The New Mental Health Act 2012

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On the 10th of October on the occasion of World Mental Health Day significant sections of the new Mental Health Act, (Cap 525 of the Laws of Malta) will come into force. The remaining sections will come into force within a year’s time. The new law will replace the old Mental Health Law, Cap 262 which has been in force since 1981.

The new Act is far more extensive and far-reaching. The new legislation introduces the concepts of rights of users and their carers and the establishment of a Commissioner to safeguard those rights. The new law includes high elements of focus on patients and their needs and mirrors changes in knowledge, perceptions and attitudes towards mental illness and mental health. It brings about new models of care practices including reduction in hospital stay and more community based services. The law introduces specific sections on mental capacity, minors (people under 18 years of age) and the administration of special treatments. It introduces the concepts of community treatment and social inclusion.

Rehabilitation of patients with mental health problems includes their active involvement in their own treatment plans and a more holistic multidisciplinary approach in care is being established. The law defines the term ‘informed consent’ whereby patients or their carers actively participate in the treatment after being given all the necessary information in an understandable language and manner.

The history of mental health is tainted with a bad reputation of people with mental health problems being treated as witches and as people possessed by evil spirits. Over the years there is documented evidence of people with mental health problems being unnecessarily held in prisons and in secluded places – asylums. In the 20th century considerable improvement was made in the care and treatment of mental health disorders and people were moved to hospitals. Still there was a lot of restrictive and ‘harsh’ treatment which was at times considered as brutal and inhuman. The new trends of care are to give acute treatment in hospital if necessary and to move towards a more community approach. The new law aims to see people with mental health problems as full and active members of the society.

The rights of users and carers are listed and defined in the third section of the law. The person with a mental health disorder shall have the right to exercise a number of civil, political, economic, social, religious, educational and cultural rights amongst others. The patients and their carers have the right to full respect of their dignity, the right to privacy and the right to receive quality treatment. The new law gives the right to the person to receive treatment of the same quality and standards as other individuals and to have their needs addressed holistically through a multidisciplinary care plan approach. Importance to care in the community is another right with the aim of facilitating the reintegration of the person in society. The right to receive timely information in an understandable form and manner together with the right to participate actively in own treatment are two new rights driven by the new legislation. Another three important rights are the right to have access to clinical records; the right to communicate with the outside world and the right to receive visitors, for
all three the safeguard of self and others is considered important prior to practicing the rights. Last but not least is the right to have a responsible carer of their choice.

The revision in treatment options includes that treatment is to be given in the least restrictive manner possible whilst it gives the option of the person seeking voluntary admission. The law lays out provisions regulating mental capacity, with the overarching assumption that – a person suffering from a mental disorder is able and competent to make decisions unless otherwise certified by a psychiatrist. The law provides special clauses with regards to treatment of individuals under 18 years old – referred to as minors. The facilities providing care for minors are required to have a specific license whilst it foresees that a minor can also give informed consent if required, so long as the minor has sufficient maturity and understanding. Periods of treatment of minors are considerably reduced and are subject to more frequent reviews.

The Commissioner is established under the new Mental Health Act. The role of the Commissioner for Mental Health is not just to absorb the function which the old law gave to the Mental Health Review Tribunal but is much broader and extensive. The law highlights that the Commissioner is to promote and safeguard the rights of persons suffering from mental disorders and their carers and to review any policies and make the necessary recommendations to the competent authorities. The Commissioner has the authority to receive complaints and carry out investigations relevant to queries received. The new legislation specifically places the onus on the Commissioner of the inspection of all licensed mental health facilities to ascertain that patients’ rights and all the provisions of the Act are upheld.

Patients, carers, professionals and the public in general can contact the Office of the Commissioner to make complaints and queries regarding care, treatment and incidents on mental health issues. Complaints should always be in writing and addressed to: Office of the Commissioner, St Luke’s Square, G’Mangia PTA 1010. A full copy of the law in Maltese and English may be accessed on the website of the Office of the Commissioner on http://commissionermhop.gov.mt