OFFERYNNAU STATUDOL CYMRU

2011 Rhif 2501 (Cy.273)

IECHYD MEDDWL, CYMRU

Rheoliadau Iechyd Meddwl (Eiriolwyr Iechyd Meddwl Annibynnol) (Cymru) 2011

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

1. Mae'r Rheoliadau hyn yn cynnwys darpariaethau ynghylch trefniadau ar gyfer penodi Eiriolwyr Iechyd Meddwl Annibynnol ("EIMAau"). Maent yn cynnwys darpariaethau ynghylch pwy y caniateir ei benodi i weithredu'n EIMA, a'r personau y caniateir i EIMA ymweld â hwy a'u cyfweld er mwyn darparu cymorth i glaf cymwys Cymreig a gafodd ei dderbyn o dan adran 4 (derbyn ar gyfer asesiad mewn achosion brys) o Ddeddf Iechyd Meddwl 1983 ("y Ddeddf").

2. Mae rheoliad 3 yn darparu—

(a) bod yn rhaid i Fyrddau Iechyd Lleol (BILlau) wneud trefniadau bod EIMAau ar gael i gleifion cymwys Cymreig dan orfodaeth (fel y'u diffinnir yn adran 130(I) o'r Ddeddf), sy'n bresennol yn ardal y BILl pan ddarperir y gwasanaeth eiriolaeth iechyd meddwl annibynnol. Cleifion cymwys Cymreig dan orfodaeth yw'r rheini:

(i) sy'n agored i gael eu cadw'n gaeth (heblaw o dan adrannau 135 a 136 o'r Ddeddf) mewn ysbyty neu sefydliad cofrestredig (rheoliad 3(1)(a)),

(ii) sy'n destun gwarcheidiaeth neu orchymyn triniaeth gymunedol o dan y Ddeddf (rheoliad 3(1)(b)),

(iii) sy'n cael eu hystyried am ffurf ar driniaeth sy'n dod o dan adran 57 o'r Ddeddf (rheoliad 3(1)(c)), neu

(iv) nad ydynt wedi cyrraedd 18 mlwydd oed ac sy'n cael eu hystyried am ffurf ar driniaeth o dan adran 58A o'r Ddeddf (rheoliad 3(1)(c));

WELSH STATUTORY INSTRUMENTS

2011 No. 2501 (W.273)

MENTAL HEALTH, WALES

The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations contain provisions about arrangements for the appointment of Independent Mental Health Advocates ("IMHAs"). They contain provisions about who may be appointed to act as an IMHA, and persons who may be visited and interviewed by an IMHA for the purpose of providing help to a Welsh qualifying patient who has been admitted under section 4 (admission for assessment in cases of emergency) of the Mental Health Act 1983 ("the Act").

2. Regulation 3 provides—

(a) that Local Health Boards (LHBs) must make arrangements for IMHAs to be available to Welsh qualifying compulsory patients (as defined in section 130(I) of the Act), who are present in the area of the LHB when the independent mental health advocacy service is to be provided. Welsh qualifying compulsory patients are those who are:

(i) liable to be detained (other than under sections 135 and 136 of the Act) in a hospital or registered establishment (regulation 3(1)(a)),

(ii) subject to guardianship or a community treatment order under the Act (regulation 3(1)(b)),

(iii) being considered for a form of treatment which falls under section 57 of the Act (regulation 3(1)(c)), or

(iv) not yet 18 years of age and are being considered for a form of treatment under section 58A of the Act (regulation 3(1)(c));

(b) bod yn rhaid i BILlau wneud trefniadau bod EIMAau ar gael i gleifion anffurfiol cymwys Cymreig (fel y'u diffinnir yn adran 130(J) o'r Ddeddf), sy'n bresennol mewn ysbyty neu sefydliad cofrestredig yn ardal y BILl pan ddarperir y gwasanaeth eiriolaeth iechyd meddwl annibynnol (rheoliad 3(2));

