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information for all

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Citizens Information Bill 2006

The Citizens Information Bill 2006 has been published. It proposes to change the name of Comhairle to the Citizens Information Board and provides for other changes to the legislation governing Comhairle/Citizens Information Board. It also provides for the establishment of a Personal Advocacy Service for people with disabilities. The Comhairle (Amendment) Bill 2004 has been withdrawn and is replaced by this Bill. The provisions in relation to the personal services are broadly similar in the two Bills but there are significant differences, notably the appeal arrangements.

The Citizens Information Board

The Bill proposes to change the name of Comhairle to the Citizens Information Board. The Board will consist of 15 members – (the present legislation provides for 20 members on the Comhairle board). Its term of office will be five years (three at present). At least three members must be people who represent people with disabilities.

The Bill provides that the Minister may give the Board general policy directions including directions to undertake campaigns to disseminate information relating to a particular social service or services.

Functions of the Citizens Information Board

At present, Comhairle's main functions are:

- (a) to support the provision of or, where the Board considers it appropriate, to provide directly, independent information, advice and advocacy services so as to ensure that individuals have access to accurate, comprehensive and clear information relating to social services and are referred to the relevant services
- (b) to assist and support individuals, in particular those with disabilities, in identifying and understanding their needs and options and in accessing their entitlements to social services
- (c) to promote greater accessibility, co-ordination and public awareness of social services and of information, advice and advocacy services provided in relation to such services whether by a statutory body or a voluntary body



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- (d) to support, promote and develop the provision of information on the effectiveness of current social policy and services and to highlight issues which are of concern to users of those services
- (e) to promote and support the development of voluntary bodies providing social services including, where the Board considers it appropriate, the provision of financial or other resources such as integrated information, training and development services
- (f) to furnish advice, information and assistance to the Minister in relation to the development of any aspect of social services
- (g) whenever the Minister so requests, to design schemes relating to social services to address needs identified by the Minister concerning such services, and, where the Board considers it appropriate to do so, to provide such services directly
- (h) to promote, develop, encourage and assist, through the provision of financial or other resources, the work in relation to social services of such bodies as the Minister may specify

The Bill proposes to replace functions (b) and (c) as follows:

- to support the provision of or, where the Board considers it appropriate, to provide directly, advocacy services to individuals, in particular those with a disability, that would assist them in identifying and understanding their needs and options and in securing their entitlements to social services
- to provide, or to arrange for the provision of a Personal Advocacy Service to “qualifying persons”
- to support, promote and develop –
 - (i) greater accessibility, co-ordination and public awareness of social services and
 - (ii) the provision and dissemination of integrated information in relation to such services by statutory bodies and voluntary bodies

The Bill also proposes that the Board must, subject to the approval of the Minister for Social and Family Affairs, decide the terms and conditions under which it may support the provision of information, advice or advocacy services and provide financial or other resources to a voluntary body or to a body specified by the Minister. When deciding these terms and conditions, the Board must have regard to its aim of promoting the provision of an integrated, reliable and comprehensive information service of the highest quality and of the need for it to co-operate with statutory and voluntary bodies.

Advocacy

Advocacy is defined as including services in which the interests of a person seeking a social service are represented in order to assist the person in getting entitlements to such service but does not include legal representation.

Social services

The Comhairle Act 2000 does not define a “social service” but the Citizens Information Bill proposes the following definition: any service provided by a statutory or voluntary body that is available or accessible to the public generally or a section of the public under legislation or otherwise and includes, but is not limited to, services in relation to health, social welfare, education, family support, housing, taxation, citizenship, consumer matters, employment and training, equality, asylum and immigration.

Disability

Disability is defined in the same way as in the Disability Act 2005, that is it is defined, in relation to a person, as a substantial restriction in the capacity of the person to carry on a profession, business or occupation or to participate in social or cultural life by reason of an enduring physical, sensory, mental health or intellectual impairment.

Personal Advocacy Service

The Bill introduces a Personal Advocacy Service specifically aimed at people with disabilities. When providing this service, the Citizens Information Board must take account of its own financial resources and whether the people concerned can get advocacy services from another source. The Chief Executive Officer may designate members of the staff of the Citizens Information Board to be personal advocates and/or the Board may arrange for the functions of personal advocates to be carried out by people who are not staff members. The Board may appoint a Director of the Personal Advocacy Service and he/she will be responsible to the Chief Executive Officer.

