Wetenschappelijk Onderzoek- en Documentatiecentrum

Cahier 2022-4

Planevaluatie Wet forensische zorg

Reconstructie en evaluatie van de beleidstheorie

Summary

Wetenschappelijk onderzoek- en kennisinstituut voor het ministerie van Justitie en Veiligheid

Cahier 2022-4

Planevaluatie Wet forensische zorg

Reconstructie en evaluatie van de beleidstheorie

Summary

A.M. Burger
C.H. de Kogel

m.m.v.
J.J. van der Ree

Cahier
De reeks Cahier omvat de rapporten van onderzoek dat door en in opdracht van het Wetenschappelijk Onderzoek- en Documentatie Centrum is verricht. Opname in de reeks betekent niet dat de inhoud van de rapporten het standpunt van de Minister van Justitie en Veiligheid weergeeft.

Summary

Program evaluation for the Forensic care act

Reconstruction and evaluation of policy theory

Background

The Forensic care act (Dutch: *Wet forensische zorg* or Wfz, hereafter called Wfz) came into force on January 1st 2019. Section 2.3 of the Wfz, which provides a link between the Wfz and the Compulsory mental healthcare act (Dutch: *Wet verpichte geestelijke gezondheidszorg* or Wvggz) and the Care and compulsion act (Dutch: *Wet zorg en dwang* or Wzd) came into force on January 1st 2020. The Wfz is meant to provide a framework for changes made to forensic healthcare system that were enacted in 2008. During this system change, the budget for forensic healthcare was transferred from the Ministry of Health, Welfare and Sport to the Ministry of Justice and Security. From that moment onwards, forensic healthcare was purchased by the Ministry of Justice and Security based on contracts. Additionally, a standardized assessment procedure is implemented to help place forensic healthcare patients with suitable healthcare providers.

The Wfz offers a legal framework for the procurement and organization of forensic health care for adults. The Wfz applies to all patients who receive forensic health care. The legislator describes forensic health care as 'mental healthcare, addiction treatment or care for the mentally handicapped, that is part of a (suspended) sentence or measure or the implementation thereof, or a different judicial title'.

For the purpose of evaluating the Wfz, this report will reconstruct and evaluate the policy theory of the Wfz. The emphasis during this reconstruction will lie with the intended objectives and the presumed working mechanisms of the Wfz, as described by the legislator. The presumptions that the legislation was based on will help determine whether the legislation can work in practice. For this reason, evaluating these presumed working mechanisms is an important first step of the evaluation of a law. Within this form of evaluation, it's not the application of the law in practice or the goal attainment that is being evaluated, but the theoretical and empirical substantiation of the presumed working mechanisms of the law. Based on the reconstruction of the policy theory, we can identify specific indicators that can offer direction and substance to future research regarding the application and the goal attainment of the Wfz in practice.

Research questions

The research questions are as follows:

1 Within what societal and historical context was the bill for the Wfz introduced and by what societal changes did it later take shape?

2 How does the policy theory of the Wfz look?
   a What are the most important goals of the Wfz?
   b What are the presumed working mechanisms of the Wfz?
3 What can be said about the substantiation of the policy theory, the availability of required preconditions and the coordination with other legislation?
4 What specific indicators can be extracted from the reconstruction of the policy theory that can be used in future research regarding the use of the Wfz in practice or the goal attainment of the Wfz?

Methods

Source research

The description of the historical framework and the reconstruction of the policy theory take place based on both a literature review as well as interviews. While the parliamentary file of the Wfz is particularly important in this respect, the parliamentary files of forensic care, the Wvggz, and the Wzd have also been examined. In addition, reports published in the period between January 2004 and March 2022 on the forensic care sector or the Wfz were consulted, and scientific literature was sought using the search engines Legal Intelligence and Kluwer Navigator. The literature review was supplemented by interviews with policy officers who were involved in the drafting and implementation of the Wfz, as well as with DJI employees involved in procurement of and placement within forensic care.