(c) y caiff BILlau wneud trefniadau gyda darparwyr gwasanaethau eiriolaeth ar gyfer darparu EIMAau (rheoliad 3(3));

(ch) pan wneir trefniadau ar gyfer darparu EIMAau rhaid i BILl roi sylw, i'r graddau y mae'n rhesymol ymarferol, i'r amgylchiadau amrywiol sydd gan gleifion cymwys Cymreig dan orfodaeth a chleifion anffurfiol cymwys Cymreig (rheoliad 3(4));

(d) bod yn rhaid i unrhyw berson a benodwyd i weithredu'n EIMA naill ai fod wedi ei gymeradwyo gan y BILl neu wedi ei gyflogi gan ddarparydd gwasanaethau eiriolaeth y mae BILl wedi gwneud trefniadau gydag ef ar gyfer darparu gwasanaethau eiriolaeth (rheoliad 3(5));

(dd) bod yn rhaid i BILl, cyn cymeradwyo penodi person yn EIMA, gael ei fodloni bod y person hwnnw'n bodloni'r gofynion penodi a ddarperir yn rheoliad 4 a'r gofynion annibyniaeth a ddarperir yn rheoliad 5 (rheoliad 3(6));

(e) bod yn rhaid i BILl sicrhau bod unrhyw ddarparydd gwasanaethau eiriolaeth y mae'n gwneud trefniadau gydag ef ar gyfer darparu gwasanaethau eiriolaeth yn sicrhau bod unrhyw berson y mae'r darparydd yn ei gyflogi'n EIMA yn bodloni'r gofynion penodi a ddarperir yn rheoliad 4 a'r gofynion annibyniaeth a ddarperir yn rheoliad 5 (rheoliad 3(7)); ac

(f) eglurder pan fydd person wedi ei gyflogi gan ddarparydd gwasanaethau eiriolaeth (rheoliadau 3(8)).

3. Mae rheoliad 4 yn gosod y gofynion penodi y mae'n rhaid i berson eu bodloni cyn y caniateir iddo gael ei benodi'n EIMA.

4. Mae rheoliad 5 yn gosod y gofynion annibyniaeth y mae'n rhaid i berson eu bodloni cyn y caniateir iddo gael ei benodi'n EIMA.

5. Mae rheoliad 6 yn darparu y caniateir i EIMA ymweld â phersonau penodol nad ydynt yn ymwneud yn broffesiynol â thriniaeth feddygol claf cymwys Cymreig dan orfodaeth a gafodd ei dderbyn o dan adran 4 o'r Ddeddf a'u cyf-weld at ddibenion darparu cymorth i glaf o'r fath.

(b) that LHBs must make arrangements for IMHAs to be available to Welsh qualifying informal patients (as defined in section 130(J) of the Act) who are present in a hospital or registered establishment located within the area of the LHB when the independent mental health advocacy service is to be provided (regulation 3(2));

(c) that LHBs may make arrangements with providers of advocacy services for the provision of IMHAs (regulation 3(3));

(d) when making arrangements for the provision of IMHAs an LHB must have regard, as far as reasonably practicable, to the diverse circumstances of Welsh qualifying compulsory patients and Welsh qualifying informal patients (regulation 3(4));

(e) that any person who is appointed to act as an IMHA must either be approved by the LHB or employed by a provider of advocacy services with which an LHB has made arrangements for the provision of advocacy services (regulation 3(5));

(f) that before approving the appointment of a person as an IMHA, the LHB must be satisfied that he or she meets the appointment requirements provided in regulation 4 and the independence requirements provided in regulation 5 (regulation 3(6));

(g) that an LHB must ensure that any provider of advocacy services with which it makes arrangements for the provision of advocacy services ensures that any person who the provider employs as an IMHA satisfies the appointment requirements provided in regulation 4 and the independence requirements provided in regulation 5 (regulation 3(7)); and

(h) clarification of when a person is employed by a provider of advocacy services (regulation 3(8)).