Qualifying persons

You may qualify for a personal advocacy service if you are aged 18 or over and

- Because of a disability, you are unable to obtain or have difficulty in obtaining a social service without the help or support of a personal advocate and
- There are reasonable grounds for believing that there is a risk of harm to your health, welfare or safety if you are not provided with the social service in question

If you are under 18, you may qualify for a personal advocacy service if:

- Your only parent or guardian meets the qualifying conditions or
- You have a disability or there are reasonable grounds for believing you have a disability and it would be unreasonable to expect a parent or guardian to act on your behalf without the help of a personal advocate and your health, safety or welfare would be at risk if you did not get the service concerned

When assigning personal advocates, the Board may have to set an order of priority among the people who qualify for the service. When doing this, the Board must take into account:

- The needs of the people who qualify
- The degrees of risk of harm to the health, welfare or safety of the people concerned if they are not provided with the social service they are trying to get
- The benefits likely to accrue if they do get personal advocates
- The availability of advocacy services from other sources and
- Other factors the Board considers appropriate or are set out in regulations

How to get a personal advocate

If you consider that you are entitled to get a personal advocate – that you are what the legislation describes as a “qualifying person” – a written application must be made to the Director of the Personal Advocacy Service asking that you be assigned a personal advocate and setting out the social services that you are trying to get. This application may be made by any other person on your behalf. The Director decides whether or not you are a qualifying person and, if you are, he/she assigns a personal advocate to you.

If your application is refused, reasons must be given in writing. You may appeal against such a decision to the Appeals Office of the Department of Social and Family Affairs. The general rules which apply to social welfare appeals will apply. This means, in general, that you must appeal within 21 days and that the decision of an Appeals Officer is final.

Functions of a personal advocate

A personal advocate has a range of functions including:

- Applying on your behalf or helping you to apply for an assessment of need and helping and/or representing you at the various stages of the process of drawing up a service statement; assessments of need and service statements are provided for in the Disability Act 2005. The assessment of need arrangements will begin to be implemented in July 2007.
- Helping you or representing you in the process of getting the social services you have named in your application or which are included in your service statement
- If the personal advocate considers it appropriate, making or helping you to make a complaint, appeal or application for review to any body other than a court. This could involve, for example, helping you to make an appeal to the Social Welfare Appeals Office or a complaint to the Ombudsman as well as helping you to use the complaints and appeals machinery provided under the Disability Act
- Providing support and training to you, members of your family, your carers or others who are involved in promoting your best interests

Personal advocates will be entitled to get certain information and make enquiries on your behalf. They may go into any place where day care, residential care or training is provided for you and make inquiries. They may, subject to the data protection legislation:

- Get information relating to you from a statutory or voluntary body.
- Attend and represent you at any meeting, consultation or discussion at which your interests are being considered and
- Identify any family member or carer who may be able to help in promoting your best interests

Voluntary and statutory bodies that provide social services will be obliged to co-operate with personal advocates.

Mental Health Legislation

The Mental Health Act 2001 is being fully implemented from 1 November 2006. This means that, from that date, the rules about admission to psychiatric hospitals and the rights of psychiatric patients change. New procedures are in place for the monitoring and regulation of standards of care in psychiatric hospitals. Here we summarise the new rules that apply and the structures that are in place for the implementation of the Act.

Best interests of the patient

When any decisions under the Act are being made about the care and treatment of a person, the best interests of the person is the principal consideration with due regard being given to the interests of other people who may be at risk of serious harm if the decision is not made. People who are being admitted or to whom treatment is being administered must be given an opportunity to express their views and have those views taken into account as far as is practicable. When decisions are being made under the Act, due regard must be given to the need to respect a person's right to dignity, bodily integrity, privacy and autonomy.

Mental Health Commission

The Mental Health Commission has been in existence since 2002. Its main functions are:

- To take all reasonable steps to protect the interests of people who have been involuntarily admitted to an approved centre and
- To promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services

It is responsible for implementing the provisions of the Act in relation to involuntary admission, for setting up the mental health tribunals and ensuring that the rights of patients are respected. It has drawn up the forms necessary for the various processes and issued codes of practice and rules for people involved in the mental health system.