Policy reconstruction and evaluation

The reconstruction of the policy theory was carried out in accordance with the *Policy-Scientific* approach for policy evaluations. Based on this working method, the problems and related objectives of the Wfz have been extracted from the parliamentary files of the Wfz. Subsequently, the assumptions made by the legislator about the effective mechanisms that should contribute to achieving the goals of the Wfz have been identified in these parliamentary documents and have been made more explicit by reconstructing them in the form of 'if…then' or 'the more… the better' statements.

For each assumption about the functioning of the Wfz, an evaluation has been made on the basis of scientific articles and research reports to see whether this assumption can be substantiated with scientific theory or data. In addition to the scientific substantiation, the degree of coherence between various policy measures within and outside the Wfz is also examined, and the extent to which the statutory and process-related preconditions are present to achieve the objectives of the Wfz is also examined.

Indicators

Specific indicators have been formulated for each purpose and each presumed effective mechanism of the Wfz, based on general evaluation criteria. These evaluation criteria for the central goals focus in particular on the relevance of those goals for solving the problems that play a role in forensic care (*Relevance*) and the extent to which the implemented policy leads to the achievement of the goals (*Effectiveness*). Evaluation criteria of the assumptions focus on the results achieved as a result of the use of policy instruments (*Impact*), the bottlenecks that arise in the application of the

policy instruments (*Efficiency*) and in a number of cases also the degree to which the policy is aligned with existing or concurrently implemented policies (*Alignment*).
An expert meeting was organized to investigate whether the evaluation indicators derived from the program evaluation are meaningful and realistic from the point of view of professionals working within the forensic care sector. During this meeting, professionals within the forensic care sector were invited to discuss the reconstruction of the presumed working mechanisms that were reconstructed in the program evaluation and about the way in which these presumed mechanisms and the goals of the Wfz can be investigated on the basis of concrete indicators.

Historical framework

Following a motion by Member of Parliament Van de Beeten (2004) and a subsequent study by the Workgroup Houtman (2005), it was found that forensic care was struggling with several bottlenecks in the field of care capacity, the connection with regular care and the discrepancy between on the one hand, the responsibilities of the Minister of Justice and Security for the implementation of forensic care and, on the other hand, the actual possibilities for acting on these responsibilities. As a result, a broad system change was prepared, whereby forensic care would henceforth be financed on the basis of purchase contracts from the budget of the Ministry of Justice and Security instead of the Ministry of Health, Welfare and Sport. This system change, which was combined with a new system of assessment and placement, was implemented starting in 2008.

Although the funding of forensic care came from the budget of the Ministry of Justice and Security since 2008, in the period before the Wfz came into effect, there was no formal legal framework to transfer responsibility for financing and managing forensic care under the Ministry of Justice and Security. The Wfz was designed to fill this gap. In order to regulate forensic care while the bill for the Wfz was still before the House of Representatives and later the Senate, the Interim Decree Forensic Care came into effect in December 2010. This Decree contained many provisions that have also been included in the Wfz in an amended form, including the regulations for indications, placement and procurement of forensic care.

On June 4, 2010, the bill for the Forensic Care Act, together with the Explanatory Memorandum, was sent by the Minister of Justice and Security to the House of Representatives, where the bill was adopted in December 2012. In the Senate, however, the Wfz would not be considered until it could be dealt with in conjunction with the civil care laws Wvggz and Wzd. As a result, the Wfz would only be approved by the Senate in 2018. The Wfz largely entered into force on January 1st 2019, with the linking article 2.3 Wfz entering into force simultaneously with the Wvggz and the Wzd on January 1st 2020.

During the parliamentary history of the Wfz, the bill has undergone several changes, mainly with regard to the connection with the civil care Acts Wvggz and Wzd. Particularly in response to the Bart van U. case and the subsequent Hoekstra investigation committee, substantial changes were made to the procedure regarding Article 2.3 Wfz, as a result of which the civil authorizations that would be issued by the criminal court took on a more criminal character.