3. Regulation 4 sets out the appointment requirements that a person must satisfy before he or she may be appointed as an IMHA.

4. Regulation 5 sets out the independence requirements that a person must satisfy before he or she may be appointed as an IMHA.

5. Regulation 6 provides that certain persons who are not professionally concerned with the medical treatment of a Welsh qualifying compulsory patient admitted under section 4 of the Act may be visited and interviewed by an IMHA for the purpose of providing help to such a patient.

6. Mae rheoliad 7 yn darparu ar gyfer dirymu Rheoliadau Iechyd Meddwl (Eiriolwyr Annibynnol Iechyd Meddwl) (Cymru) 2008 (O.S. 2008/2437 (Cy. 210)).

7. Mae asesiad effaith rheoleiddiol wedi cael ei baratoi o ran y costau a'r manteision tebygol o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi gan y Tîm Deddfwriaeth Iechyd Meddwl, yr Adran Iechyd, Gwasanaethau Cymdeithasol a Phlant, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

6. Regulation 7 provides for the revocation of the Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2008 (S.I. 2008/2437 (W. 210)).

7. A regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Mental Health Legislation Team, Department for Health, Social Services and Children, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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2011 Rhif 2501 (Cy.273)

IECHYD MEDDWL, CYMRU

Rheoliadau Iechyd Meddwl (Eiriolwyr Iechyd Meddwl Annibynnol) (Cymru) 2011

Gwnaed *18 Hydref 2011*

Yn dod i rym yn unol â rheoliad 1(2)

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddwyd gan adrannau 130E(2), (3)(a) a (b), (4)(b), (5)(b), (7) a 130H(1)(b) o Ddeddf Iechyd Meddwl 1983(**1**) a chan adrannau 12, 203 a 204 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006(**2**).

Mae drafft o'r offeryn hwn wedi cael ei osod gerbron Cynulliad Cenedlaethol Cymru yn unol ag adran 143(3DB) o Ddeddf Iechyd Meddwl 1983, a'i gymeradwyo gan benderfyniad Cynulliad Cenedlaethol Cymru.

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Iechyd Meddwl (Eiriolwyr Iechyd Meddwl Annibynnol) (Cymru) 2011.

(2) Daw'r Rheoliadau hyn i rym—

(a) i'r graddau maent yn ymwneud â chleifion anffurfiol cymwys Cymreig(**3**) ar 2 Ebrill 2012; a

(b) at bob diben arall ar 3 Ionawr 2012.

(3) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.

(**1**) 1983 p.20 mewnosodwyd adrannau 130E i 130L gan Fesur Iechyd Meddwl (Cymru) 2010 mccc 7.

(**2**) 2006 p.42.

(**3**) Gweler adran 130J o Ddeddf Iechyd Meddwl 1983 am y diffiniad o 'Welsh qualifying informal patients'.

WELSH STATUTORY INSTRUMENTS

2011 No. 2501 (W.273)

MENTAL HEALTH, WALES

The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011

Made *18 October 2011*

Coming into force in accordance with regulation 1(2)

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 130E(2), (3)(a) and (b), (4)(b), (5)(b), (7) and 130H(1)(b) of the Mental Health Act 1983(**1**) and by sections 12, 203 and 204 of the National Health Service (Wales) Act 2006(**2**).

A draft of this instrument, has been laid before the National Assembly for Wales in accordance with section 143(3DB) of the Mental Health Act 1983, and approved by resolution of the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011.

(2) These Regulations come into force—

(a) insofar as they relate to Welsh qualifying informal patients(**3**) on 2 April 2012; and

(b) for all other purposes on 3 January 2012.

(3) These Regulations apply in relation to Wales.

(**1**) 1983 c.20 sections 130E to 130L were inserted by the Mental Health (Wales) Measure 2010 nawm 7.

(**2**) 2006 c.42.

