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OFFERYNNAU STATUDOL  
CYMRU

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WELSH  
STATUTORY INSTRUMENTS

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**2008 Rhif 2440 (Cy.213)**

**2008 No. 2440 (W.213)**

**IECHYD MEDDWL, CYMRU**

**MENTAL HEALTH, WALES**

Rheoliadau Iechyd Meddwl  
(Gwrthdrawiad Buddiannau)  
(Cymru) 2008

The Mental Health (Conflicts of  
Interest) (Wales) Regulations  
2008

**NODYN ESBONIADOL**

**EXPLANATORY NOTE**

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

*(This note is not part of the Regulations)*

Mae'r Rheoliadau hyn yn gosod yr amgylchiadau pan fo'r posibilrwydd o wrthdrawiad buddiannau yn gyfryw ag nad oes modd i weithiwr proffesiynol iechyd meddwl cymeradwy wneud cais a grybwyllir yn adran 11(1) o Ddeddf Iechyd Meddwl 1983 (p.20), fel y'i diwygiwyd gan Ddeddf Iechyd Meddwl 2007 (p.12), neu nad oes modd i ymarferydd meddygol cofrestredig wneud argymhelliad meddygol at ddibenion cais a grybwyllir yn adran 12(1) i berson gael ei dderbyn o dan y Ddeddf.

These Regulations set out the circumstances in which there is a potential conflict of interest such that an approved mental health professional cannot make an application mentioned in section 11(1) of the Mental Health Act 1983 (c.20), as amended by the Mental Health Act 2007 (c.12), or a registered medical practitioner cannot make a medical recommendation for the purposes of an application mentioned in section 12(1) for a person to be admitted under the Act.

Bydd gan weithiwr proffesiynol iechyd meddwl cymeradwy sy'n ystyried gwneud cais i berson gael ei dderbyn dan y Ddeddf neu ymarferydd meddygol cofrestredig sy'n ystyried rhoi argymhelliad meddygol at ddibenion cais o'r fath wrthdrawiad buddiannau posibl am amryw o resymau. Mae'r rhesymau hynny yn rhai proffesiynol (rheoliad 3), yn rhai ariannol (rheoliad 4), yn rhai busnes (rheoliad 5) neu oherwydd perthynas bersonol (rheoliad 6) sy'n bodoli rhwng y person hwnnw ac asesydd arall, neu rhwng y person hwnnw a naill ai y claf neu, pan fo'r cais i gael ei wneud gan berthynas agosaf y claf, y perthynas agosaf.

An approved mental health professional considering making an application to admit a person under the Act or a registered medical practitioner considering giving a medical recommendation for the purposes of such an application will have a potential conflict of interest for a number of reasons. Those reasons are the existence of a professional (regulation 3), financial (regulation 4), business (regulation 5) or personal (regulation 6) relationships between that person and another assessor, or between that person and either the patient or, where the application is to be made by the patient's nearest relative, the nearest relative.

Mae yna ddarpariaeth i weithiwr proffesiynol iechyd meddwl cymeradwy neu i ymarferydd meddygol cofrestredig wneud cais neu argymhelliad meddygol er gwaethaf gwrthdrawiad buddiannau posibl petai yna fel arall oedi gyda risg difrifol i iechyd neu ddiogelwch y claf neu bobl eraill.

There is provision for an approved mental health professional or a registered medical practitioner to make an application or a medical recommendation despite a potential conflict of interest if there would otherwise be a delay with a serious risk to the health or safety of the patient or to others.

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

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

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2008

*Gwnaed* 15 Medi 2008  
*Gosodwyd gerbron Cynulliad  
Cenedlaethol Cymru* 17 Medi 2008  
*Yn dod i rym* 3 Tachwedd 2008

*Made* 15 September 2008  
*Laid before the National  
Assembly for Wales* 17 September 2008  
*Coming into force* 3 November 2008

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddwyd iddynt gan adran 12A o Ddeddf Iechyd Meddwl 1983(1), drwy hyn yn gwneud y Rheoliadau a ganlyn:

The Welsh Ministers, in exercise of the powers conferred upon them by section 12A of the Mental Health Act 1983(1), hereby make the following Regulations:

**Enwi, cychwyn a rhychwant**

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Iechyd Meddwl (Gwrthdrawiad Buddiannau) (Cymru) 2008 a deuant i rym ar 3 Tachwedd 2008.