At the same time, the social and political position with regard to forensic care seems to be shifting over time. In line with fluctuations in the amount of tbs impositions, initiatives have been introduced during the parliamentary history of the Wfz that focus more on security, in some cases at the expense of a patient's treatment and legal status. An example of this is the tightening of the granting of freedoms in response to the case Michael P.

Reconstruction of the policy theory

The Explanatory Memorandum mentions four central goals of the Wfz: *Patient in the right place*, *Sufficient forensic care capacity*, *High-quality forensic care* and *Improving the connection between forensic and curative care*. Forensic care itself focuses on the recovery of the forensic patient and the reduction of the risk of recidivism, according to Article 2.1 of the Wfz. A central principle underlying this goal is that forensic care leads to a decrease in a patient's risk of recidivism. It can therefore be stated that the four central goals serve to strengthen the treatment of patients on the one hand and the security of society, while this should not be at the expense of the legal position of patients.

Several presumed working mechanisms have been reconstructed for each goal of the Wfz, based on both literature research and the interviews with policy officers. These are presented one by one for each goal in the following section.

Patient in the right place

1.1 If the (opportunities for) exchange of information between institutions is improved, the search for the most suitable place of care is simplified. The better the information exchange is arranged, the better the patient can be guided to the right place.
1.2 Through the implementation of protocolled indications, potential care and security needs of offenders can be structurally determined at an early stage. As a result, forensic patients are guided to the right place in time. By taking the care and security needs as described in the assessment as a starting point for placement, placement is demand-oriented and not capacity-oriented.

Sufficient forensic healthcare capacity

2.1 If a purchasing system for forensic care is used, the purchasing of forensic care can be adjusted on the basis of the demand for care in recent years. Sufficient forensic care capacity can be created by adjusting healthcare procurement on the basis of the previous healthcare demand.
2.2 If a purchasing system for forensic care is used and this purchasing is demand-driven, a differentiated supply of care is created, which creates more room for care providers to specialize further. Because care can be purchased from more different care providers, there is sufficient forensic care capacity.
2.3 Because the placement of forensic patients can be contractually enforced when it falls within the purchasing agreements with a healthcare provider, a timely start of treatment at a suitable care location can be achieved.

Qualitative forensic health care

3.1 If forensic care is only purchased from healthcare institutions that meet specific quality requirements, the quality of the forensic care can be managed via healthcare procurement. This leads to high-quality forensic care.
3.2 If a procurement system for forensic care is used, healthcare procurement can be guided on the basis of scores that healthcare providers achieve on performance indicators. By basing healthcare procurement in part on a healthcare provider's score on these performance indicators, forensic care is specifically purchased from healthcare institutions that provide high-quality forensic care.

Improving the connection between forensic and curative care

4.1 By better aligning the legal and financial frameworks of forensic and regular care, the preconditions are created for a better connection between the two systems.
4.2 If a procurement system for forensic care is used, healthcare procurement can be steered on the basis of scores that healthcare providers achieve on performance indicators. By basing healthcare procurement in part on a healthcare provider's score on these performance indicators, forensic care is purchased as much as possible from healthcare institutions that ensure a good match between forensic and regular healthcare.
4.3 If a procurement system for forensic care is used, healthcare procurement can be steered on the basis of scores that healthcare providers achieve on performance indicators. By basing healthcare procurement in part on a healthcare provider's score on these performance indicators, forensic care is purchased as much as possible from healthcare institutions that ensure a good match between forensic and regular healthcare.
4.4 If the criminal court can issue a civil authorization for compulsory care to a broad target group at several moments in the criminal process, either on its own initiative or at the request of the public prosecutor, the criminal court will be better equipped to make an integrated assessment between punishment and care. In that case, those involved who do not (or no longer belong) in the forensic sector can better be directed to regular care, resulting in a better connection between criminal law and regular care.

