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WELSH STATUTORY INSTRUMENTS

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**2009 No. 266**

**The Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) (Wales) Regulations 2009**

**PART 3**

Appointment — general

**Appointment procedure**

- 4.—(1) A person is to be selected for appointment as a representative in accordance with Part 4.  
(2) A person is to be appointed as a representative in accordance with Part 5.

**Commencement of appointment procedure**

5. The procedure for appointing a representative must begin as soon as—
- (a) a best interests assessor is selected by the supervisory body(1) for the purposes of a request for a standard authorisation(2); or
  - (b) a relevant person's representative's appointment terminates, or is to be terminated in accordance with regulation 14, and the relevant person remains subject to a standard authorisation.

**Eligibility of a person to be a representative**

- 6.—(1) A person is eligible to be appointed as a representative if they are—
- (a) 18 years of age or over;
  - (b) able to keep in contact with the relevant person(3);
  - (c) not prevented by ill-health from carrying out the role of the representative;
  - (d) willing to be the relevant person's representative;
  - (e) not financially interested in the care home(4) or independent hospital(5) where the relevant person is, or is to be, detained;
  - (f) not a relative of a person who is financially interested in the care home or independent hospital where the relevant person is, or is to be, detained;
  - (g) not providing services to, or not employed to work in, the care home where the relevant person is, or is to be, detained;

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(1) The identity of the supervisory body is determined in accordance with paragraphs 128, 180, 181 and 182 of Schedule A1 to the Mental Capacity Act 2005 ("the Act").  
(2) "standard authorisation" is defined in paragraph 8 of Schedule A1 to the Act.  
(3) "relevant person" is defined in paragraph 7 of Schedule A1 to the Act.  
(4) "care home" is defined in paragraph 178 of Schedule A1 to the Act.  
(5) "independent hospital" is defined in paragraph 175(3) of Schedule A1 of the Act.

- (h) not employed to work in the hospital<sup>(6)</sup> where the relevant person is, or is to be, detained in a role that is, or could be, related to the relevant person's case; and
  - (i) not employed to work in the relevant person's supervisory body in a role that is, or could be, related to the relevant person's case.
- (2) For the purposes of this regulation a "relative" (*"perthynas agos"*) means:
- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse, former spouse, civil partner or former civil partner, or
  - (b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person's spouse, former spouse, civil partner or former civil partner.
- (3) For the purposes of this regulation—
- (a) "spouse" (*"priod"*) or "civil partner" (*"partner sifil"*) includes a person who is not married to or in a civil partnership with a person but is living with that person as if they were, and
  - (b) a person has a financial interest in a care home or independent hospital where that person is a partner, director, other office-holder or major shareholder of the care home or independent hospital that has made the application for a standard authorisation.
  - (c) "major shareholder" (*"prif gyfrannddaliwr"*) means—
    - (i) any person who holds one tenth or more of the issued shares in the care home or independent hospital, where the care home or independent hospital is a company limited by shares, and
    - (ii) in all other cases, any of the owners of the care home or independent hospital.

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<sup>(6)</sup> "hospital" is defined in paragraph 175(1) of Schedule A1 to the Act.