(**3**) Please see section 130J of the Mental Health Act 1983 for the definition of Welsh qualifying informal patients.

Dehongli

2. Yn y Rheoliadau hyn—

ystyr "darparydd gwasanaethau eiriolaeth" ("*provider of advocacy services*") yw corff neu berson, gan gynnwys corff gwirfoddol, sy'n cyflogi personau y trefnir eu bod ar gael i weithredu fel EIMA;

ystyr "y Ddeddf" ("*the Act*") yw Deddf Iechyd Meddwl 1983;

ystyr "EIMA" ("*IMHA*") yw eiriolwr iechyd meddwl annibynnol; ac

ystyr "gwasanaeth eiriolaeth iechyd meddwl annibynnol" ("*independent mental health advocacy service*") yw'r gwasanaeth a ddarperir i glaf cymwys Cymreig dan orfodaeth(**1**) neu i glaf anffurfiol cymwys Cymreig gan ddarparydd gwasanaethau eiriolaeth.

Trefniadau ar gyfer eiriolwyr iechyd meddwl annibynnol

3.—(1) Yn ddarostyngedig i gyfarwyddiadau y caiff Gweinidogion Cymru eu rhoi, rhaid i Fwrdd Iechyd Lleol wneud y trefniadau hynny y mae o'r farn eu bod yn rhesymol i alluogi EIMAau i fod ar gael i weithredu ynghylch claf cymwys Cymreig dan orfodaeth—

(a) sy'n agored i gael ei gadw'n gaeth mewn ysbyty neu mewn sefydliad cofrestredig, p'un a yw mewn ysbyty neu mewn sefydliad cofrestredig sydd o fewn ardal y Bwrdd Iechyd Lleol, ac y mae'n bresennol yn ardal y Bwrdd Iechyd Lleol ar yr adeg pan ddarperir gwasanaeth eiriolaeth iechyd meddwl annibynnol;

(b) sy'n destun gwarcheidiaeth o dan y Ddeddf neu sy'n glaf cymunedol ac y mae'n bresennol yn ardal y Bwrdd Iechyd Lleol ar yr adeg pan ddarperir gwasanaeth eiriolaeth iechyd meddwl annibynnol; neu

(c) sy'n gymwys o dan adran 130I(3) o'r Ddeddf ac y mae'n bresennol yn ardal y Bwrdd Iechyd Lleol ar yr adeg pan ddarperir gwasanaeth eiriolaeth iechyd meddwl annibynnol.

(2) Yn ddarostyngedig i gyfarwyddiadau y caiff Gweinidogion Cymru eu rhoi, rhaid i Fwrdd Iechyd Lleol wneud y trefniadau hynny y mae o'r farn eu bod yn rhesymol i alluogi EIMAau i fod ar gael i weithredu ynghylch claf anffurfiol cymwys Cymreig sy'n bresennol mewn ysbyty neu mewn sefydliad cofrestredig sydd o fewn ardal y Bwrdd Iechyd Lleol ar yr adeg pan ddarperir gwasanaeth eiriolaeth iechyd meddwl annibynnol.

(**1**) Gweler adran 130I o Ddeddf Iechyd Meddwl 1983 am y diffiniad o 'Welsh qualifying compulsory patients'.

Interpretation

2. In these Regulations—

"the Act" ("*y Ddeddf*") means the Mental Health Act 1983;

"IMHA" ("*EIMA*") means an independent mental health advocate;

"independent mental health advocacy service" ("*gwasanaeth eiriolaeth iechyd meddwl annibynnol*") means the service provided to a Welsh qualifying compulsory patient(**1**) or a Welsh qualifying informal patient by a provider of advocacy services; and

"provider of advocacy services" ("*darparydd gwasanaethau eiriolaeth*") means a body or person, including a voluntary organisation, that employs persons who may be made available to act as an IMHA.