Substantiation of the policy theory

Forensic health care and recidivism

The relationship between forensic care and reduction of the risk of recidivism has been extensively researched and endorsed. In contrast to stricter punishment and supervision, which have little effect on recidivism rates, rehabilitation programs and treatment programs lead to a clear reduction in recidivism. At the same time, there are significant differences in the effectiveness of treatment programmes, which underlines the importance of the goals of the Wfz, in particular the goals of Good quality forensic care and Patient in the right place.

Patient in the right place

In order to achieve the goal of patient in the right place, the legislator has set up a uniform and protocolled process in which the purchasing, assessment and placement

of forensic patients is carried out independently of each other. The process of assessment and placement has led to a protocolled process in which the care and security demand is mapped, and on the basis of which placement can be established on a demand-driven and not capacity-driven basis. It is clear from previous reports that capacity shortages in forensic care can counteract this demand-driven placement, although these findings are not supported by concrete figures about how frequently this bottleneck occurs and to what extent it can be overcome with temporary bridging care.

Relationship between healthcare purchasing, forensic care capacity and quality of forensic care

At the time of the submission of the Wfz bill, the legislator assumed that health care procurement would play a guiding role in achieving a good match between care demand and care capacity, as well as in promoting the quality of care. As a result, all identified presumed operative mechanisms that are linked to the central goals Sufficient forensic care capacity and Quality of care are related to the purchase of care. When the European Procurement Guidelines were tightened up in 2016, DJI's possibilities to make agreements with individual healthcare providers with regard to capacity, quality and price were severely limited.

In response to these changes in procurement legislation, DJI will use an open house model for the procurement of forensic care from 2020 onwards. Within this open house model, forensic care is not tendered, but every care provider that registers and meets a series of minimum requirements is contracted for forensic care. Within this open house model, DJI cannot make agreements with individual healthcare providers about capacity, quality or price, which means that DJI can only steer these facets of forensic care to a limited extent on a macro level. The assumptions formulated by the legislator at the start of the legislative process about how healthcare procurement would lead to the promotion of the objectives Sufficient forensic care capacity and Good-quality forensic care are therefore implausible within the current procurement system. DJI has meanwhile taken steps to use an alternative purchasing model from January 1, 2024, namely the landscape-oriented purchasing model. This is expected to mean that DJI will be able to better manage the price, quality and capacity of forensic care in the future.

Improving the connection between forensic and curative care

No fewer than four presumed effective mechanisms can be derived from the Parliamentary Papers from which the Wfz should promote the central goal of Continuity of care. For these assumptions, there is often varying evidence that the underlying working mechanisms can make a positive contribution to the continuity of care. The reconciliation of, among other things, the financial frameworks of forensic care and regular care is a positive development, but differences in legal position between forensic and regular patients in the civil care laws can hinder continuity of care (assumption 4.1). In the case of the effort requirement laid down in Article 2.5 Wfz (assumption 4.3), it must be established that this provision can only contribute to continuity of care if follow-up care can actually be started within six weeks. In the case of article 2.3 Wfz (assumption 4.4), recent reports show that the link article is used, but not very frequently. This can partly be explained by missing preconditions such as the capacity of secure beds and their financing, but also by ambiguities in the

legislation and implementation, as well as flaws in the Article 2.3 Wfz procedure in relation to the Wzd.

Directions for future research

The program evaluation has shown that it is useful to carry out a process and goal attainment evaluation for the Wfz. This research has provided insights into the theoretical and practical underpinning of the presumed effective mechanisms underlying the Wfz. Based on the findings from the program evaluation, a prioritization can be given to the processes that need to be further investigated in the subsequent process and goal attainment evaluations of the research program 'Evaluation of the Wfz'.

Patient in the right place

The process of assessment and placement plays a central role in guiding patients to the right place. Based on the program evaluation, concrete indicators have been established on the basis of which the presumed operation of the assessment and placement process can be investigated, and possible research designs have been described for further investigation.

