

Mental Health Commission welcomes safeguards for involuntary patients during Covid-19 crisis

Temporary emergency legislation will ensure continuation of review process for those involuntarily detained

The Mental Health Commission has strongly welcomed the introduction of new emergency legislation that will help to ensure the continuation of the independent process to review all people who have been involuntarily admitted to an approved mental health centre.

For the past 14 years, all people who are involuntarily detained have had the right to have their detention reviewed by what is known as a 'mental health tribunal' within 21 days of the making of the admission or renewal order detaining the person. The tribunals are independent and the reviews exist to protect patients' rights. Stringent requirements exist in the legislation and the Mental Health Commission carefully adheres to these statutory requirements.

The current COVID-19 pandemic had created the potential for the failure of the current mental health tribunal procedures due to pressures and necessary restrictions on our health services and/or the unavoidable absence of tribunal panel members.

"The situation regarding COVID-19 is constantly evolving," said the Chief Executive of the Mental Health Commission, John Farrelly. "This is a new and unprecedented situation for us all. The Commission acknowledges the extraordinary pressure on health services at present and the importance of physical distancing measures. However, as is the case with providers, our priority remains the safety and wellbeing of service users, including those who are involuntarily detained."

"With all this in mind, we have collaborated with the Department of Health and the HSE to draft emergency legislation to provide an alternate format for mental health tribunals which continues to ensure a person's right to due process and freedom from arbitrary detention."

To this end, an emergency process has been identified which will vindicate patients' human rights by ensuring that all involuntary detentions are reviewed and that appropriate clinical oversight, legal representation and independent scrutiny continues to be provided. The Department, the HSE and the Mental Health Commission have been mindful of the importance of the clinical input at various stages of the process.

"This new legislation will protect the human rights of any person involuntarily detained and ensure that their detention is reviewed under the 2001 Mental Health Act during this crisis," added Mr Farrelly. "It also takes into account government policy, essential health advice on social distancing, and the severe strain currently being placed on the health service."

"The Commission believes that these processes will ensure that there is no infringement of the person's dignity and autonomy, and their rights to bodily integrity, health, due process and freedom from arbitrary detention are maintained. The temporary legislation will be repealed as soon as the crisis passes."

The Commission shall be issuing a guidance notice to all relevant parties, while a separate leaflet will be provided for patients to explain what is going to change for them and a number of associated documents were required to be updated to reflect the new process.

As a result of the emergency legislation, and in line with 2019 and 2018 figures, approximately 600 involuntarily detained patients may be affected by these changes over the next three months.

Meanwhile, the Commission issued a follow-up notice to all approved mental health centres this week that dealt with the Commission's regulatory response to COVID-19, including changes to standard procedures.

The notice will help clarify matters in relation to the new COVID-19 notification form - which was introduced to ensure that each centre notifies the Commission of any confirmed or suspected cases of the virus – while it also requested that each centre give assurance to the Commission that contingency plans have been put in place.

Earlier this month, the Commission confirmed to centres that all routine inspections of approved centres were suspended until further notice, while the publication of inspection reports will also cease temporarily.

“While we have made clear that services must continue to comply with the rules and regulations of the 2001 Act, we understand that they may need to apply a risk-based approach to the implementation of standards relating to quality, given the current situation,” said Mr Farrelly.

“The situation we all face is extremely challenging and we will endeavour to work with the centres we regulate to ensure that patients and residents remain safe and well. By working together, while at the same time being realistic and fair, we will help protect people who are amongst those most at risk in this crisis.

“I would like to acknowledge the efficient work and co-operation of all the health services, civil servants, our elected representatives, the Commission members, our staff and the advice of Professor Brendan Kelly of Trinity College Dublin in swiftly prioritising people who may suffer from mental illness during this crisis.

“We will continue to work closely with our colleagues in the HSE and Department of Health to support national efforts in response to the outbreak of COVID-19.”

Ends

Notes to the Editor:

About the Mental Health Commission

The Mental Health Commission is an independent statutory body. The primary functions of the Mental Health Commission are to foster and promote high standards of care and good practice in the delivery of mental health services and to ensure that the interests of those involuntarily admitted are protected,

pursuant to the Mental Health Act 2001. The Mental Health Commission also has statutory responsibility for the Decision Support Service under the Assisted Decision-Making (Capacity) Act 2015.

Mental Health Tribunals – emergency legislation

Under our current law, a mental health tribunal is convened with 21 days to review and decide on all involuntary detentions. The detained person is appointed a solicitor; he/she has a report prepared by an independent consultant psychiatrist; and he/she is entitled to attend the tribunal. Under the emergency legislation, all of these key protections will remain in place.

The new Act provides for certain changes as follows:

- It is anticipated that during the public health emergency, it may not always be possible to convene a three-person tribunal. When this arises the Mental Health Commission is authorised to appoint a lawyer from its existing panel of tribunal chairs to act as a one-person tribunal. He or she will review the same documentation as the three member panel. In addition, if this one-person tribunal requires it will have access to an independent psychiatrist for further guidance in relation to certain specific matters (for example, if there is conflict between the independent consultant psychiatrist and the treating consultant psychiatrist).
- The independent consultant psychiatrist can carry out the examination of the patient remotely.
- If the treating consultant psychiatrist is not able to attend the tribunal hearing then he/she shall be required to submit a report within a day of the tribunal hearing.
- A tribunal has always been allowed to adjourn a hearing twice. It may now do so on its own motion if satisfied that this is required due to the public health emergency and having due regard to the interests of the patient.
- If a patient's order is revoked before he/she has his/her tribunal hearing, they can still ask for the tribunal to proceed but in the current emergency those cases will not be given priority.
- Certain amendments have been made to the powers of the tribunals to ensure flexibility now that the tribunal hearings will be conducted remotely.

The detained person will continue to be kept fully informed at all stages of the process.

Of note is that there is no amendment to the grounds or process for a person's involuntary admission to an approved centre and no extension to the permitted duration of detention orders. These emergency measures will be kept under review.

The Act is due to come into effect on 30 March and will last only as long as the current COVID -19 emergency and not longer than 9 November 2020.