Mental Health Commission
St. Martin's House
Waterloo Road
Dublin 4
Tel: (01) 636 2400
www.mhcirl.ie

Approved centres

The Mental Health Commission is required to establish and maintain a Register of Approved Centres.

This Register is made available for inspection by the public at all reasonable times. An approved centre is a hospital or other in-patient facility (usually a psychiatric unit within a general hospital) for the care and treatment of people suffering from mental illness or mental disorder which is registered on the Register of Approved Centres. Existing hospitals and other in-patient facilities providing care and treatment for people with a mental disorder will be considered to be approved centres for three years from 1 November 2006.

Inspector of Mental Health Services

The Inspector of Mental Health Services is appointed by the Mental Health Commission. The Inspector's functions are:

- To visit and inspect every approved centre at least once a year
- To carry out a review of mental health services every year and report to the Commission on the quality of care and treatment given to people receiving mental health services and other aspects of the services

The Inspector may be requested by the Mental Health Commission to carry out an inquiry into:

- Any approved centre or any premises where mental health services are provided
- The care and treatment provided to a specified patient, whether voluntary or involuntary
- Any other appropriate matter

The annual report of the Mental Health Commission includes the report of the Inspector and is available on the Mental Health Commission's website.

Involuntary admission to an approved centre

The majority of people who are suffering from mental illness go to approved centres as voluntary patients. However, some are placed involuntarily. The legislation sets out in detail how the procedures for involuntary detention must operate and sets out the rights of patients who are involuntarily detained.

Under the Mental Health Act 2001, you may be involuntarily admitted and detained in an approved centre (effectively a psychiatric hospital or psychiatric unit in a general hospital) if you are suffering from a mental disorder. You may not be admitted purely because you are suffering from a personality disorder, are socially deviant or addicted to drugs or intoxicants.

Mental disorder

The Act defines mental disorder as mental illness, severe dementia or significant intellectual disability where:

- Because of the illness, disability or dementia, there is a serious likelihood that you may cause immediate and serious harm to yourself or to other people or
- Because of the severity of the illness, disability or dementia, your judgement is so impaired that failure to admit you to an approved centre would be likely to lead to a serious deterioration of your condition or would prevent the administration of appropriate treatment that could only be given by such an admission and your reception, detention and treatment in an approved centre would be likely to materially benefit or alleviate your condition.

Mental illness means a state of mind which affects your thinking, perceiving, emotion or judgment and which seriously impairs your mental function to the extent that you require care or medical treatment in your own interest or in the interest of other people.

Severe dementia means a deterioration of the brain which significantly impairs your intellectual function and affects thought, comprehension and memory and which includes severe psychiatric or behavioural symptoms such as physical aggression.

Significant intellectual disability means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning and abnormally aggressive or seriously irresponsible conduct.

Application for involuntary admission

An application for the involuntary admission of an adult may be made to a registered medical practitioner by a spouse or relative, an authorised officer, a Garda or any other person. An authorised officer is an officer of the Health Service Executive (HSE) who is designated by the Chief Executive Officer of the HSE for the purposes of making such applications.

The definition of spouse does not include a separated spouse or a spouse against whom an application or order under the Domestic Violence Act has been made.

The following people may not make an application:

- Anyone aged under 18
- An authorised officer or Garda who is a relative of the person concerned or of that person's spouse
- A member of the governing body (not including a member of the HSE) or staff of the approved centre concerned
- Anyone who has an interest in the payments to be made to the approved centre
- Any medical practitioner who provides a regular medical service to the approved centre
- The spouse, parent or other close relative of any of the people specifically mentioned above.

The person applying must have seen the person whose admission is sought within the 48 hours prior to making the application. If the application is being made by "any other person", the application must include a statement of the reasons why it is being made, the connection of the applicant to the person whose admission is proposed and the circumstances in which the application is made.

Medical assessment

If it is proposed that you be involuntarily admitted to an approved centre, you must be examined by a medical practitioner (who is not a relative and is not involved with an approved centre) within 24 hours of the making of an application. The doctor must tell you the purpose of the examination unless he or she considers that such information would prejudice your mental health, wellbeing or emotional condition. If the doctor is of the opinion that you are suffering from a mental disorder, he or she makes a recommendation that you be involuntarily admitted to an approved centre (other than the Central Mental Hospital). This recommendation remains in force for seven days.

