



OFFERYNNAU STATUDOL
CYMRU

2008 Rhif 2437 (Cy.210)

IECHYD MEDDWL, CYMRU

Rheoliadau Iechyd Meddwl
(Eiriolwyr Annibynnol Iechyd
Meddwl) (Cymru) 2008

NODYN ESBONIADOL

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

1. Mae'r Rheoliadau hyn yn cynnwys darpariaethau ynghylch y trefniadau ar gyfer penodi Eiriolwyr Annibynnol Iechyd Meddwl (EAIMau). Maent yn cynnwys darpariaeth ynghylch pwy y caniateir ei benodi'n EAIM.

2. Mae rheoliad 3 yn darparu—

- (a) bod yn rhaid i Fyrrdau Iechyd Lleol (BILL) drefnu bod EAIMau ar gael i cleifion sy'n gymwys am help o dan adran 130C o Ddeddf Iechyd Meddwl 1983 ("y Ddeddf"). Cleifion cymwys yw'r cleifion hynny sydd
 - (i) yn agored i gael eu cadw'n gaeth mewn ysbty (ac eithrio o dan adrannau 4, 5(2)(4), 135 neu 136 o'r Ddeddf);
 - (ii) yn ddarostyngedig i orchmylion gwarchediaeth neu driniaeth gymunedol;
 - (iii) cleifion anffurfiol sy'n cael eu hystyried am ffurf ar driniaeth sy'n dod o dan adran 57 o'r Ddeddf;
 - (iv) cleifion anffurfiol nad ydynt wedi cyrraedd eu deunaw mlwydd oed ac sy'n cael eu hystyried am ffurf ar driniaeth o dan adran 58A o'r Ddeddf (rheoliad 3(1));
- (b) y caiff BILLau wneud trefniadau gyda darparwyr gwasanaethau eirioli ar gyfer darparu EAIMau (rheoliad 3(2));
- (c) bod yn rhaid i unrhyw berson a benodwyd i weithredu fel EAIM fod naill ai wedi'i gymeradwyo gan y BILL neu wedi'i gyflogi gan ddarparydd gwasanaethau eirioli (rheoliad 3(3));

WELSH
STATUTORY INSTRUMENTS

2008 No. 2437 (W.210)

MENTAL HEALTH, WALES

The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations contain provisions about the arrangements for the appointment of Independent Mental Health Advocates (IMHAs). They contain provision about who may be appointed to act as an IMHA.

2. Regulation 3 provides—

- (a) that Local Health Boards (LHB) must make arrangements for IMHAs to be available to patients who qualify for help under section 130C of the Mental Health Act 1983 ("the Act"). Qualifying patients are those patients who are
 - (i) liable to be detained in hospital (other than under sections 4, 5(2)(4), 135 or 136 of the Act);
 - (ii) subject to guardianship or community treatment orders;
 - (iii) informal patients who are being considered for a form of treatment that falls under section 57 of the Act;
 - (iv) informal patients who have not attained the age of 18 years and are being considered for a form of treatment under section 58A of the Act (regulation 3(1));
- (b) that LHBs may make arrangements with providers of advocacy services for the provision of IMHAs (regulation 3(2));
- (c) 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 (regulation 3(3));

- (ch) bod yn rhaid i BILI, cyn cymeradwyo EAIM, gael ei fodloni ei fod yn cwrdd â gofynion y penodiad (rheoliad 3(4));
- (d) y dylai fod yn ofynnol i ddarparydd gwasanaethau eirioli sicrhau bod unrhyw EAIMau y gallant eu cyflogi yn bodloni gofynion y penodiad (rheoliad 3(5));
- (dd) eglurhad ynghylch pa BILI sy'n gyfrifol am drefnu i EAIM weithredu dros glaf tra bydd yn cael ei gadw'n gaeth mewn ysbyty.

3. Mae rheoliad 4 yn nodi'r gofynion penodi y mae'n rhaid i EAIM eu bodloni cyn y caniateir ei benodi.

4. Ni luniwyd asesiad effaith llawn ar gyfer yr offeryn hwn gan ragwelir y caiff effaith arwyddocaol ar y sector preifat nac ar y sector gwirfoddol.

- (d) that before approving an IMHA the LHB must be satisfied that he or she meets the appointment requirements (regulation 3(4));
- (e) that a provider of advocacy services should be required to ensure that any IMHAs who they may employ satisfy the appointment requirements (regulation 3(5));
- (f) clarification on which LHB is responsible for making arrangements for an IMHA to act for a patient whilst the patient is detained in hospital.

