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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	02 February 2023	Agenda Item	3.2
Report Title	Update on the Health Board implications and preparedness surrounding Liberty Protection Safeguards (LPS)		
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Report Sponsor	Gareth Howells Director of Nursing and Patient Experience		
Presented by	Carol Killia Head of Nursing for Liberty Protection Safeguards		
Freedom of Information	Open		
Purpose of the Report	To provide the committee with an update on preparedness for LPS (Liberty Protection Safeguards)		
Key Issues	<p>The Consultation on the Welsh Government Regulations to the Mental Capacity (Amendment) Act 2019 Act, and the UK Government new Code of Practice to the Mental Capacity Act (MCA) 2005, concluded in July. Swansea Bay University Health Board (SBUHB) responded individually, regionally with Local Authority partners and as part of an all Wales response via Public Health Wales</p> <p>Early indications are that responses will be fed back early in 2023 and at least a further six months will be required to meet legislative timescales, before implementation can progress and while no date has been provided it is anticipated that early 2024 is likely.</p> <p>SBUHB's bid for Phase 2 of Welsh Government funding was successful and £152.000 has been allocated, the guidance for use includes continued training, and a robust infrastructure to support the implementation of LPS.</p>		

	<p>In September 2022, the Health Board Quality Management Board approved with the plan to put in place an MCA (Mental Capacity Act) resource and the recruitment process has begun for some elements of this. Two Best Interest Assessor (BIA) posts were advertised and from the applications submitted it is hoped that we will be successful with this recruitment campaign. Interviews take place 23rd Jan 2023</p> <p>The Professional Development Nurse post is advertised and we have had interest from clinicians with the relevant experience so again, are hopeful of recruit.</p> <p>The administrative project manager post is a new post and currently still in HR process prior to advertising.</p> <p>Due to changes to the Managing Authority and Supervisory Body roles required under LPS, discussions have begun on where the accountability for MCA compliance and the work of the team will sit in the future. A task and finish group has been set up chaired by the Director of Nursing and Patient Experience and the first meeting took place on the 19th January. This was a productive meeting with agreement that Corporate oversight is required for this area of work and to fulfil the future requirements of the responsible body. It was agreed that there is a need for a dedicated resource with an identified lead and this work will need to continue. Two further meetings have been arranged on a monthly basis to maintain progress.</p> <p>Work is well underway on an all Wales IMCA (independent mental capacity advocate) contract and the Health Board is represented on this. The aim is to have this in place by April 2024. IMCA funding from the Welsh Government increased substantially this year to support the development of the infrastructure needed for our providers to deliver the provision that will be required under the new all Wales contract. Discussions have now begun with procurement and the current providers Mental Health matters (Wales) to support consistent IMCA provision in the interim, this has been challenging due to procurement rules.</p>			
	Information	Discussion	Assurance	Approval

Specific Action Required (please choose one only)	<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

This report is to provide an update on progress on all the relevant areas relating to preparations for the introduction of Liberty Protection Safeguards (LPS).

2. BACKGROUND

The Consultation on the Welsh Government Regulations to the Mental Capacity (Amendment) Act 2019, and the UK Government new Code of Practice to the Mental Capacity Act (MCA) 2005, concluded in July. Swansea Bay University Health Board (SBUHB) responded individually, regionally with Local Authority partners and as part of an all Wales response via Public Health Wales. Early indications are that responses will be fed back early in 2023 and at least a further six months will be required to meet legislative timescales before implementation can progress. While no date has been provided it is anticipated that early 2024 is now likely.

This may seem a way off, but the expectation from the Welsh Government is that Health Boards and Local Authorities will be LPS ready with the resource and skills required when the implementation date is announced. To support this, funding has been provided with assurance on provision up to 2025. This is to support development of our MCA resource and improve the competence of staff in readiness for the LPS.

3. Update on progress against identified concerns

3.1. The siting of the supervisory body and DoLS (Deprivation of Liberty Safeguards) processes

We have a year to put in place the correct infrastructure in place to support the implementation of LPS and following this the DoLS and LPS processes will need to be run in parallel for a further year so that all cases will be transferred from DoLS to LPS as each individual DoLS authorisation lapses.

To be able to effectively implement LPS we need to move to an MCA focus. Despite significant efforts from all the teams currently overseeing the various elements of MCA the current structures will not support the transition and there is a significant risk that without change we will struggle to implement LPS.

The Primary Care and Therapies service group are continuing to manage the DoLS backlog as creatively as possible, currently through a matrix of resource options:

- Substantive in house staff (currently one full time best interest assessor)

- Agency usage
- Overtime
- Independent BIA's

This is delivering an improved picture but the long term use of agency staff and overtime is not sustainable. It is not financially prudent and long term overtime working risks impacting on the wellbeing of staff. The Health Board is currently in the process of recruiting two more permanent full time Best Interest Assessor posts to enhance the core resource.

However, there is still no identified MCA Lead post with oversight and accountability for management of practice under and compliance with the MCA. To take forward this work there needs to be clear accountability and oversight of the MCA in practice across the Health Board. To support this, a task and finish group has been established chaired by the Director of Nursing and Patient Experience to review the requirements and agree which team is best situated to house this work. The first meeting took place on the 19th January see papers at appendix 1. A further two meetings are planned.

The Task and Finish group considered all the information provided and options available to deliver quality care in line with the legislative requirements. It was agreed that this work would sit within one of the corporate teams and a dedicated team with a MCA lead needs to be developed. The housing of this resource is still under discussion and a meeting is planned for the executive Directors of Nursing and Director of Corporate Governance to consider the way forward. Issues will include

- The Responsible Body role,
- The operational management of the MCA in practice.
- The training processes for staff across the organisation as well as
- The future management of the IMCA contract.

