

Issue Brief: Mental Health Act Consultation

7 February 2018

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MENTAL HEALTH ACT REVIEW:

The Mental Health Act was last amended almost 20 years ago in 1998. Since then models of care and methods of treatment have advanced significantly. As a result, the Ministry of Health established a Steering Committee to oversee a review of this legislation. A phased approach to amending the legislation was deemed necessary to ensure urgent priorities are addressed first followed by a complete review of the Act.

A Project Team of key stakeholders researched the identified issues and, with input from the Steering Committee, made recommendations for policy and legislative changes to address the major urgent gaps.

PROPOSED CHANGES:

The urgent areas being addressed in this phase of amendments are:

1. Role of the Nearest Relative for patient admission
2. Establishment of Community Treatment Orders
3. Ensuring Consent to Treatment is obtained
4. Requirements to define and determine Mental Capacity

A summary of each proposal is on page 2. The proposed recommendations are modelled on the United Kingdom's Mental Health Act, the foundation of Bermuda's legislation, and incorporates aspects of United Kingdom's Mental Capacity Act 2005.

CONSULTATION PROCESS:

Stakeholders' views on the proposals are invited at this time (see side bar on How to Respond). The consultation period closes on **Feb 28th 2018**. Stakeholders are asked to address the following questions for each recommendation in the consultation paper:

1. Does your organization agree with the recommendation as outlined?
2. What concerns (if any) does your organization have with the recommendation outlined?
3. What changes does your organization suggest be made to the recommendations that will address the concerns you have noted in question b?

HOW TO RESPOND

1. Respond to questions in Section 5 of the paper (also on page 1 of this Issue brief).
2. Send response by **28th Feb 2018**:
 - Online at <https://goo.gl/forms/gpWJs4Pbg1GM7Btl1>
 - Email enquiries or responses to moh@gov.bm
 - Written enquiries and responses can be mailed to:
Attn: MHA Consultation Submissions, Ministry of Health Continental Building, 25 Church Street, Hamilton, HM 12.
3. Response must include your name and state if you are a business, individual or representing an organisation. In the case of an organisation, please indicate the number of people you are representing.
4. Do not send consultation responses to the Minister. All views and responses must be considered in the public consultation process.
5. Information provided in response to this consultation may be discoverable in accordance with the Public Access to Information Act.

Paper copies of this document may be obtained free of charge from the above address.

This document can also be accessed from our website at www.gov.bm/health-public-consultations.

OVERVIEW OF PROPOSED CHANGES

1. Role of the Nearest Relative for patient admission	Develop a Code of Practice to provide guidance to mental health professionals on admission processes of patients to hospital. This Code will require the Mental Welfare Officer to sign the admission forms upon consultation with the Nearest Relative. This removes the practice of the Nearest Relative signing the admission form which can result in non-admission due to the nearest relative's fear of damaging their relationship with their loved one. This proposal is the current practice in the UK.
2. Establishment of Community Treatment Orders	Introduce provisions under the Act for Supervised Community Treatment in the form of Community Treatment Orders ("CTO"). CTOs enable mental health professionals to treat patients granted leave from the hospital for extended periods of time. This amendment will enable conditions to be set for patients to live in the community (such as continuation of medication) while also improving legal safeguards to protect the rights of the patient.
3. Ensuring Consent to Treatment is obtained	Establish safeguards under the Act for patients regarding Consent to Treatment. The Act currently does not provide legal safeguards for patients who either cannot consent or refuse to consent to treatment. Provisions for Consent to Treatment recommended will apply to all detained patients whether in hospital for treatment or living in the community under the CTO provisions proposed.
4. Requirements to define and determine Mental Capacity	Introduce provisions under the Act for determining Mental Capacity. A patient cannot consent to or refuse treatment unless they have the Mental Capacity to do so. The Mental Capacity provisions recommended will define a person who lacks capacity, outline a framework for assessing whether a person is unable to make a decision and therefore lacks capacity, and ensure decisions taken for those who lack capacity are done so in that person's best interests.