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

**Title, commencement and extent**

1.—(1) The title of these Regulations is the Mental Health (Conflict of Interest) (Wales) Regulations 2008 and they come into force on 3 November 2008.

(2) These Regulations apply in relation to Wales.

**Dehongli**

2. Yn y Rheoliadau hyn—

ystyr "argymhelliad meddygol" ("*medical recommendation*") yw argymhelliad meddygol fel a grybwyllir yn adran 12(1) o'r Ddeddf at ddibenion cais;

ystyr "asesydd" ("*assessor*") yw—

- (a) GPIMC sy'n ystyried gwneud cais, neu
- (b) ymarferydd meddygol cofrestredig sy'n ystyried rhoi argymhelliad meddygol;

ystyr "cais" ("*application*") yw cais a grybwyllir yn adran 11(1) o'r Ddeddf;

ystyr "y Ddeddf" ("*the Act*") yw Deddf Iechyd Meddwl 1983(2);

**Interpretation**

2. In these Regulations—

"the Act" ("*y Ddeddf*") means the Mental Health Act 1983(2);

"AMHP" ("*GPIMC*") means an approved mental health professional;

"application" ("*cais*") means an application mentioned in section 11(1) of the Act;

"assessor" ("*asesydd*") means—

- (a) an AMHP considering making an application, or
- (b) a registered medical practitioner considering giving a medical recommendation;

(1) 1983 p.20. Mewnosodwyd adran 12A gan adran 25(5) o Ddeddf Iechyd Meddwl 2007. Bydd yr Ysgrifennydd Gwladol yn gwneud rheoliadau ar wahân i Loegr.

(2) 1983 p.20 (fel y'i diwygiwyd gan Ddeddf Iechyd Meddwl 2007 p.12).

(1) 1983 c.20. Section 12A was inserted by section 25(5) of the Mental Health Act 2007 (c.12). The Secretary of State has made separate regulations in relation to England.

(2) 1983 c.20 (as amended by the Mental Health Act 2007 c.12).

ystyr "GPIMC" ("AMHP") yw gweithiwr proffesiynol iechyd meddwl cymeradwy;

mae cyfeiriadau at "perthynas agosaf" ("*nearest relative*") yn cynnwys unrhyw berson a benodwyd am y tro i weithredu swyddogaethau'r perthynas agosaf yn rhinwedd gorchymyn a wnaed o dan adran 29 o'r Ddeddf, rheoliad 33 o Reoliadau Iechyd Meddwl (Ysbyty, Gwarcheidiaeth, Triniaeth Gymunedol a Chydsynio â Thriniaeth) (Cymru) 2008 neu reoliad 24 o Reoliadau Iechyd Meddwl (Ysbyty, Gwarcheidiaeth a Thriniaeth) (Lloegr) 2008.

### **Gwrthdrawiad buddiannau posibl am resymau proffesiynol**

3.—(1) Wrth ystyried claf, bydd gan asesydd wrthdrawiad buddiannau posibl—

- (a) os yw'n gweithio o dan gyfarwyddyd un o'r aseswyr eraill sy'n ystyried y claf neu os yw'n gyflogedig gan un ohonynt;
- (b) os yw'n aelod o dîm a drefnwyd i gydweithio at ddibenion clinigol yn rheolaidd a bod y ddau asesydd arall hefyd yn aelodau ohono.

