2021-05/19-01

19 May 2021

Health Committee
New Zealand Parliament

Tēnā koe

Mental Health (Compulsory Assessment and Treatment) Amendment Bill, new sections, s34(A-D) and s53(A).

Tōpūtanga Tapuhi Kaitiaki o Aotearoa, New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment to the Health Select Committee on the Mental Health (Compulsory Assessment and Treatment) Amendment Bill (the Bill).

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand, representing 51,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment matters. NZNO embraces te Tiriti o Waitangi and contributes to the improvements of the health status and outcomes for all Aotearoa New Zealanders through influencing health, employment, and social policy development. Furthermore, we share the intent of the Ministry of Health's definition of equity which equally applies to NZNO work across professional, industrial and member activities.

NZNO has consulted its members, including the Mental Health Nurses Section (MHNS), Te Rūnanga o Aotearoa, NZNO (Te Rūnanga) and policy advisors in preparation of this submission. Overall NZNO supports the amendments and the intent of the Bill. This includes the provisions to:

- provide protection of individual human rights for patients' safety, care, and informed consent, in particularly pre and post COVID-19 pandemic response
- minimise the risk of harm to forensic patients (special patients)
- clinical supportive specialists and staff during transportation of patients, and
- ensure family members or caregivers subject to geographical limitations are able to participate in a patients' assessment examination, via audio or video link.

While we support the Bill, we wish to raise our concerns about the government's role in active protection and in facilitating the clinical and wellbeing management of the compulsory assessment and treatment orders.

As health professionals and specialist in health care, we strongly advocate for any systemic change that seeks to evolve, upgrade, and improve the public health care system. Furthermore, to inform best practice approaches to health and wellbeing and the delivery of health care services in Aotearoa New Zealand across its diverse communities. Upholding the standards and duty of care is paramount. Therefore, NZNOs consideration of the practical application and endorsement of the Bills new provisions have been carefully examined and considered at a patient and workforce specialist level.

As Māori health professionals, Te Rūnanga are aware of the importance of Kaupapa Māori services to support Tāngata whaiora in the pursuit of hauora, wellbeing and waiora. In addition, wellbeing is significantly impacted by experiences of inequity, racism, and poverty, all of which need to be addressed at an individual and whānau level. Te Rūnanga agree that it is not fair or just that Māori are overrepresented across all mental health service delivery and have poorer outcomes (Rangihuna, Kopua & Tipene-Leach, 2018; He Aranga Oranga report, 2018; Gassin, 2019). Te Rūnanga also acknowledge those experts working in mental health, including marae based Whānau ora providers and services supporting the wellness and care of whānau wellbeing. Additionally, we would like to acknowledge all those tangāta whaiora (patient current and past) who have contributed their shared lived experiences to best inform the provisions of this Bill.

NZNO supports the intent of Bill to better align to addressing the admissions and facilitation of patients subject to compulsory treatment orders as recommended in *He Ara Oranga Government Inquiry into Mental Health and Addictions*[1] and raised by the United Nations Committee on the Rights of Persons with Disabilities (CRPD), who both criticised the inconsistency of the Mental

[1] HDC 2018. *New Zealand's Mental Health and Addiction Services: The monitoring and advocacy report of the Mental Health Commissioner.* Auckland: Health and Disability Commissioner. www.hdc.org.nz/resources-publications/search-resources/mental-health/mental-health-commissioners-monitoring-and-advocacy-report-2018

Health Act[2], that did not align with human rights principle approaches and provisions of therapeutic care. NZNO supports the recommendations of the MHNS submission which clarify and support the proposed changes of the Bill.

NZNO agrees that the Bill must be responsive to previous recommendations raised by health professionals and public (including those forensic patients who have been subjected to the current legislation provisions of care). NZNO supports the work of Health Quality and Safety Commission to raise awareness of archaic provisions of seclusion in legislation and the importance of consumers voices. This work has led to a wider response, championed by the District Health Boards and the mental health sector to join the national 2020 collaborative campaign, Towards Zero Seclusion (TZS). The purpose of the campaign focused on training techniques in Safe Practice Effective Communication (SPEC),[3] much of this effort ultimately led to a national call for action from the sector to government, to make drastic changes to the Bill to reduce powers of coercion and enforced treatment.

Further, NZNO supports the development of clear clinical guidelines to provide safety for tāngata whaiora, the public and health professionals that focus on creating a supportive clinical best practice approaches to safety and care, managed by clear guidelines to promote inclusive decision-making to minimise the severity of any compulsory orders. It is not acceptable or fair that the safety of health consumers seclusion powers be left to the appetite of the government of the day.

NZNO agrees that the Bill now incorporates recommendations that allow for practical considerations to better align to the Bill of Rights Act 1990, Human Rights legal instruments, international treaties such as CRPD, and Te Tiriti o Waitangi (te Tiriti) under collective duty of Mental Health and Wellbeing Commission Act 2020[4]. This includes addressing and promoting stewardship of te Tiriti that recognises and respect the Crown's responsibility to take appropriate action and account of te Tiriti, with a view to achieving better and equitable mental health and wellbeing outcomes for Māori.

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[2] https://www.mentalhealth.inquiry.govt.nz/assets/Summary-reports/He-Ara-Oranga.pdf

[3] Health Quality and Safety Commission New Zealand. 2018. New projects seek to eliminate seclusion and improve service transitions for mental health consumers (web page). www.hqsc.govt.nz/our-programmes/mental-health-and-addiction-quality-improvement/news-and-events/news/3162/ (accessed 17 October 2018).

[4] https://www.legislation.govt.nz/act/public/2020/0032/latest/whole.html#LMS281167

The role of equity and prevalence of Māori impacted by mental health, does raise the question about how the government must apply specific culturally appropriate services and cultural safety for tāngata whaiora, their whānau and the health workforce who have the duty of care.

