

ASSIGNMENT FOR MODULE 10:

DRAFTING, ADOPTING AND IMPLEMENTING MENTAL HEALTH LEGISLATION

BOTH EXERCISES ARE TO BE COMPLETED AND ALL CELLS IN EACH TABLE ARE TO BE COMPLETED (THE LENGTH OF THE CELLS CAN BE EXTENDED AS NEEDED BUT THE TOTAL NUMBER OF WORDS FOR THE WHOLE ASSIGNMENT IS TO BE KEPT BETWEEN 900 AND 1500).

Exercise 1, Module 10

Identify, giving specific examples that exist in your country, 3 mental health needs or barriers to mental health care in your country that can be addressed through legislation. Also indicate how legislation can be used to satisfy the needs or to overcome the barriers.

Needs/barriers	How legislation can address these needs/barriers
Development of programs for persons with dementia and other geriatric conditions The demographic change has already had a huge impact on the health needs of the German population and will continue to do so. Today approximately 24% of the German population are over 65 years ¹ . With the growing number of elderly persons comes along a increase of the prevalence of age related diseases and health conditions. Currently about 1.1 million persons in Germany are affected by dementia (prevalence >65yrs.=6.8%),	 The development and maintenance of appropriate services for persons with geriatric conditions can be promoted in mental health legislation and important guidelines can be given, e.g.: <ul style="list-style-type: none">- promotion of community-based services and adequate living conditions (smaller groups, homely atmosphere)- human resources regulations (e.g. minimum ratio of carers per users)

¹ WHO Mental Health Atlas 2005

<p>in 2050 this number is estimated to rise to approximately 2.6 million².</p> <p>This development poses a tremendous challenge for the German health and social system. Current geriatric services are already struggling with the increasing number of users, with the quality of services suffering evidently due to human resources deficits and overcrowding. This problematic situation has only recently drawn public attention, when reports were published illustrating the degrading living conditions and the unjustified drugging of patients in care facilities³.</p>	<ul style="list-style-type: none"> - lying out accreditation criteria for facilities, setting guidelines for qualification of staff, human and technical resources, living standards etc. - promote training and education on human rights for staff - Establishing a monitoring body for the review of care and living conditions in services
<p>Lack of effective safeguards for the review of involuntary admissions and treatment:</p> <p>Due to Germany's federal system The involuntary admission and treatment of persons with mental disabilities is regulated by the different state laws on mental health and – in case the person concerned is under guardianship – by the Guardianship Law included in the German Civil</p>	<p>A big step to improve the legal review of involuntary measures has already been made by the establishment of the "Assistance Court" (Betreuungsgericht) replacing the custodianship court in 2009. The custodianship had a broader focus with its function including legal processes in</p>

² German Alzheimer Association: <http://www.deutsche-alzheimer.de/fileadmin/alz/pdf/factsheets/FactSheet01.pdf> (last access: 18/08/2010)

³ Examples of latest cases: Caritas nursing home Giesenkirchen, Mönchengladbach

⁴Source: Ministry of Justice, Special Survey "Proceedings under guardianship law 1998 - 2005"

Code.

While all state laws and the provisions on involuntary admission under guardianship do require a legal review for the decision on each case, the safeguards provided in regard to this review are insufficient. One major weakness lies in the composition of the legal body: The legal framework does not demand for a mental health expert within the court body to be involved in the decision on involuntary admission and treatment.

Despite the continuing development of alternative voluntary services, the number of involuntary admissions, both on the grounds of the mental health state laws and of the Guardianship law, has increased significantly in the last decade raising from 111 457 ordered admissions in 1995 to 193 373 IN 2005⁴. Court decisions are often made in a haste, even without the person concerned present and judges generally have had no qualification in mental health issues.

regard to adoption and marriage law. Mental health related matters only contributed to a small section of its duties, thus judges were often inexperienced and unqualified for the decisions on coercive psychiatric measures.

Still today's procedures lack efficient safeguards, with court decisions often being conducted hastily without the presence of the person concerned

To ensure the review body's capacity in making decisions on involuntary admissions and coercive measures, legislation should set out guidelines for the establishment of a Mental Health Review Body that carries expertise in mental health as well as law.

Improve access to mental health services for migrants

The lack of access of migrants to mental health services in Germany has found to be limited due to a number of barriers:

This population group typically shows a greater lack of knowledge about mental health and effective treatment opportunities in general and mental health services available in Germany in particular.

Several studies⁵ have also indicated differences in treatment seeking behavior, finding that migrants generally tend to seek primary health care and report somatic symptoms rather than emotional or cognitive ones. Meanwhile existing mental health services are significantly less approached than by the general population, even though studies have shown comparatively high prevalence of mental health conditions.