Arrangements for independent mental health advocates

3.—(1) Subject to directions that may be given by the Welsh Ministers, a Local Health Board must make such arrangements as it considers reasonable to enable IMHAs to be available to act in respect of a Welsh qualifying compulsory patient who—

(a) is liable to be detained in a hospital or registered establishment, whether or not in a hospital or registered establishment located within the area of the Local Health Board, and is present in the area of the Local Health Board at the time when the independent mental health advocacy service is to be provided;

(b) is subject to guardianship under the Act or is a community patient and is present in the area of the Local Health Board at the time when the independent mental health advocacy service is to be provided; or

(c) qualifies under section 130I(3) of the Act and is present in the area of the Local Health Board at the time when the independent mental health advocacy service is to be provided.

(2) Subject to directions that may be given by the Welsh Ministers, a Local Health Board must make such arrangements as it considers reasonable to enable IMHAs to be available to act in respect of a Welsh qualifying informal patient who is present in a hospital or registered establishment located within the area of the Local Health Board at the time when the independent mental health advocacy service is to be provided.

(**1**) Please see section 130I of the Mental Health Act 1983 for the definition of Welsh qualifying compulsory patients.

(3) Wrth wneud trefniadau o dan baragraffau (1) a (2) caiff Bwrdd Iechyd Lleol wneud trefniadau gyda darparydd gwasanaethau eiriolaeth.

(4) Wrth wneud trefniadau o dan baragraffau (1) a (2) rhaid i Fwrdd Iechyd Lleol, cyn belled ag y bo'n rhesymol ymarferol, roi sylw i amgylchiadau amrywiol (gan gynnwys ond heb fod yn gyfyngedig i anghenion ethnig, ieithyddol, diwylliannol a demograffig) cleifion cymwys Cymreig dan orfodaeth a chleifion anffurfiol cymwys Cymreig y caniateir i'r Bwrdd Iechyd Lleol arfer y swyddogaethau hynny mewn cysylltiad â hwy.

(5) Ni chaiff neb weithredu fel EIMA onid yw'r person hwnnw wedi ei gymeradwyo gan y Bwrdd Iechyd Lleol neu wedi ei gyflogi i weithredu fel EIMA gan ddarparydd gwasanaethau eiriolaeth y mae Bwrdd Iechyd Lleol wedi gwneud trefniadau gydag ef o dan baragraff (3).

(6) Cyn cymeradwyo unrhyw berson o dan baragraff (5) rhaid i Fwrdd Iechyd Lleol gael ei fodloni bod y person yn bodloni'r gofynion penodi yn rheoliad 4 a'r gofynion annibyniaeth yn rheoliad 5.

(7) Rhaid i Fwrdd Iechyd Lleol sicrhau ei bod yn ofynnol i unrhyw ddarparydd gwasanaethau eiriolaeth y mae'n gwneud trefniadau gydag ef o dan baragraff (3), yn unol â thelerau'r trefniant hwnnw, sicrhau bod unrhyw berson—

(a) sy'n gyflogedig gan y darparydd gwasanaethau eiriolaeth hwnnw; a

(b) y trefnwyd ei fod ar gael i weithredu fel EIMA,

yn bodloni'r gofynion penodi yn rheoliad 4 a'r gofynion annibyniaeth yn rheoliad 5.

(8) Yn y rheoliad hwn mae person yn gyflogedig gan ddarparydd gwasanaethau eiriolaeth os yw'r person hwnnw—

(a) yn gyflogedig gan ddarparydd gwasanaethau eiriolaeth o dan gontract gwasanaeth; neu

(b) wedi ei gymryd ymlaen gan y darparydd gwasanaethau eiriolaeth o dan gontract am wasanaethau.

Gofynion penodi ar gyfer eiriolwyr iechyd meddwl annibynnol

4.—(1) Y gofynion penodi y cyfeirir atynt yn rheoliad 3(6) a (7) yw—

(a) bod gan berson brofiad neu hyfforddiant priodol neu gyfuniad priodol o brofiad a hyfforddiant;

(b) bod person yn unplyg ac o gymeriad da; ac

(c) nad yw person yn gyflogedig o dan gontract gwasanaeth gan y Bwrdd Iechyd Lleol y gwneir y penodiad ar gyfer ei ardal.