On the one hand, a prospective study can be set up. Placement coordinators would be requested to systematically register in which cases it is not possible to place a patient in the right place. In these cases, it could be examined whether the required security level or the care demand in the assessment needs to be adjusted and whether this concerns temporary bridging care or a long-term second-best placement. Alternatively, a retrospective study can be performed, in which the actual placements of patients are compared with data from the initial indication based on data from Ifzo.

This research could be supplemented with interviews with officials responsible for the assessment and placement, in order to gain more insight into the process, the administrative burden associated with the assessment and placement of patients and the role that information exchange plays in guiding from patients to the right place.

Sufficient Forensic care capacity and Quality of forensic care

The current program evaluation concludes that the assumed effective mechanisms from which the objectives Sufficient forensic care capacity and Quality of forensic care should be achieved are not plausible within the current procurement structure. DJI has meanwhile taken steps to tender the procurement of forensic care based on a landscape-oriented procurement model as of January 1, 2024, among other things in order to get a better grip on capacity, quality and price. Due to the proposed change in the procurement strategy, it will be less useful in the near future to evaluate the role of healthcare procurement with regard to the achievement of objectives within the Wfz. When the landscape-oriented procurement model has been implemented in procurement for forensic care, it is important to re-examine the extent to which DJI implements the presumed effective mechanisms of the Wfz within this construction.

Improving the connection between forensic and curative care

In both the research into Article 2.3 Wfz and the evaluation of the Wvggz and Wzd, which was published at the same time, extensive research has been done into practical experience with Article 2.3 Wfz and the connection of the legal frameworks between the Wfz on the one hand and the Wvggz and the Wzd on the other. A second report on the jurisprudence regarding Article 2.3 Wfz will be published in 2022.

In the process evaluation, attention could also be paid to the impact and efficiency of Article 2.5 Wfz (assumption 4.3). Interviews can be used to find out what influence Article 2.5 of the Wfz has on achieving continuity of care and what bottlenecks arise in the preparation of follow-up regular care after the criminal justice framework has ended. This information could possibly be combined with information from registration systems, in order to compare the average timeframe preparing healthcare authorizations or judicial authorizations against the preparation period as laid down in Article 2.5 Wfz.

Conclusion

The system change of forensic care and the resulting Wfz has led to large-scale changes in the system of purchasing and transferring to forensic care. Overall, we believe that there is good scientific evidence for the general principle of the Wfz that effective forensic care contributes to the recovery of the forensic patient and reduces the risk of recidivism. Within the framework of this general principle, the legislator has formulated four objectives for the Wfz. Based on the program evaluation, we conclude that there is varying evidence for the presumed effective mechanisms from which the Wfz should achieve its goals. On the one hand, there is good evidence that the system of assessment and placement can lead to better guidance of forensic patients to the right place with the right care. On the other hand, it is becoming clear that the current system of healthcare procurement, which should play a central role in achieving sufficient forensic care capacity and high-quality forensic care, can provide insufficient guidance on capacity, quality and costs of forensic care. In 2024, a switch will be made to a different purchasing system, which is expected to allow better control of these factors. There is also varying evidence for the presumed effective mechanisms for the continuity of care – although new options such as Article 2.3 Wfz are being applied, boundary conditions such as capacity problems for secure beds can be an important limiting factor.

This program evaluation has shown that it is quite possible and useful to carry out a process evaluation and goal attainment evaluation for the Wfz. In view of the changes that will take place in the purchasing system, the process evaluation will mainly focus on the process of assessment and placement, which plays a central role in the goal Patient in the right place. The process evaluation will also contain several studies into the effects of the Wfz on continuity of care, specifically focusing on Article 2.3 Wfz.

Het Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC) is het kennisinstituut voor het ministerie van Justitie en Veiligheid. Het WODC doet zelf onafhankelijk wetenschappelijk onderzoek of laat dit doen door erkende instituten en universiteiten, ter ondersteuning van beleid en uitvoering.

Meer informatie:

www.wodc.nl