

MEMORANDUM OF UNDERSTANDING CONCERNING COOPERATION IN THE REGULATION OF HEALTH AND PERSONAL SOCIAL SERVICES AND THE REGULATION OF MENTAL HEALTH SERVICES IN IRELAND

1. BACKGROUND

The **Mental Health Commission (MHC)** established under the Mental Health Act, 2001 having its office at St Martin's House, Waterloo Road, Dublin 4, Ireland and the **Health Information and Quality Authority (HIQA)** established under the Health Act 2007 as amended and having its head office at Unit 1301 City Gate, Mahon, Cork, Ireland wish to establish a framework for cooperation in the area of the regulation of the provision of health and social care in Ireland in those services designated within the relevant legislation (detailed below).

The MHC was established in April 2002 as an independent statutory body and its functions are set out by the provisions of Mental Health Act, 2001. The objective of the MHC is to promote, encourage and foster high standards and good practices in the delivery of mental health services and to protect the interests of patients who are involuntarily admitted and detained. The MHC is responsible for regulating and monitoring mental health services in Ireland as defined by the Mental Health Act, 2001. The Commission's remit includes general adult mental health services, as well as mental health services for children and adolescents, older people, people with intellectual disabilities and forensic mental health services.

The Health Information and Quality Authority is the independent authority established to drive continuous improvements in Ireland's health and social care services. HIQA's mandate extends across the quality and safety of the public, private (within its social care function) and voluntary sectors.

2. OBJECTIVES

This Memorandum of Understanding (MOU) is intended to assist and support both the MHC and HIQA in performing their individual functions. In particular it takes note of areas of potential cooperation and collaboration in the interest of service-user safety and public protection. The objectives of this MOU are:

- a. To promote cooperation on areas of strategic and operational interest
- b. To facilitate cooperation on cross-referral of concerns where one organisation believes that it falls within the remit of the other (or both);
- c. To collaborate on communication and information sharing activities.

This MOU represents the understanding reached by the MHC and HIQA, in particular:

- that both signatories have jurisdiction over different areas of regulation. This MOU is intended to cover areas of common interest or where cooperation will lead to better informed regulation; and
- that both signatories may in particular circumstances, limit the scope of disclosure of information only if the disclosure is contrary to the public interest or the interests of the participant concerned, is in breach of or is inconsistent with statutory obligations or requirements or other obligations and requirements imposed by law.

3. GOVERNING LEGISLATION

The MHC was established by the Mental Health Act, 2001 with the main functions to promote, encourage and foster high standards and good practices in the delivery of mental health services and to protect the interests of patients who are involuntarily admitted and detained. The MHC's remit includes general adult mental health services, as well as mental health services for children and adolescents, older people, people with intellectual disabilities and forensic mental health services. The Mental Health Commission appoints an Inspector of Mental Health Services. The principal responsibilities of the Inspector of Mental Health Services include visiting and inspecting approved centres and other premises where mental health services are being provided as per Sections 51-53 Mental Health Act, 2001, carrying out annual reviews of mental health services in the State and furnishing a report to the Commission as per Section 51 Mental Health Act, 2001.

The Mental Health Act 2001 also outlines the additional responsibilities of the Commission. These include:

- appointing persons to mental health tribunals to review the detention of involuntary patients and appointing a legal representative for each patient
- establishing and maintaining a Register of Approved Centres i.e. register inpatient facilities providing care and treatment for people with a mental illness or mental disorder
- making rules regulating the use of specific treatments and interventions i.e. ECT (electro-convulsive therapy), seclusion and mechanical restraint; and
- developing codes of practice to guide people working in the mental health services.

The Health Information and Quality Authority was established by the Health Act 2007 with the object to 'promote safety and quality in the provision of health and personal social services for the benefit of the health and welfare of the public' (section 8, Health Act 2007, as amended). HIQA's principal functions under the Health Act 2007 include:

- to set standards on safety and quality in relation to services provided by the Health Service Executive (HSE) or a service provider in accordance with:
 - the Health Acts 1947 to 2007, except for services under the Mental Health Acts 1945 to 2001 that, under the Health Act 2005, are provided by the HSE,
 - the Child Care Acts, 1991 and Child Care (Amendment) Act 2001,
 - the Children Act 2001, and
 - services provided by a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990
- to monitor compliance with standards and to advise the Minister and HSE accordingly
- to undertake investigations as to the safety, quality and standards of services
- to evaluate the clinical and cost-effectiveness of health technologies including drugs and provide advice arising out of the evaluation to the Minister and the HSE
- to evaluate available information respecting the services and the health and welfare of the population
- to operate such other schemes aimed at ensuring safety and quality in the provision of the services.

The Health Act 2007, in Part 7, also established the Office of the Chief Inspector of Social Services. The functions of the Chief Inspector are carried out by the staff of the Authority's Regulation Directorate with the Director of Regulation being appointed by the Authority to the statutory post of Chief Inspector. The principal statutory functions for which the Chief Inspector is currently commenced is:

- the registration and inspection of designated centres – currently this extends to residential care services for dependent persons, principally older people.

