FAO of all members of Seanad Éireann re

Seanad 2nd Stage

Mental Health Bill 2024 - Adults Only

It is essential to note that the Mental Health Bill 2024 is a specialist piece of legislation intended to provide for the treatment of a very specific cohort of vulnerable persons i.e. those with severe mental illness, who have temporarily lost their insight due to the severity of their illness and require admission and treatment on an involuntary basis. This represents a **very small minority** of those who will ever become mentally ill or attend a psychiatric service. It is absolutely necessary to have strong legal protections in place to protect the rights of this vulnerable cohort; but this legal framework should not prevent or delay treatment or further stigmatise an already, and sadly often, marginalised group of people.

Ideally the governance of all other aspects of psychiatric care should be no different to that of all other medical care. Clear distinction needs to be drawn between severe mental illness needing emergency treatment without consent, severe mental illness in general, mental illness and psychological distress. These represent points along a continuum. Psychiatric services are intended to treat moderate to severe mental illness only, and this legislation, as previously stated, is intended for the small minority of those who will become unwell enough to require treatment without consent; and that usually is on a temporary basis. Mild mental illness and psychological distress are more appropriately dealt with in primary care.

The proposed amendments to the Mental Health Bill 2024, published on 10th June 2025, represent some positive movement towards more workable, person centered legislation. We welcome the change of timing of the previously named psychosocial assessment (proposed name change to biopsychosocial assessment) and the clarification of requirements of that assessment.

This is complex legislation, with potentially significant and far reaching consequences, and as such, warrants detailed consideration; it is the very least we owe to some of the most vulnerable members of our society.

1. Regarding the definition of a mental disorder, inclusion of the phrase *"mental health difficulty"* is too broad and may inadvertently cause the involuntary admissions of those without serious mental illness. Also, under the criteria for involuntary admission, the use of the phrase "psychosocial disabilities" is not appropriate nor clear; what are psychosocial disabilities? A person can experience acute psychological distress in the face of a life event such as a job loss or the end of a relationship. Their reaction may be temporarily extreme, but still falls within the spectrum of unpleasant but normal human experience. This person should not find themselves taken to hospital against their will. As previously stated, this is

specialist legislation for a very specific set of serious mental illnesses. Any wording that expands its remit encroaches on civil liberties, which we know is not the intention of this Bill.

2. With regard to the Consent to Treatment section, we continue to question the need for court involvement in treatment as outlined below. We have some additional commentary on the specific amendments:

a. General comments

i. The Bill, as amended, still significantly complicates the delivery of mental health services by involving the court system. It remains a matter of regret that a person can be deemed sufficiently unwell to warrant involuntary admission; yet treatment for this very same person still requires court system oversight. The amended criteria for an involuntary admission includes specific wording regarding a lack of capacity to consent to admission **and** a lack of a capacity to consent to treatment. This immediately activates all of the necessary protections automatically afforded to an involuntarily admitted person i.e. automatic appointment of an independent legal representative, automatic assessment by a second, independent consultant psychiatrist who works elsewhere in the country, and a review of the entire process within 21 days of this admission by an independent panel (the Review Board) made up of a lay person, a legal person and yet another, entirely independent consultant psychiatrist. Treatment without consent will easily be subjected to rigorous scrutiny by this review board, and this, after **all** of the other checks and balances already activated as part of the process. **Why is it necessary to involve the courts at all?**

ii. Court involvement in treatment will result in proliferation of waiting lists. Even with the suggested amendments, the Bill will still result in a consultant psychiatrist spending the day in court awaiting the hearing on an application for treatment. As a result, their clinic would be cancelled as the court system is generally unable to consider the consultant's clinical schedule. If thirty people were due to be seen in that clinic these patients would have to wait at least another three months for the next available appointment. This is one clinic for one psychiatrist. Expanding that nationally to approximately 2000 involuntary admissions annually, inevitably results in widespread disruption to outpatient psychiatric services and a massive escalation in waiting lists.

iii. Court involvement in treatment is not in keeping with the parity of esteem that all agencies are striving to achieve between physical and mental health. It also increases the stigma of serious mental illness as only treatment of serious mental illness will require permission from a court. Patients on medical or cardiology wards who have lost capacity to consent to treatment because of delirium or brain injuries from lack of oxygen, do not require court permission for lifesaving treatment.

b. Specific Comments

i. Expanding the criteria under which a person can be treated without consent while awaiting a court determination to include criteria based on need to treat, is helpful.

ii. There is a specific direction that an application to the circuit court for a treatment order **MUST** be made within the 21 or 42 day window of treatment without consent. This does not allow for the eventuality of a person benefiting from treatment and giving consent for ongoing treatment. We need clarification that there is a proposed mechanism to withdraw a circuit court application in this eventuality, or indeed if the specified treatment needs to be discontinued for any reason, or the person is discharged.

iii. What is meant by "***greater alignment with the ADMCA, particularly where a person has a pre-existing Decision-Making Representative or Advance Healthcare Directive before being involuntarily admitted***"? Specifics of this remain unclear. However, it should be noted that the ADMCA is a separate, standalone piece of legislation and does not belong in specialist legislation for a specific cohort of vulnerable persons. Furthermore, any individual is free to access the ADMCA at will, even if they are an involuntary patient under the (current) Mental Health Act 2001, so it is unnecessary to include it.
iv. Amendment number 265 proposes ministerial direction regarding the form of care plans. While this is an improvement on the original bill, which proposed direction on the content of care plans including goals and treatment, it still represents political overreach and stigmatisation of those with mental illness.
v. We welcome amendment 44 which adds "a spouse living separately or apart from the person concerned" as one of those disqualified from making an application for an involuntary admission.

c. Comment re section 51, paragraph 1, subsection (a):

We have one additional comment which has not been addressed in amendments. Under section 51, paragraph 1, subsection (a), there is a provision for an application for treatment to the High Court for someone who has the capacity to refuse treatment. This is a violation of civil liberties and runs directly counter to the spirit of this act and indeed the ADMCA. No court should have the power to compel a person with capacity to accept treatment that they have refused.

We absolutely welcome the chance to discuss this crucial legislation with the Seanad (and any relevant committee within the Seanad). We are highly trained and regulated specialist doctors who work with the current Mental Health Act daily in delivering psychiatric care to rigorous standards. We remain available to any member of the Seanad (and Dáil) to discuss the 2024 Bill and its implications for the future delivery of this vital care.