

Introduction and Key Components

A Discussion Paper Series for a New Mental Health Act

Discussion Paper 1 of 4

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Policy, Legislation and Communications

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Background

The World Health Organization (WHO) guidance on human rights and mental health legislation and policy suggests that comprehensive mental health legislation should address a range of topics, including:

- access to mental health care and access to care in community settings;
- the legal rights of mental health service users and of family members and other carers;
- competence or capacity issues for people with mental illness;
- guardianship issues for people with mental illness;
- mechanisms to oversee involuntary admission;
- procedures and safeguards for voluntary and involuntary treatment;
- mechanisms to monitor involuntary treatment practices;
- accreditation of professionals and of facilities;
- law enforcement and other judicial system issues; and
- Mechanisms to implement the provision of mental health legislation.

The Mental Health Commission of Canada released their report *Changing Directions, Changing Lives* in May 2012 based on their research and scan of Canadian jurisdictions. The report contains 109 priorities and recommendations for action and is being called a blueprint for change. It has a 10-year mandate and its recommendations are divided into the following six strategy areas, aimed at governments, the private sector, health professionals, social services providers, and all Canadians.

1. Promote mental health across the lifespan in homes, schools, and workplaces, and prevent mental illness and suicide wherever possible.
2. Foster recovery and well-being for people of all ages living with mental health problems and illnesses, and uphold their rights.
3. Provide access to the right combination of services, treatments and supports, when and where people need them.
4. Reduce disparities in risk factors and access to mental health services, and strengthen the response to the needs of diverse communities and Northerners.
5. Work with First Nations, Inuit, and Métis to address their mental health needs, acknowledging their distinct circumstances, rights and cultures.
6. Mobilize leadership, improve knowledge, and foster collaboration at all levels.

These strategic areas tie in well with the NWT Mental Health and Addictions Action Plan 2012-2015, *A Shared Path Towards Wellness*. Providing “access to the right combination of services, treatments and supports, when and where people need them” is a fundamental goal of the Integrated Service Delivery Model, the foundation upon which the Action Plan was developed. The Plan focuses on three key elements - community focus and engagement, collaborative partnerships and an integrated continuum of care. It further identifies gaps in the current system and sets the following four goals based on current capacity and priority needs:

- Goal 1: Promote understanding and Awareness;

- Goal 2: Focus on the Person;
- Goal 3: Improve the availability of and Access to Services; and
- Goal 4: Improve the effectiveness of Services.

As part of the Action Plan, in December 2012 the Minister of Health and Social Services formed the Minister's Forum on Addictions and Community Wellness, made up of thirteen members nominated by Members of the Legislative Assembly and the public. Between December 2012 and April 2013, the Forum conducted in-person and online consultations in every region of the NWT. The goal of the forum was to develop recommendations on future directions for community-based addiction programs that could meet local needs as defined by the communities themselves. The Minister of Health and Social Services was presented with the Forum's final Report on May 3, 2013. The report includes recommendations on future directions for community-based addiction programs in the NWT, focusing on local needs and best practices. The Department will assess how to incorporate all the recommendations into the existing addictions and community wellness work.

Rationale for New Mental Health Act

In response to developments in the area of mental health policy and principles, the Department feels it is necessary at this time to review the NWT's current mental health legislation and propose updates to the legislative framework. Policy and legislation are the foundation on which to develop and deliver programs and services. Mental health legislation sets out the general framework for civil and human rights protection of people with mental disorders, protection against harm to themselves or others, access to treatment, substitute decision making authority, and appeal processes. The scope of mental health legislation however varies across jurisdictions.

The current *Mental Health Act* (MHA) has been in place since June 1985; before the *Access to Information and Protection of Privacy Act* (ATIPPA) and modern privacy protection provisions, and before current trends in community treatment models. Though there have been amendments to the MHA since 1985, there have been no significant amendments that would make the MHA on par with legislation across Canada.

The primary purpose of the current NWT *Mental Health Act* (MHA) is to provide individuals with mental disorders the treatment and care they need when they are not willing to accept it. In other words it serves as an involuntary psychiatric treatment or involuntary committal act for when someone with a mental disorder:

- as a result of their mental disorder
 - is threatening or attempting to be or has recently been a danger to him/herself or others; or
 - is likely to suffer serious physical impairment or serious mental deterioration or both;
- lacks capacity to make decisions about his or her care,
- requires care in a psychiatric facility and cannot be admitted voluntarily.

The overall purpose of the *Mental Health Act* (MHA) however should go beyond committal. Mental health legislation should protect the rights of and support community-based treatment for persons with mental illness. In response the Department of Health and Social Services proposes the new NWT *Mental Health Act* should uphold the following guiding principles with respect to the care and treatment of persons with mental illness:

- Persons of all ages with mental disorders are to be treated with dignity and respect;
- Mental health care and treatment received should respect the cultures and traditions of clients;
- Treatment and related services are to be offered in the least-restrictive manner and environment;
- Treatment and related services, where possible, should promote the person's self-reliance;
- The person has the right to a treatment plan that maximizes the person's potential and is based on the principles of evidence-based best practice;
- Persons with mental disorders should have access to mental health services in their community wherever possible or as close to the person's home as practicable and should be able to return to their community at the earliest possible time;
- Each person has the right to make treatment decisions to the extent of the person's capacity to do so;
- Any declaration of involuntary admission or declaration of incapacity is made on the basis of evidence.

By maintaining a balance between protecting the public and protecting the human rights of persons with mental illness and using involuntary committal as a last resort, NWT Mental Health legislation will be brought into line with international and national standards. Through a modern MHA we will be in a better position to effectively meet the immense mental health needs of the NWT.

Methodology

Keeping in mind the above principles, the discussion paper series outlines options for a new MHA. The series puts forward the following components for consideration:

- A modern, inclusive definition of '*mental health disorder*';
- Clear Voluntary admission provisions and criteria for switch to involuntary status
- A streamlined involuntary admission process that aligns with the Charter of Human Rights and Freedoms and the concepts of natural justice:
- Improving geographical access by legislating community treatment orders and community treatment plans that would integrate cultural and community concerns and allow some individuals who would have otherwise been hospitalized involuntarily, to receive treatment and support in their own community.
- A mechanism, such as Mental Health Review Board and Review Panels or an Ombudsman, to hear concerns from mental health patients, persons acting on behalf of mental health patients, families of mental health patients, and health care

professionals in a timely manner and to provide an oversight role for the administration of the MHA;

- A Patient Rights Advisor as an impartial third party to ensure that the patient and those acting on the patient's behalf have a clear understanding and awareness of their rights and options;
- Up to date provisions for those detained on remand, under the *Criminal Code*, or under jurisdictional law;
- Modern mental health record access, correction provisions and privacy provisions; and
- Up to date provisions regarding inter-jurisdictional mental health agreements.

These components are discussed through four discussion papers:

- Introduction and Key Components;
- Assessment and Admission;
- Treatment; and
- Review Board and Patient Rights.

As part of its research on mental health legislation, DHSS has completed a cross-jurisdictional comparison of some of the most recent, up to date mental health legislation in Canada.

Consultation

The discussion paper series forms part of the consultation activities carried out by DHSS in its review of mental health legislation and is being shared with key stakeholders and the general public to elicit feedback on a new MHA. The discussion papers, together with the feedback DHSS receives through consultation, will help form the basis for the key policy elements of a new MHA.