The Chief Inspector also, on behalf of the Minister for Children and Youth affairs and under section 69 of the Child Care Act, 1991, as amended, inspects children residential centres, special care units and foster care services provided by the HSE.

4. AREA OF COOPERATION

The MHC and HIQA having reached the above understanding will:

- a. Undertake to communicate as appropriate on all matters of strategic mutual and operational interest. Communication will be conducted on both a formal basis through scheduled meetings and informally on an ad hoc basis.
- b. Facilitate cooperation on cross-referral of concerns where one organisation believes that it falls within the remit of the other (or both) and where there are concerns in relation to the health and/or welfare of service users. In the conduct of this activity both organisations will respect, maintain and adhere to all requirements of the relevant legislation.
 - For the MHC this includes but is not limited to: circumstances where the MHC, through the discharge of its statutory functions, complaints and inquiry processes, becomes aware of information regarding potential deficits in the safety, quality and standard of the service or

context of care that is relevant to the remit and statutory functions of HIQA.

- For HIQA this includes but is not limited to: circumstances where HIQA through its statutory investigation, monitoring and registration processes becomes aware of concerns regarding a service provider's fitness and/or provision of a service that may lead to a risk to the safety of service users; circumstances where HIQA through its statutory investigation, monitoring and registration processes becomes aware of concerns regarding an organisation's suitability as a setting for the provision of health and social care services of any type; circumstances where HIQA through its statutory investigation, monitoring and registration processes becomes aware of any breaches in any perceived or actual abuses of the rights of an individual as outlined under the Mental Health Act 2001.
 - A protocol governing the means by which the cross-referral outlined above will take place will be developed jointly by the MHC and HIQA as part of this MOU.
- c. Collaborate on communication and information sharing activities. The purpose of which will be to establish communication mechanisms to facilitate an understanding of the respective fields of regulation and operation of both organisations; and to examine and pursue opportunities to collaborate on initiatives in areas where it is deemed by both organisations to be in the best interest of public protection and patient and service-user safety and rights.

5. CONFIDENTIALITY

a. Mental Health Commission

- i. Nothing in this MOU requires the MHC to release confidential information to HIQA except in accordance with law.
- ii. Unless otherwise required by law, the MHC will not disclose any information received from HIQA under this MOU, except with the written consent of HIQA. If disclosure is required by law, the Mental Health Commission will take all reasonable measures to ensure that the information received from HIQA will be disclosed in a manner that protects the information from any disclosure that is not required or authorised by law. This obligation will not require the either party to expend monies to give effect to this obligation.
- iii. Unless otherwise required by law, the MHC will not use the information disclosed to it under this MOU for any other purpose than the performance of its regulatory activities/statutory functions.

b. Health Information and Quality Authority

- i. Nothing in this MOU requires HIQA to release confidential information to the MHC, except in accordance with law.
- ii. Unless otherwise required by law, HIQA will not disclose any information received from the MHC under this MOU, except with the written consent of the MHC. If disclosure is required by law, HIQA will take all reasonable

measures to ensure that the information received from the MHC will be disclosed in a manner that protects the information from any disclosure that is not required or authorised by law. This obligation will not require the either party to expend monies to give effect to this obligation.

- iii. Unless otherwise required by law, HIQA will not use the information disclosed to it under this MOU for any other purpose other than for the purposes of the performance of its regulatory activities/statutory functions.

6. FINANCIAL ARRANGEMENTS

Each Participant will be solely responsible for the administration and expenditure of its own resources associated with activities conducted under this MOU.

7. VARIATION

Any provision of this MOU may be amended at any time by the mutual consent in writing of the Participants via the respective signatories.

8. STATUS OF MEMORANDUM OF UNDERSTANDING

This MOU reflects the intentions of the Participants. It is not intended to create legal obligations of any nature, either in domestic or international law. The Participants will, however, observe and give due respect to the confidentiality undertakings which they have expressed in this MOU.

9. EFFECTIVE DATE AND REVIEW

This MOU will come into effect upon the date of signature of both signatories and will continue in effect until terminated in accordance with clause 11.

This MOU will be subject to formal annual review on each anniversary of its signing.

This review will be conducted by the agency contacts shown under paragraph 10 and any required variations arising made in accordance with paragraph 7.

10. AGENCY CONTACT

The liaison officers responsible for the administration of this MOU are:

- a. for the MHC, the person holding the position of Director of Standards and Quality Assurance (Interim); and
- b. for HIQA, the person holding the position of Director of Regulation (Chief Inspector).

For the purposes of this MOU the frequency of formal contact will be on a four-monthly basis unless otherwise agreed.

11. TERMINATION

- a. Either Participant may, at any time, give written notice of termination to the other Participant. This MOU (excepting clause 5) will terminate six months after the date of receipt of the notice of termination.
- b. The termination of this MOU will not affect the confidentiality undertakings expressed by the Participants in this MOU and any commitments given under or as a consequence of this MOU in respect of any arrangement or action taken during the period before the termination takes effect.

Signed in the *Health Information and Quality Authority*

on this 26 day of August 2013

by Patricia Gubbay

for and on behalf of the Mental Health Commission

on this 26 day of August 2013

by Meeg

for and on behalf of the Health Information and Quality Authority