It was agreed that the Court of Protection work needs to form part of this with a more proactive approach to supporting front line staff dealing with complex challenges to care planning and provision.

3.2 Staff competence, training and education

Front line teams are faced with increasingly complex cases and family dynamics when it comes to decision making for vulnerable patients who lack a voice in choice and control over their care. This is evident in the problems facing our acute settings when trying to support patient flow and access to longer term care options. With no identified lead for this complex area, staff lack the support they need when liaising with families who are disputing decisions or challenging care plans.

Our workforce across the Health Board need to be supported with flexible training options to update their knowledge and skills in working with patients and service users with cognition issues.

Welsh Government funding has been used to support the Health Board core MCA and DoLS training as well as adding extra sessions to support the application of the MCA in every day practice and to improve confidence in assessing mental capacity. With the changes to practice under LPS, front line staff will be expected to have the knowledge and skills to undertake the required mental capacity assessment. This will be a challenge and so in addition to increased formal courses there will be a need to support staff in clinical areas, with information and guidance on MCA in practice.

All Health Boards have been requested by Welsh Government not to procure or provide specific training on implementing LPS until an all Wales training pack is developed and launched. The Health Board has been involved in the development and procurement process for this. The roll out of this training fulfil the organisational responsibility for LPS training and an agreed resource will be required to support implementation once this is launched. It is anticipated that this will be rolled out prior to the implementation date. Current funding is being used to develop a time limited post to support this and work with front line staff in clinical areas.

3.3 Court of protection cases

The management of access to legal advice on MCA issues and applications to the Court of Protection is an increasing issue. Legal services and advice are either being accessed too early on, or not accessed in a coordinated way. Documentation to support Court work is not always at an acceptable standard, leading to re requests and so delaying decision making for vulnerable patients. There appears to have been an increase in the number of court ordered reports and the standard of documentation required to complete these is challenging. Some reports run in excess of 6000 words and can be complex and require precision and accuracy. There is no agreed resource for this and delays are often due to agreeing who will undertake this. Locating professionals with the required skills is a challenge.

Oversight of elements of this work currently sit with the Corporate Governance team but there are cases across many of the service groups, which are dealt with by the local Governance teams and there is currently no resource allocation to support the coordination of this. This is an organisational risk as there is no way of identifying the number of cases in play across the organisation at any given time.

3.4 Management of the Independent Mental Capacity Advocacy (IMCA) provision

The IMCA contract is funded by Welsh Government out of which the HB has the duty to provide services for the region, this includes the Health Board and the two Local Authorities. The amount of funding has had no uplift for a significant amount of time and this has led to other contracts being commissioned to manage the demand for advocacy under the MCA. These are Responsible Persons Representative (RPR) contracts held separately by the Health Board within the Primary Care Community and Therapies Service Group, Swansea and Neath Port Talbot Local Authorities, with our current providers Mental Health Matters (Wales).

There has now been a recent uplift in funding from the Welsh Government to support the implementation of LPS and the need to increase the IMCA resource. This has caused challenges for Health Board procurement teams as to increase finance within an extant contract is not possible within the current procurement rules. There is a need to alter the contract which owing to the amount of funding allocated, should result in a multi-tender bid opportunity for providers. However, as the providers are already involved with the all Wales contract this would cause confusion and so a single tender agreement is being processed. The interim contract needs to include increased one off spends to support the development of the providers' infrastructure to meet the demands for LPS once introduced but managing this in the interim 2023 /24 year has been challenging and work is still ongoing with procurement, finance and the providers.

4. GOVERNANCE AND RISK ISSUES

An audit was undertaken early October 2022, across all the service groups. While it only included small numbers due to the limited resource in the team to undertake the work, it identified a lack of understanding of the MCA and Dols processes among our front line staff, with patients being documented as lacking in capacity but not referred for DoLS authorisation. This places the Health Board open to challenge of unlawful Deprivation of Liberty and demonstrates the need for increased support in practice for staff and a clear pathway for advice and support for issues relating to MCA.

The Health Board remains at risk of challenge of human rights breaches if people are deemed to be being held against their wishes and the Health Board is unable to manage DoLS applications within the agreed timescales. While everyone involved with the elements of the MCA have been committed to managing their component the lack of cohesion and accountability is leading to non-compliance issues. This is primary legislation with court penalties that could have significant financial and reputational risk.

Once a model for the structure and siting of the MCA team is agreed, and with an MCA lead in post, work can begin to build the stability and expertise required for the staff competence for LPS and court of protection work, which would reduce the current risk.

5. FINANCIAL IMPLICATIONS

In 2022 WG allocated £254,000.00 in two phases:
£102,000 in phase 1 and £152,000 in phase 2.

The phase 1 allocation was intended to support MCA refresher training and reducing the backlog of DoLS applications.

Phase two was to continue to help with the backlog of applications but also to enhance the resource with additional roles and bespoke training to ensure the HB is LPS ready.

Due to the timescales for the recruitment to the posts, we are projecting an underspend this financial year, this has been reported back to Welsh Government as requested.

Welsh Government has informed the HB that the funding allocated for 2022 will continue up to 2025 and the future allocation is expected in the near future.

5. RECOMMENDATION

The committee is asked to note the progress made and ongoing work.

Governance and Assurance		
Link to Enabling Objectives <i>(please choose)</i>	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		
<i>(please choose)</i>	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	<p>Need for a future dedicated MCA team as outlined above.</p> <p>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.</p>
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)	<p>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.</p> <p>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.</p>
Report History	Mental Health and Legislative Committee May 2022
Appendices	