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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	03 November 2022	Agenda Item	3.2
Report Title	Update on the Health Board implications and preparedness surrounding Liberty Protection Safeguards (LPS)		
Report Author	Carol Killa Head of Nursing for Liberty Protection Safeguards		
Report Sponsor	Gareth Howells Director of Nursing and Patient Experience		
Presented by	Carol Killa Head of Nursing for Liberty Protection Safeguards		
Freedom of Information	Open		
Purpose of the Report	To provide the committee with an update on LPS		
Key Issues	<p>The Consultation on the Welsh Government Regulations to the MCA (A) 2019 Act, and the UK Government new Code of Practice to the MCA 2005, concluded in July. 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 in December 2022 and a further six months will be required to meet legislative timescales, so an implementation date is likely to be Autumn 2023. The expectation is that the Health Boards and Local Authorities will be LPS ready with the appropriate resource and skills available to meet the demand.</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 the Health Board Quality Management Board approved with the plan to put in place an MCA resource and the recruitment process has begun for some elements of this.</p>		

	<p>Discussions have begun on where this team will sit and a task and finish group will be led by the Nurse Director in Q3 to agree the way forward for all aspects of LPS introduction.</p> <p>IMCA funding has also increased substantially but this will be to manage the IMCA and RPR work for the Health Board and both Local Authorities. Work is now beginning with pattern agencies and our current providers to scope out the workload to ensure prudent use of the funding going forward.</p>			
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

There is still no agreed date for implementation, but indications are that responses to the consultation are likely to be fed back in December 2022 and a further six months will be required to meet legislative timeframes. This gives a likely date for implementation post autumn 2023.

Whilst this may seem a way off, the Welsh Government are providing funding with assurance on provision up to 2025, with the expectations that Health Boards and Local Authorities will be LPS ready with the resource and skills required when LPS is launched. Work has also begun to agree and commission Wales wide training in readiness for the introduction.

Consultation

The consultation closed on the 14th July 2022 and Swansea Bay responded within the timescales. The Health Board also responded jointly with Local Authority partners for a regional response and in partnership with the other six Health Boards for a Public Health Wales led response.

3. Update on progress against identified concerns

3.1. The siting of the supervisory body and DoLS processes

At the Quality Management Board in September it was agreed to use the WG funding to increase the Health Board resource and develop an MCA team with a dedicated MCA lead. Discussions have been held as to where this team would be best sited and the Nurse Director will chair a task and finish group of senior leads in Q3 to consider options and agree the way forward.

3.2 Staff competence, training and education

WG funding has secured the extant Health Board MCA / DoLS training for 2022/2023. It has also supported the development of bespoke training commissioned from Swansea University, this will upskill staff on applying the MCA to practice with capacity assessments. This has been commissioned on a rolling bi monthly basis to support the release of staff in smaller numbers for busy ward areas to undertake training via teams.

Work is now underway to procure bespoke training for the children's service areas for the application of LPS for 16 to 18-year-olds as this is a new requirement for staff under LPS.

3.4 Court of protection cases

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. Currently the demand for this is falling to the DoLS team lead and so a training lead post will be put in place to support the upskilling of champions for this niche area of work across the ward and service group areas.

a. **Management of the Independent Mental Capacity Advocacy provision**

The Health Board has been allocated a substantial uplift in funding and is in discussions with the two Local Authority partners and the Providers (Mental Health Matters wales) to plan the resource required. All elements of the advocacy work related the MCA, will be brought together under the one contract held by the Health board to provide IMCA, RPR and Litigation Friend services for the area.

This is challenging due to the increased workload likely to arise from the extension for LPS in the community domiciliary and residential care settings. This did not apply with DoLS and so numbers are being collated across all Health board service areas and Local Authorities, to plan the best way to increase the resource in a safe and timely way ensuring the funds are used in the most prudent way.

b. **The authorisation of DoLS applications**

This continues to be managed within the Primary and Community Care Service Group and is being supported by use of Welsh Government funding allocation to fund increased hours and overtime payments to meet the demand for authorisation and sign off. This will continue and forms part of the Health Boards plan for use of WG funding.

c. **RESOURCE**

The Quality Management board met in September and agreed the use of WG funds to develop MCA resource require to support the implementation and ongoing management of LPS.