(2) Wrth benderfynu a yw person yn bodloni'r gofyniad penodi ym mharagraff (1)(a) rhaid rhoi sylw

(3) In making arrangements under paragraphs (1) and (2) a Local Health Board may make arrangements with a provider of advocacy services.

(4) In making arrangements under paragraphs (1) and (2) a Local Health Board must, as far as reasonably practicable, have regard to the diverse circumstances (including but not limited to the ethnic, linguistic, cultural and demographic needs) of Welsh qualifying compulsory patients and Welsh qualifying informal patients in respect of whom the Local Health Board may exercise those functions.

(5) No person may act as an IMHA unless that person is approved by the Local Health Board or is employed to act as an IMHA by a provider of advocacy services with which a Local Health Board has made arrangements under paragraph (3).

(6) Before approving any person under paragraph (5) a Local Health Board must be satisfied that the person satisfies the appointment requirements in regulation 4 and the independence requirements in regulation 5.

(7) A Local Health Board must ensure that any provider of advocacy services with whom it makes arrangements under paragraph (3) is required, in accordance with the terms of that arrangement, to ensure that any person who—

(a) is employed by that provider of advocacy services; and

(b) is made available to act as an IMHA,

satisfies the appointment requirements in regulation 4 and the independence requirements in regulation 5.

(8) In this regulation a person is employed by the provider of advocacy services if that person is—

(a) employed by the provider of advocacy services under a contract of service; or

(b) engaged by the provider of advocacy services under a contract for services.

Appointment requirements for independent mental health advocates

4.—(1) The appointment requirements referred to in regulation 3(6) and (7) are that a person—

(a) has appropriate experience or training or an appropriate combination of experience and training;

(b) is of integrity and good character; and

(c) is not employed under a contract of service by the Local Health Board for whose area the appointment is made.

(2) In determining whether a person satisfies the appointment requirement in paragraph (1)(a) regard

i safonau yn unrhyw Godau Ymarfer a ddyroddwyd gan Weinidogion Cymru o dan adran 118 (codau ymarfer) o'r Ddeddf, ac unrhyw ganllawiau a ddyroddir o bryd i'w gilydd gan Weinidogion Cymru.

(3) At ddibenion paragraff (2) caniateir i safonau gynnwys unrhyw gymwysterau y caiff Gweinidogion Cymru benderfynu eu bod yn briodol.

(4) Cyn gwneud penderfyniad at ddibenion paragraff (1)(b) mewn perthynas ag unrhyw berson, rhaid cael mewn cysylltiad â'r person hwnnw, dystysgrif cofnod troseddol fanwl a ddyroddwyd yn unol ag adran 113B (tystysgrifau cofnod troseddol manwl) o Ddeddf yr Heddlu 1997(**1**) sy'n cynnwys—

(a) pan fo person i ddarparu gwasanaethau eiriolaeth ar gyfer cleifion cymwys Cymreig dan orfodaeth a chleifion anffurfiol cymwys Cymreig nad ydynt wedi cyrraedd 18 oed, wybodaeth ynghylch addasrwydd mewn perthynas â phlant (o fewn ystyr adran 113BA o Ddeddf yr Heddlu 1997); a

(b) pan fo person i ddarparu gwasanaethau eiriolaeth ar gyfer cleifion cymwys Cymreig dan orfodaeth a chleifion anffurfiol cymwys Cymreig sydd wedi cyrraedd 18 oed, wybodaeth ynghylch addasrwydd mewn perthynas â phersonau hyglwyf (o fewn ystyr adran 113BB o Ddeddf yr Heddlu 1997).

