

Health Board Management of Liberty Protection Safeguards and the Mental Capacity (Amendment) Act 2019

Appendix 3.

Identified Risks related to Mental Capacity (Amendment) Act 2019

Risk 1.

The use of the MCA assures the Board that the Human rights of patients and people we provide services to are being upheld. It is a key piece of legislation and the lead role for this was not replaced following the retirement of the post holder in 2017. 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. Increasingly families are being contacted by legal professionals to query if due process has been followed.

With the lack of a dedicated lead, and team in place the various elements outlined are not being managed or monitored adequately and so there is no assurance that the Health Board will not receive increasing legal challenges in this area such as we have seen previously in relation to CHC management. This is in contradiction to the Mental Health Act which has a dedicated team in place.

Risk 2.

The lack of BIA's in post will also present a challenge to implementation of LPS. Training. The AMCP conversion courses is expected to be between 2 to 4 days via a short conversion route for existing BIAs, exact details are yet to be finalised by UK and Welsh Governments. The AMCP accredited route is yet to be agreed but is looking likely to be an academic based route provided by university with agreed accredited studies required, while details have not been finalised at this point from UK & Welsh Governments, it is likely to be a longer commitment than the conversion course, therefore most Health Boards are ensuring adequate numbers of BIA now to reduce the gap going forward. This is a specialist area of work and identifying individuals is not easy Swansea Bay is at risk of not being able to transfer to LPS as it does not have the necessary infrastructure in place by the time it goes live even with the current projected timescales being a year away.

Risk 3.

With the introduction of LPS it is likely that the workload relating to MCA will increase with the need to cover primary and community settings as well as young people aged 16 and 17. Also with the ceasing of the BIA role two of the three required assessments will need to fall to front line staff and embedded into everyday practice. This coming after a pandemic and difficult winter for our front line staff in all areas will be a challenge and there is a need to ensure one team can support with advice expertise and tailored training.

Risk 4.

Much of this work has evolved and is managed piece meal this has led to dispute and discord between various service delivery and corporate areas as to responsibility both financial and operational for work arising under the MCA.

This can lead to prolonged delays in case resolution and court of protection processes with shared services legal teams being left ill prepared for court appearance and service users unable to progress through the care pathway in a seamless manner. Court penalties for these breaches can be substantial. The lack of clear process and resource for Court of protection work leaves the Health Board vulnerable to current challenge by the courts but also there is no progress to developing expertise within the teams to support the improved management of consent and capacity supporting the prevention and de-escalation of disputes or the prompt management of complex consent and capacity matters.

Risk 5.

Elements such as IMCA and RPR services have not been adequately reviewed and renewed in the past and so there is no assurance for the Board with regards to value for money or quality of service. All Health Boards across Wales will be looking to access increasing support from providers which if we are not prepared could lead to delays due to lack of access to IMCA services in the future.

Risk 6.

There is currently no agreed budget for the level three training required for all clinical staff dealing with capacity concerns across the Health Board and the whole structure is under resourced and not robust, this is likely to lead to further backlog and challenge from WG that the Health Board has not prepared adequately for LPS as expected. Monies allocated were to enhance the established service to support the changes but without the core infrastructure Swansea Bay is unlikely to be able to make the transition to LPS when required to do so. The WG will be providing a training package which it will expect to be delivered across the HB and currently there is no training