The BIA resource will be increased with the addition of two further Best Interest Assessors (BIA's)

A senior administrator post is planned to support the development of management systems for LPS / MCA, the coordination of the oversight of all elements of the MCA, and to support the future management of training for LPS / MCA.

A Nurse training post will provide ward and unit based support to upskill staff competencies in relation to capacity assessment, documentation in relation to court requirements and LPS / MCA practice. It will also support the development and implementation of WG training across the Health board.

Future band seven posts are being considered to lead on operational LPS practice and to provide the expertise and support required for all Governance teams in relation to MCA and Court of Protection issues.

However, these will need to be considered alongside the need for the future roles required under LPS such as the AMCP, the preauthoriser and authoriser roles.

d. BACKLOG

This has been managed and reduced by Primary Care Community and Therapies Service Group using agency BIA's using 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.

e. WELSH GOVERNMENT FUNDING

The Health Board was allocated the further £152,000 from the phase two funding bid and with the £102,000 from phase one has been a substantial allocation for the Health Board. With the assurance that funding will continue at the same rate as a minimum for 2022/23 and 2023/24 there is an expectation that resources will be enhanced to manage the implementation of LPS.

In SBUHB the Quality Management Board agreed the use of WG funding to put in place a MCA team resource with an MCA lead.

Discussions have begun to agree the siting of the team within the corporate structure and the Director of Nursing will chair a task and finish group of senior leads later in the month, to agree this and plan a way forward.

Funding has also been allocated for ongoing training for all staff, bespoke training for the children's service areas and continued use of agency staff and overtime payments to support the ongoing DoLS practice required until the resource is recruited and functional in post.

4 GOVERNANCE AND RISK ISSUES

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.

The increase in Court Ordered reports and the limited numbers of professionals deemed competent to deliver them gives rise to inefficient use of legal services and the risk of Court penalties leading to financial and reputational risk.

We continue to have 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.

If we fail to build the resource, we require with the funding allocated it is unlikely that WG will consider any permanent uplift in funding for the ongoing long term management of LPS once it is introduced.

The risk of issues arising due to the fragmentation remains, once a model for the structure and siting of the MCA team is agreed, work can begin to build the stability and expertise required for the staff competence, LPS and court of protection work.

5 FINANCIAL IMPLICATIONS

WG has said that the funding allocated for 2022 will continue up to 2025. If the same amount is allocated for each year combined with the current resource for DoLS it gives an income as outlined below. The shortfall of £64,578, will be managed in the short term due to delay caused by recruitment timescales and future years will be reviewed against the impact the team has on the efficiency of MCA managed in our care settings.

MCA Lead	B8a	63,952
CoP work lead LPS / DoLS Lead	B7 x 2	115,074
Best Interest Assessor	B6 x 4	195,220
Administrator	B4 x 2	61,348
Total proposed spend		435,594

Expenditure

COSTS	RESOURCE
Cost of proposed resource: £435,594	Current DoLS team funding: £137,016
MCA / DoLS Training: £20,00	WG Funding: £254,000
£455,594	£391,016
Outstanding £64,578	

It is unlikely that all posts will be filled in this financial year.

Further discussion on the format of the AMCP role mean that recruitment of the band 7 posts will need to be delayed until the final model is agreed.

6 RECOMMENDATION

The committee is asked to note the progress made and ongoing work to support this element of healthcare.

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		
<p>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.</p>		
Financial Implications		
<p>Current budgeted resource Band 7 DoLS Lead Band 6 Best Interest Assessor Band 4 Administrator</p> <p>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</p>		
Legal Implications (including equality and diversity assessment)		
<p>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.</p>		
Staffing Implications		
<p>Need for a future dedicated MCA team as outlined above.</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.

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