Gofynion annibyniaeth ar gyfer eiriolwyr iechyd meddwl annibynnol

5.—(1) Y gofynion annibyniaeth y cyfeirir atynt yn rheoliad 3(6) a (7) yw, i'r graddau y mae'n ymarferol, bod rhaid i berson allu gweithredu'n annibynnol o unrhyw unigolyn—

(a) sy'n ymwneud yn broffesiynol â thriniaeth feddygol y claf cymwys Cymreig dan orfodaeth neu'r claf anffurfiol cymwys Cymreig;

(b) sy'n gofyn i'r person hwnnw i ymweld â'r claf cymwys Cymreig dan orfodaeth neu'r claf anffurfiol cymwys Cymreig neu ei gyf-weld.

(2) Yn achos claf cymwys Cymreig dan orfodaeth a gafodd ei dderbyn ar gyfer asesiad o dan adran 4 (derbyn ar gyfer asesiad mewn achosion brys) o'r Ddeddf, yn ychwanegol at y gofynion ym mharagraff (1) rhaid i berson allu gweithredu—

(a) yn annibynnol o'r proffesiynolyn iechyd meddwl a gymeradwywyd neu'r berthynas agosaf a wnaeth y cais iddo gael ei dderbyn yn unol ag adran 4(2) o'r Ddeddf; a

(b) yn annibynnol o'r meddyg a ddarparodd yr argymhelliad meddygol yn unol ag adran 4(3) o'r Ddeddf,

must be had to standards in any Codes of Practice issued by the Welsh Ministers under section 118 (codes of practice) of the Act, and any guidance that may be from time to time issued by the Welsh Ministers.

(3) For the purposes of paragraph (2) standards may include any qualifications that the Welsh Ministers may determine as appropriate.

(4) Before a determination is made for the purposes of paragraph (1)(b) in relation to any person, there must be obtained in respect of that person, an enhanced criminal record certificate issued pursuant to section 113B (enhanced criminal record certificates) of the Police Act 1997(**1**) which includes—

(a) where the person is to provide advocacy services for Welsh qualifying compulsory patients and Welsh qualifying informal patients who have not attained the age of 18, suitability information relating to children (within the meaning of section 113BA of the Police Act 1997); and

(b) where the person is to provide advocacy services for Welsh qualifying compulsory patients and Welsh qualifying informal patients who have attained the age of 18, suitability information relating to vulnerable persons (within the meaning of section 113BB of the Police Act 1997).

Independence requirements for independent mental health advocates

5.—(1) The independence requirements referred to in regulation 3(6) and (7) are that, so far as practicable, a person must be able to act independently of any individual, who—

(a) is professionally concerned with the medical treatment of the Welsh qualifying compulsory patient or the Welsh qualifying informal patient;

(b) requests that person to visit or interview the Welsh qualifying compulsory patient or the Welsh qualifying informal patient.

(2) In the case of a Welsh qualifying compulsory patient who has been admitted for assessment under section 4 (admission for assessment in cases of emergency) of the Act, in addition to the requirements in paragraph (1) a person must be able to act independently of—

(a) the approved mental health professional or nearest relative who made the application for admission in accordance with section 4(2) of the Act; and

(b) the doctor who provided the medical recommendation in accordance with section 4(3) of the Act,

(**1**) 1997 p.50.

(**1**) 1997 c.50.

pan na fo'r personau a bennir yn (a) a (b) hefyd yn ymwneud yn broffesiynol â thriniaeth feddygol y claf cymwys Cymreig dan orfodaeth.

(3) Nid yw person yn ymwneud yn broffesiynol(**1**) â thriniaeth feddygol claf cymwys Cymreig dan orfodaeth neu'n ymwneud yn broffesiynol â thriniaeth feddygol claf anffurfiol cymwys Cymreig os yw'r person hwnnw—

(a) yn gweithredu, neu wedi gweithredu unwaith neu fwy nag unwaith, fel EIMA i'r claf yn unol ag adrannau 130F (trefniadau o dan adran 130E ar gyfer cleifion cymwys Cymreig dan orfodaeth) neu 130G (trefniadau o dan adran 130E ar gyfer cleifion anffurfiol cymwys Cymreig) o'r Ddeddf; neu

(b) yn cynrychioli neu'n cynorthwyo, neu wedi cynrychioli neu gynorthwyo, y claf ac eithrio yn unol ag adrannau 130F neu 130G o'r Ddeddf, ond fel arall heb ymwneud â thriniaeth y claf.