If the application is refused and a subsequent application is made, the applicant is obliged to inform the doctor about the previous application, if aware of it.

Role of the Gardaí

If a Garda has reasonable grounds for believing that a person is suffering from a mental disorder and that, because of the disorder, there is a serious likelihood of the person causing immediate and serious harm to himself/herself or another person, the Garda may take the person into custody and immediately make an application for a recommendation by a registered medical practitioner. If necessary, the Garda may use force to enter the premises where it is believed that the person is. The Garda must then go through the normal application procedure for involuntary detention in an approved centre. If the Garda's application is refused, the person must be released immediately. If the application is granted, the Garda must remove the person to the approved centre.

Removal to an approved centre

In general, it is the applicant who is responsible for taking the person to the approved centre. If this is not possible, then the doctor who made the recommendation may ask the clinical director of the centre or a consultant psychologist acting on his/her behalf to arrange for the person to be brought to the centre by the staff. If necessary, the Gardaí may be asked to help. In this situation, the Gardaí have the power to enter premises by force and may detain or restrain the patient if necessary.

Admission to an approved centre

When you are received at an approved centre, you must be examined by a consultant psychiatrist on the staff. You may be detained for a maximum of 24 hours in the centre for the purpose of carrying out this examination. If the psychiatrist is satisfied that you are suffering from a mental disorder, he/she then makes an involuntary admission order. If the psychiatrist is not satisfied that you are suffering from a mental disorder, you must be released immediately. The admission order is valid for 21 days. It authorises your reception, detention and treatment in the centre for this period.

A renewal order may extend this period by a further three months. This must be made by the consultant psychiatrist responsible and he/she must have examined you in the week before making the order. A further renewal order may be made by the same psychiatrist for a period of six months and subsequently for 12 months at a time.

Patient's right to information

Each time an admission order or a renewal order is made, within 24 hours a copy must be given to the Mental Health Commission and a notice in writing must be given to the patient. The notice to you, the patient, must include the following information:

- You are being detained under the Mental Health Act 2001 and the relevant section
- You are entitled to legal representation
- You will be given a general description of the proposed treatment to be administered during the detention
- You are entitled to communicate with the Inspector of Mental Health Services
- You will have your detention reviewed by a mental health tribunal
- You are entitled to appeal to the Circuit Court against a decision of a mental health tribunal
- You may be admitted as a voluntary patient if you wish

Review of admission by a mental health tribunal

When the Mental Health Commission receives a copy of an admission or renewal order, it must

- Refer the matter to a mental health tribunal
- Assign a legal representative to represent you free of charge. If you choose your own legal representative you may have to pay their costs.
- Direct, in writing, a member of the panel of consultant psychiatrists to examine you, interview the consultant psychiatrist responsible for your treatment and care and review your records in order to decide whether you are suffering from a mental disorder. The consultant psychiatrist's report must be made within 14 days and given to the mental health tribunal, a copy of the report will be given to your legal representative.

The mental health tribunal must review your detention and make a decision within 21 days of the making of the order (there are provisions for extending this time limit). If it is satisfied that you are suffering from a mental disorder and that the proper procedures have been followed (or, if they have not, that the failure does not affect the substance of the order and does not cause an injustice) then it affirms the order. If it is not satisfied, it revokes the order and directs that you be discharged.

In order to carry out its functions, the mental health tribunal has similar powers to a court, including the power to require the attendance of the relevant people and the production of documents. The mental health tribunal is, of course, obliged to respect the usual requirements of natural justice. For example, it must ensure that you have copies of the reports that are being considered by the tribunal.

The tribunal must notify its decision, in writing, to:

- The Mental Health Commission
- The psychiatrist responsible for your care and treatment
- You and your legal representative
- Any other person the tribunal considers should be notified.

The tribunal is appointed by the Mental Health Commission. It must consist of a lawyer as chairperson, a consultant psychiatrist and a lay person (a person who is not a lawyer or doctor or a registered nurse). The Mental Health Commission has selected and trained mental health tribunal members.