3. Regulation 4 sets out the appointment requirements that an IMHA must satisfy before they may be appointed.

4. A full impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.

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

ystyr "EAIM" ("IMCA") yw eiriolwr annibynnol iechyd meddwl.

Trefniadau ar gyfer eiriolwyr annibynnol iechyd meddwl

3.-(1) Yn ddarostyngedig i gyfarwyddiadau y caiff Gweinidogion Cymru eu rhoi, bydd Bwrdd Iechyd Lleol yn gwneud trefniadau y mae'n ystyried eu bod yn rhesymol er mwyn galluogi EAIMau i fod ar gael i weithredu mewn cysylltiad â chlaf cymwys sydd—

- (a) yn agored i gael ei gadw'n gaeth mewn ysbty neu mewn sefydliad cofrestredig sydd yn ardal y Bwrdd Iechyd Lleol;
- (b) yn ddarostyngedig i warcheidiaeth o dan y Ddeddf neu sy'n glaf cymunedol ac sydd fel arfer yn preswylio yn yr ardal y sefydlwyd y Bwrdd Iechyd Lleol ar ei chyfer;
- (c) yn gymwys o dan adran 130C(3) o'r Ddeddf ac sydd fel arfer yn preswylio yn yr ardal y sefydlwyd y Bwrdd Iechyd Lleol ar ei chyfer.

(2) Wrth wneud trefniadau o dan baragraff (1) caiff Bwrdd Iechyd Lleol wneud trefniadau gyda ddarparwyd gwasanaethau eirioli.

(3) Ni chaiff unrhyw berson weithredu fel EAIM onid yw'r person hwnnw wedi cael ei gymeradwyo gan y Bwrdd Iechyd Lleol neu onid yw wedi cael ei gyflogi gan ddarparwyd gwasanaethau eirioli i weithredu fel EAIM.

(4) Cyn cymeradwyo unrhyw berson o dan baragraff (3) rhaid i Fwrdd Iechyd Lleol gael ei fodloni bod y person yn bodloni'r gofynion penodi yn rheoliad 4.

(5) Rhaid i Fwrdd Iechyd Lleol sicrhau ei bod yn ofynnol i unrhyw ddarparwyd gwasanaethau eirioli y mae'r Bwrdd yn gwneud trefniant ag ef o dan baragraff (2), yn unol â thelerau'r trefniant hwnnw, sicrhau bod unrhyw berson—

- (a) a gyflogir gan y darparwyd gwasanaethau eirioli hwnnw, a
- (b) y perir ei fod ar gael i weithredu fel EAIM, yn bodloni'r gofynion penodi yn rheoliad 4.

(6) At ddibenion rheoliad 2(2) o Reoliadau Byrddau Iechyd Lleol (Swyddogaethau) (Cymru) 2003(1) nid yw Bwrdd Iechyd Lleol yn gyfrifol am wneud trefniadau'n unol â pharagraff (1) mewn perthynas â chlaf cymwys os yw'r claf cymwys hwnnw—

"qualifying patients" ("cleifion cymwys") mean those persons who qualify for help from an IMHA under sections 130C(2), (3) and (4) of the Act

Arrangements for independent mental health advocates

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

- (a) is liable to be detained in a hospital or registered establishment which is in the area of the Local Health Board;
- (b) is subject to guardianship under the Act or is a community patient and is usually resident in the area for which the Local Health Board is established;
- (c) qualifies under section 130C(3) of the Act and is usually resident in the area for which the Local Health Board is established.

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

(3) No person may act as an IMHA unless that person is approved by the Local Health Board or is employed by a provider of advocacy services to act as an IMHA.

(4) Before approving any person under paragraph (3) a Local Health Board must be satisfied that the person satisfies the appointment requirements in regulation 4.

(5) A Local Health Board must ensure that any provider of advocacy services with whom it makes arrangements under paragraph (2) 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.

(6) For the purposes of regulation 2(2) of the Local Health Boards (Functions) (Wales) Regulations 2003(1) a Local Health Board is not responsible for making arrangements in accordance with paragraph (1) in respect of a qualifying patient if that qualifying patient—

(1) O.S. 2003/150 (Cy.20).

(1) S.I. 2003/150 (W.20).