Legislation can promote informational and educational programs on mental disabilities and the mental health system and encourage the distribution of relevant information in different languages.

It can explicitly acknowledge migrants as a underserved minority and call for culutural appropriate services.

On a broader scale, legislation can promote the training and qualification of primary health care docotrs for the identification and diagnose of mental health conditions

⁵ E.g. "Accessible to all? Psychosocial Health and Care of migrant and strategies for improvement" <http://forum.sexualaufklaerung.de/index.php?docid=934> (last access: 18.08.2010); "Short Survey on the psychosocial care for migrants in Rheinland-Pfalz and Mainz" http://www.cmb-mainz.de/htm/004_veroeffentlichungen/documents/Kurzrecherche.pdf (latest access: 18.08.2010)

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Exercise 2, Module 10

Identify, giving specific examples that exist in your country, 3 potential barriers/obstacles to drafting, adopting or implementing a new mental health law in your country and list the strategies you could use to overcome them.

Potential barriers/obstacles to drafting, adopting or implementing mental health legislation	Strategies to overcome them
<p>The general public is reluctant about human rights oriented mental health laws.</p> <p>Example: The right to education</p> <p>The realization of inclusive education faces tremendous barriers, with Germany taking one of the last positions regarding the integration of children and adolescents with mental disabilities in European comparison⁶.</p> <p>This is not only due to the</p>	<p>Information and education should be made available in an understandable and striking way to highlight how all children and adolescents can benefit from inclusive education and how education is not a privilege but a right to all.</p> <p>Workshops to be organized, in which:</p> <ul style="list-style-type: none"> - the fundamental right to education and what it means in relation to inclusive education could be

^{6 6} Education in Germany 2010. Education Report ion behalf of the conference of Ministers of education:
http://www.bildungsbericht.de/daten2010/bb_2010.pdf, 17.7.2010

<p>government's lack of willingness but also due to the fact that the general public remains skeptical on the feasibility and effects of inclusive education. The main doubts expressed are that the disabled children themselves might not profit from attending regular schools as this would only lead to excessive demands. Others even fear that the quality of mainstream education would have to be lowered to adapt to the educational needs of disabled children.</p>	<p>highlighted</p> <ul style="list-style-type: none"> - positive examples of other countries (preferably with similar social and economic background) could be presented - essential worries and fears could be addressed and discussed - concrete strategies in regard to these issues could be developed/debated - workshop attendees should include all relevant stakeholders, families of both disabled and non-disabled children, school and other public representatives etc. <p>Organization of Awareness raising campaigns in the media (internet campaign, TV adds)</p>
<p>Mental health and the development of rights-oriented mental health legislation is not a priority to the government</p> <p>The Ministry of health currently is running several projects on mental health issues but there are no plans to amend current legislation relevant</p>	<ul style="list-style-type: none"> - lobbying: investigate political figures possibly interested in mental health, gather information and affirmative statements from relevant governmental

<p>to persons with mental disabilities.</p> <p>The memorandum the German government published in the light of the ratification of the Convention on the Rights of Persons with disabilities⁷ underlines the assumption that the reform of mental health legislation is currently not on the governments agenda. The document only refers to persons with mental disabilities twice and states that the German legal framework is in compliance with the CRPD, despite non-governmental stakeholders disagreeing publicly.</p>	<p>and non-governmental stakeholders, build a network etc.</p> <ul style="list-style-type: none"> - work closely with user and family organizations and other advocacy group; empower users and families by education on human rights and opportunities to stand in for these rights; provide legal support in cases where rights have been violated to set an example - raise public awareness to put pressure on political representatives, e.g. by informing public on degrading living conditions in care facilities - refer to the CRPD and prove incompliance with its provisions, publish findings
<p>Consumers and families are unaware of legal changes in regard to their rights provided by existing mental health legislation</p> <p>There is a huge number of laws affecting persons with mental disabilities and their families. The amount of legal and administrative regulations makes it difficult for persons with no legal background to keep an overview while no official guideline is provided by the</p>	<ul style="list-style-type: none"> - empowerment of user, family and advocacy groups in order to build up a far reaching network for the distribution of information on legal changes etc. - create education and training opportunities for carers and families

government. Legal changes do get published, but it has been shown in the past that this information is far more likely to reach professionals and academics rather than users and their families.

- develop information material (brochures, flyers)

Important: The material must be accessible for population groups with a particular risk of lacking access to information (low educational background, low socio-economic background, migrants)