NZNO is not complacent that addressing this legislation in isolation will not lead to immediate effective wider systemic change. However we do anticipate that the government actions must apply recommendations submitted by the sector, health professionals, public and those patients with relative forensic lived experiences to inform any systemic changes to our public health and wellness clinical models of care and legal instruments.

The following specific member feedback compliments and supports recommendations raised in the MHNS submission.

Clause five, section nine - Provision to enable a family member, caregiver or other person concerned with welfare of the patient to be present by audio or visual link (if geographically bound) for the purpose to hear and witness the delivery of an assessment examination is explained to the patient.

Recommendations

- If contact with designated family member at the time is unsuccessful. What is the administrative follow-up process relating to time in terms of response and call back.

- Will there be a 24-48 hour and/or days stand-down period until contact can be made.

- Please explain the types of support that will be provided to the patient during this period of stand-down.

- Is a designated caregiver put on standby, and how is this information explained to the patient before and at the time of when non-contact is established.

- For the audio and video link, will the technology be compatible to all product devices and digital

technology. Particularly, as mobile phones may be the safer and more accessible option for family and whānau to access.

- What will be the education and technology literacy support provided to those family and whānau members accessing the audio and visual link. Particularly as there are number of rural and isolated communities with whānau who have little to no access to online digital services.

- Suggested wording provided by MHNS includes rephasing the following sentence within the clause. "For the purpose of subsection (2)(d), a family member or caregiver of, or other person...and such audio or visual link can reasonably be facilitated in the circumstances"

Clause seven to eight, section 34A-34D - Eliminate indefinite treatment orders, and allow a compulsory treatment order to be extended for 12 months.

Recommendations

- How have you considered the impacts of current limited resourcing to cover the capacity and capability of the workforce. Particularly those working in specialty care and expertise. The sector is under resourced and overwhelmed, considering the level of detail and clinical assessment involved in making the best-informed decision for the patient recovery, safety, and care assessment plan.

- It is important that the sector is provided with workplace professional development and upskilling options to ensure future appointments include those experts in forensic mental health.
- When will these standards of professional practice be included in options for staff professional development. We anticipate this will need to go through NCEA and tertiary accreditation process, which we would advocate for.

- We would also recommend you consider along with the forensic mental health practitioners that kaimahi hauora peer support staff are included in the wider care support plan. Particularly those kaimahi who come with forensic lived experiences (patients who enter into support care systems, but since become trained in health care) to share their stories.

Recommended wording from MHNS for section

- 34A (2) includes. The responsible clinician shall take into consideration any request from the patient to remain on a compulsory treatment order – and this shall be documented by way of a renewed informed consent to compulsory treatment. The patient shall be given the opportunity to consult with an approved lawyer per s. 70 of the Act before signing any consent form. Documentation as under s. 59(2)(a) of this Act shall apply with any necessary changes.

- 34A (4) includes. In determining the application, the Judge must give effect to any request from the patient to remain on a compulsory treatment order per 34A(2)(i).

Clause 9, section 53A - Minimise the risk of harm to forensic patients or the public by permitting the use of restraints and force on those patients, on a case-by-case basis, during transport to hospitals, medical clinics, and/or court.

Recommendations

- We ask that as part of the transport management plan that all authorisation of use of restraints for transport comply not only with the Health and Safety standards of the transport safety.

- These need to consider some form of formal training for those staff applying the restraints, as this is likely to be a non-professional health support security person. They of course are not privy to the full special patients' health and medical history.

- As outlined in the codes of practice and ethics, it is important that staff are at some length are appropriately trained to consider the needs and triggers that a mental health patient might present during any moment of care under the care of the state.

- How will workforce competency be addressed in future proofing a system that ensures those working in this particular sector, can manage the high needs of patient in special care, and is an informed consent sought prior to any inaction between those particular workforce and patient.

- Further while those applying the restraints do not require practitioner's mental health expertise. We would recommend some form of mental health wellbeing information training session is endorsed for those staff only providing short-term security and safeguarding to those practitioners, kaimahi, and patients involved during this transportation process. This ensures a wider whānau-centered approach is applied to assure the holistic safety of the special patient and all those involved is met. Which is consistent to the human rights mechanism of protecting the rights of all parties, subjected to provisions of state intervention.

Clause 13, section 2(1). Amendment to the interpretation section of the Bill to define what a mental health practitioner means.

Recommendation

- As stated mental health practitioners refers to either a medical, or nurse practitioner or registered nurse practicing in mental health, or deemed to be registered with the "Nursing Council of New Zealand by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of professional nursing…of mental disorder…"; and holds a current practicing certificate.

- We are concerned that for many medical and nurse practitioners supporting the patient may not have experience or expertise to provide the required clinical mental health support. Particularly, as their scope of practice sits outside the required clinician expertise but satisfies the practicing certification requirement. How will this be managed.

- Recommendations by MHNS have advised that all medical and nurse practitioners have exposure to and if applicable trained experience in mental health. This will enable them to have the ability to conduct a brief mental status examination assessment, that supports the authorisation made to the Director of Area Mental Health Services under section 34(B).

- Is there a suggestion to include a regulatory sanction that devolves all responsibility to the Director of Mental Health to be obligated under the act to apply appropriate standards of practice and resourcing for training to ensure we have a fully trained and experienced mental health workforce.

In conclusion, please note our extensive previous submissions to the Committee on the kaupapa of health and wellbeing of tangata whaiora, their whānau and the mental health and wellbeing workforce. Please note that we do not wish to make an oral submission. We thank you for the opportunity to provide feedback on the Bill. Ngā mihi nui ki a koe.

Nāku noa nā

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