- (a) fel arfer yn preswylio yn yr ardal y sefydlwyd y Bwrdd Iechyd Lleol ar ei chyfer; a
- (b) yn agored i gael ei gadw'n gaeth mewn ysbty neu mewn sefydliad cofrestredig nad yw yn yr un ardal y mae ef fel arfer yn preswylio ynddi

Gofynion penodi ar gyfer eiriolwyr annibynnol iechyd meddwl

4.-(1) Y gofynion penodi yn rheoliad 3(4) a (5) yw—

- (a) bod gan y person brofiad neu hyfforddiant priodol neu gyfuniad priodol o brofiad a hyfforddiant;
- (b) bod y person yn meddu ar uniondeb a chymeriad da; ac
- (c) y bydd y person yn gweithredu'n annibynnol ar unrhyw berson
 - (i) sy'n gofyn i'r person hwnnw ymweld neu gyf-weld â'r claf cymwys;
 - (ii) sy'n ymwneud yn broffesiynol â thriniaeth feddygol y claf cymwys.

(2) Wrth benderfynu a yw person yn bodloni'r gofyniad penodi ym mharagraff (1)(a) rhoddir ystyriaeth i safonau mewn canllawiau y caiff Gweinidogion Cymru eu dyroddi o bryd i'w gilydd.

(3) At ddibenion paragraff (2) caiff safonau gynnwys unrhyw gymhwyster 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 gafael ar y canlynol mewn cysylltiad â'r person hwnnw—

- (a) dystysgrif cofnod troseddol manwl a ddyroddir yn unol ag adran 113B o Ddeddf yr Heddlu 1997(1); neu
- (b) os nad yw'r diben y mae'r dystysgrif yn ofynnol o'i herwydd yn un a ragnodir o dan is-adran (2) o'r adran honno, dystysgrif cofnod troseddol a ddyroddir yn unol ag adran 113A o'r Ddeddf honno.

(5) At ddibenion adran 130A(5) nid yw person yn ymwneud yn broffesiynol â thriniaeth feddygol y claf cymwys

- (a) os yw'n gweithredu, neu wedi gweithredu, fel EAIM i'r claf cymwys yn unol ag adran 130B o'r Ddeddf; neu
- (b) os yw'n cynrychioli neu'n cynorthwyo, neu wedi cynrychioli neu gynorthwyo, claf cymwys heb fod yn unol ag adran 130B ond nad yw fel arall yn ymwneud â thriniaeth y claf cymwys.

- (a) is usually resident in the area for which the Local Health Board is established; and
- (b) is liable to be detained in a hospital or registered establishment which is not in the same area in which he or she is usually resident.

Appointment requirements for independent mental health advocates

4.-(1) The appointment requirements in regulation 3(4) and (5) 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) will act independently of any person who
 - (i) requests that person to visit or interview the qualifying patient;
 - (ii) is professionally concerned with the medical treatment of the qualifying patient.

(2) In determining whether a person satisfies the appointment requirement in paragraph (1)(a) regard will be had to standards in guidance that may from time to time be issued by Welsh Ministers.

(3) For the purposes of paragraph (2) standards may include any qualification that 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—

- (a) an enhanced criminal record certificate issued pursuant to section 113B of the Police Act 1997(1); or
- (b) if the purpose for which the certificate is required is not one prescribed under subsection (2) of that section, a criminal record certificate issued pursuant to section 113A of that Act.

(5) For the purposes of section 130A(5) a person is not professionally concerned with the qualifying patient's medical treatment if he or she—

- (a) is acting, or has acted, as an IMHA for the qualifying patient in accordance with section 130B of the Act; or
- (b) is representing or supporting, or has represented or supported, the qualifying patient other than in accordance with section 130B but is not otherwise involved in the qualifying patient's treatment.

(1) 1997 p.50. Mewnosodir adrannau 113A i 113D gan adran 163 o Ddeddf Trosedu Cyfundrefnol Difrifol a'r Heddlu 2005 (p.14).

(1) 1997 c.50. Sections 113A to 113D are inserted by section 163 of the Serious Organised Crime and Police Act 2005 (c.14).

(6) Yn y rheoliad hwn mae person yn cael ei gyflogi gan y darpanydd gwasanaethau eirioli os yw'r person hwnnw—

- (a) yn gyflogedig o dan gontract gwasanaeth; neu
- (b) wedi ei gymryd ymlaen o dan gontract am wasanaethau.

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

- (a) employed under a contract of service; or
- (b) engaged under a contract for services.

Edwina Hart

Y Gweinidog dros Iechyd a Gwasanaethau Cymdeithasol, un o Weinidogion Cymru

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

15 Medi 2008

15 September 2008

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IECHYD MEDDWL, CYMRU

Rheoliadau Iechyd Meddwl
(Eiriolwyr Annibynnol Iechyd
Meddwl) (Cymru) 2008

WELSH
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2008 No. 2437 (W.210)

MENTAL HEALTH, WALES

The Mental Health (Independent
Mental Health Advocates) (Wales)
Regulations 2008

£5.00

W358/10/08

ON