Appeal to the Circuit Court

You may appeal to the Circuit Court (within 14 days) against a decision of the mental health tribunal. At this stage, it is up to you, the patient, to prove your case that you are not suffering from a mental disorder.

Transfer of patients to other centres

The Act sets out the procedure that must be followed if a patient is transferred to another approved centre (other than the Central Mental Hospital), hospital or other place for the purposes of treatment.

Children

The HSE may apply for the involuntary admission of a child who is suffering from a mental disorder. Such an application must be made to the District Court. The court will order a psychiatric examination and may then make an order that the child be admitted to an approved centre for a maximum of 21 days, which may be extended. Specific approval by the court is required if it is proposed to carry out psycho-surgery or electro-convulsive therapy on a child with a mental disorder.

Consent to treatment

For the purposes of the Mental Health Act, consent, in relation to the patient, means consent in writing, obtained freely without threats or inducements, where:

- The consultant psychiatrist who is caring for you is satisfied that you are capable of understanding the nature, purpose and likely effects of the proposed treatment and has given you adequate information, in a form and a language that you can understand, on the nature, purpose and likely effects of the proposed treatment.

As a general rule, your consent is needed for treatment. If you are in hospital against your will, there are some circumstances under the law when you may be given certain treatment even though you have not given your consent.

Psycho-surgery may not be performed unless you consent and it is authorised by a mental health tribunal.

Electro-convulsive therapy may be performed if you give consent or where you are unable or unwilling to give consent. In such circumstances the therapy is approved by the consultant psychiatrist responsible for you and authorised by another consultant psychiatrist.

Where you are getting medicine for the amelioration of the mental disorder for a period of three months, the medicine must be discontinued unless you consent or, where you are unable or unwilling to give consent, the continued medication is approved by the consultant psychiatrist responsible for you and authorised by another consultant psychiatrist.

Restraint

Patients may not be restrained or placed in seclusion unless this is necessary for treatment or to prevent the patients from injuring themselves. The Commission has made rules for the use of seclusion and mechanical means of bodily restraint.

Clinical trials

People who are suffering from a mental disorder and who have been admitted to an approved centre may not take part in clinical trials.

Existing patients

People who are involuntarily detained under the Mental Treatment Act 1945 are considered to be involuntarily detained under the 2001 Act from 1 November 2006. Their detention must be reviewed by mental health tribunals.

Rights of voluntary patients to leave approved psychiatric centres

If you are a voluntary patient who wants to leave an approved centre and a consultant psychiatrist, or a doctor or a nurse or the staff considers that you are suffering from a mental disorder, they may detain you for a maximum of 24 hours.

The consultant psychiatrist looking after your care and treatment will either discharge you or arrange for you to be examined by another consultant psychiatrist. If both consultant psychiatrists are satisfied that you are suffering from a mental disorder an admission order is completed. This means that you are detained in the approved centre for a maximum of 21 days.

If the voluntary patient is a child and the parents or guardian want to remove him or her, a consultant psychiatrist, doctor or nurse or the staff considers that the child is suffering from a mental disorder, they may detain the child and place in the custody of the HSE.


The HSE. must either return the child to his or her parents or make an application to the District Court for the involuntary admission of the child. The District Court must sit within three days to hear the application. The HSE retains custody of the child pending the hearing of that application.

Civil proceedings

There are certain restrictions on taking civil actions in court arising from actions taken under the Mental Health Act. You need to get the permission of the High Court before taking civil proceedings in respect of any act done in carrying out the functions of the Mental Health Act. The High Court must not refuse such permission unless it is satisfied that the proceedings are either frivolous or vexatious or that there are no reasonable grounds for contending that the person against whom the proceedings are brought acted in bad faith or without reasonable care. The court is not allowed to determine the proceedings in favour of the patient unless it is satisfied that the person against whom the proceedings are brought acted in bad faith or without reasonable care.

Further information

Further information on the Act, the procedures and guidelines is available on the Mental Health Commission website.
www.mhcirl.ie



providing information just got easier with citizensinformation.ie

Comhairle's new information website at www.citizensinformation.ie replaces the current OASIS and Citizens Information Database websites.

The new website aims to make it easier to find both basic and more in-depth information on topics.

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