with the MCA 2005 (16-17 year old)

A Responsible Body will replace Supervisory body, as the agency responsible for authorising the LPS arrangements that amount to a deprivation of liberty.

There is likely to be an increase in volumes of assessment requests for SBUHB, as a consequence of care and treatment arrangements are carried out mainly through the provision of NHS Continuing Health Care, nursing homes, the responsible body will be the Local Health Board in Wales.

The LPS will have a pre-authorisation review which can be completed by either an approved mental capacity professional (AMCP), or 'some other health or care professional'. Welsh Government will set out in the regulations regarding who can undertake a pre authorisation review. As this is not normally expected to be a AMCP, unless for example the person is objecting to their care and treatment, or family, advocate IMCA raises an objection to the current or proposed care and treatment arrangements.

4. FINANCIAL IMPLICATIONS

There is no identified budget for DoLS activity, a review of the service model with other Health Boards has shown a difference in how services are funded. Considering the similar level of referrals the comparison has highlighted that the level of funding and resource available for the SBUHB Supervisory Body is significantly lower than that of other HB's and should remain under review in light of the implementation of LPS. Due to the delay in the publication of the new legislation, a business case will be submitted within the next two months with the additional resource required in order for the Health Board to meet the new legislative requirements.





Current Resource	SBU HB	HBUHB	ABUHB & Consortium (1HB & 5LA's)
Service Model	DoLS service part of Long Term Care Team Service Manager Band 8B	DoLS Service part of Long term Care team Service Manager 8B	DoLS Service currently seeking MCA support for ABUHB
Referrals	706	792	557 (ABUHB)
Coordinator role	No	Band 7	1 Band 8a
BIA	2 Band 6	4 Band 6	10 Band 6 (4 seconded from LA's) 6 HB dedicated BIAs
Administrator	1 Band 4	1 Band 4	2 - 1 Band 3: 1 Band 4
MCA Support Available in the Health Board	No	1 Band 7 and 2 Band 6	Incorporated into Co-coordinator Role
Cost Total	£111,348	£379,188	Not provided

5. RECOMMENDATION

Members are requested to note:

1. Supervisory Body will be required to exceed its financial allocation in order to discharge its obligations; currently between models due to the new legislation, further guidance expected in January 2020.
2. Support the ongoing work to reduce unnecessary referrals and the number of unnecessary urgent requests;
3. In preparation for LPS establish an LPS focus group to scope the impact and implementation for LPS including LPS objectives, costings, timescales for the training and development needs. SBUHB to identify required workforce for the new LPS and deliverables to ensure SBUHB is able to meet the new legislative requirements.

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 type="checkbox"/>
	Co-Production and Health Literacy	<input 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 type="checkbox"/>
	Partnerships for Care	<input type="checkbox"/>
	Excellent Staff	<input 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 type="checkbox"/>
	Dignified Care	<input type="checkbox"/>
	Timely Care	<input type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input type="checkbox"/>
Quality, Safety and Patient Experience		
Report highlights the importance of safe and timely assessment		
Financial Implications		
Report identifies the current financial challenges and lack of funding for Supervisory Body Function.		
Legal Implications (including equality and diversity assessment)		
Report reference the legal framework which is current and the future LPS implementation		
Staffing Implications		
Report outlines the current staffing capacity issues and identifies the potential for future staffing model to become compliant.		
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)		
Report makes reference to future legislation.		
Report History	Presented to MHA&MCA Compliance Committee in August	
Appendices	Appendix 1 provides performance information Q3 and year to 31/12/2019 Appendix 2 Audit of Managing Authorities (MAs) Processes Jul 2019 Appendix 3 SOP for Processing Payments Appendix 4 SLAs for both Sec 12 and BIA assessors	

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