Personau y caniateir iddynt gael ymweliad neu gael eu cyf-weld gan EIMA at ddibenion darparu cymorth i glaf cymwys Cymreig dan orfodaeth a gafodd ei dderbyn o dan adran 4 (derbyn ar gyfer asesiad mewn achosion brys) o'r Ddeddf

6. Yn achos claf cymwys Cymreig dan orfodaeth a gafodd ei dderbyn ar gyfer asesiad o dan adran 4 o'r Ddeddf, caniateir i'r EIMA ymweld â'r canlynol a'u cyf-weld—

(a) y proffesiynolyn iechyd meddwl a gymeradwywyd neu'r berthynas agosaf a wnaeth y cais iddo gael ei dderbyn yn unol ag adran 4(2) o'r Ddeddf; a

(b) y meddyg a ddarparodd yr argymhelliad meddygol yn unol ag adran 4(3) o'r Ddeddf

pan na fo'r personau a bennir yn (a) a (b) hefyd yn ymwneud yn broffesiynol â thriniaeth feddygol y claf cymwys Cymreig dan orfodaeth.

Dirymu

7. Mae Rheoliadau Iechyd Meddwl (Eiriolwyr Annibynnol Iechyd Meddwl) (Cymru) 2008(**2**) drwy hyn wedi eu dirymu.

where the persons specified in (a) and (b) are not also professionally concerned with the medical treatment of the Welsh qualifying compulsory patient.

(3) A person is not professionally concerned(**1**) with a Welsh qualifying compulsory patient's medical treatment or a Welsh qualifying informal patient's medical treatment if he or she—

(a) is acting, or has acted on one or more occasions, as an IMHA for the patient in accordance with sections 130F (arrangements under section 130E for welsh qualifying compulsory patients) or 130G (arrangements under section 130E for welsh qualifying informal patients) of the Act; or

(b) is representing or supporting, or has represented or supported, the patient other than in accordance with sections 130F or 130G of the Act, but is not otherwise involved in the patient's treatment.

Persons who may be visited and interviewed by an IMHA for the purpose of providing help to a Welsh qualifying compulsory patient admitted under section 4 (admission for assessment in cases of emergency) of the Act

6. In the case of a Welsh qualifying compulsory patient who has been admitted for assessment under section 4 of the Act, the IMHA may visit and interview—

(a) the approved mental health professional or nearest relative who made the application for admission in accordance with section 4(2) of the Act; and

(b) the doctor who provided the medical recommendation in accordance with section 4(3) of the Act,

where the persons specified in (a) and (b) are not also professionally concerned with the medical treatment of the Welsh qualifying compulsory patient.

Revocation

7. The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2008(**2**) are hereby revoked.

(**1**) Gweler adran 130E(5) o'r Ddeddf sy'n ymwneud â phan na fydd person yn cael ei ystyried fel un sy'n ymwneud yn broffesiynol â thriniaeth feddygol claf.

(**2**) O.S. 2008/2437 (Cy.210).

(**1**) Please see section 130E(5) of the Act relating to when a person is not to be regarded as being professionally concerned with a patient's medical treatment.

(**2**) S.I. 2008/2437 (W.210).

Lesley Griffiths

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, un o Weinidogion Cymru

18 Hydref 2011

Minister for Health and Social Services, one of the Welsh Ministers

18 October 2011

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2011 Rhif 2501 (Cy.273)

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2011 No. 2501 (W.273)

MENTAL HEALTH, WALES

The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011

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