(2) Pan fo perthynas agosaf claf yn gwneud cais, bydd gan asesydd wrthdrawiad buddiannau posibl—

- (a) os yw'n gweithio o dan gyfarwyddyd perthynas agosaf y claf hwnnw neu os yw'n gyflogedig ganddo;
- (b) os yw'n cyflogi perthynas agosaf y claf neu os yw'r perthynas agosaf yn gweithio dan ei gyfarwyddyd;
- (c) os yw'n aelod o dîm a drefnwyd i gydweithio at ddibenion clinigol yn rheolaidd a bod y perthynas agosaf hefyd yn aelod ohono.

(3) Wrth ystyried claf, bydd gan asesydd wrthdrawiad buddiannau posibl—

- (a) os yw'n gweithio o dan gyfarwyddyd y claf hwnnw neu os yw'n gyflogedig ganddo;
- (b) os yw'n cyflogi'r claf neu os yw'r claf yn gweithio dan ei gyfarwyddyd;
- (c) os yw'n aelod o dîm a drefnwyd i gydweithio at ddibenion clinigol yn rheolaidd a bod y claf hefyd yn aelod ohono.

"medical recommendation" ("*argymhelliad meddygol*") means a medical recommendation as mentioned in section 12(1) of the Act for the purposes of an application;

references to "nearest relative" ("*perthynas agosaf*") include any person for the time being appointed to carry out the functions of the nearest relative by virtue of an order made under section 29 of the Act, regulation 33 of the Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008 or regulation 24 of the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008.

### **Potential conflict of interest for professional reasons**

3.—(1) When considering a patient, an assessor will have a potential conflict of interest if he or she—

- (a) works under the direction of, or is employed by, one of the other assessors considering the patient;
- (b) is a member of a team organised to work together for clinical purposes on a routine basis of which the other two assessors are also members.

(2) Where the patient's nearest relative is making an application, an assessor will have a potential conflict of interest if he or she—

- (a) works under the direction of, or is employed by, that patient's nearest relative;
- (b) employs the patient's nearest relative or the nearest relative works under his or her direction;
- (c) is a member of a team organised to work together for clinical purposes on a routine basis of which the nearest relative is also a member.

(3) When considering a patient, an assessor will have a potential conflict of interest if he or she —

- (a) works under the direction of, or is employed by, the patient;
- (b) employs the patient or the patient works under his or her direction;
- (c) is a member of a team organised to work together for clinical purposes on a routine basis of which the patient is also a member.

### **Gwrthdrawiad buddiannau am resymau ariannol**

4.—(1) Yn ddarostyngedig i baragraff (4), bydd gan asesydd wrthdrawiad buddiannau posibl os yw, yn ddibynnol ar benderfyniad ganddo i wneud cais neu i roi argymhelliad meddygol neu beidio, ar dir i ennill yn ariannol.

(2) Pan fydd cais i glaf gael ei dderbyn i ysbyty nad yw'n sefydliad cofrestredig, caniateir i un (ond dim mwy nag un) o'r argymhellion meddygol gael ei roi gan ymarferydd meddygol cofrestredig sydd ar staff yr ysbyty hwnnw neu sy'n derbyn unrhyw daliadau a wnaed i gynnal a chadw'r claf neu sydd â buddiant yn eu derbyn.

(3) Pan fydd cais i glaf gael ei dderbyn i ysbyty sy'n sefydliad cofrestredig, ni chaniateir i unrhyw un o'r argymhellion meddygol gael ei roi gan ymarferydd meddygol cofrestredig sydd ar staff yr ysbyty hwnnw neu sy'n derbyn unrhyw daliadau a wnaed i gynnal a chadw'r claf neu sydd â buddiant yn eu derbyn.

(4) At ddibenion y rheoliad hwn nid yw'r term "ennill ariannol" yn cynnwys unrhyw ffi a dalwyd i ymarferydd o ran archwilio claf yn unol ag adran 12 o'r Ddeddf neu o ran darparu unrhyw argymhelliad o ganlyniad i archwiliad o'r fath.

### **Gwrthdrawiad buddiannau posibl am resymau busnes**

5.—(1) Wrth ystyried claf, bydd gan asesydd wrthdrawiad buddiannau posibl os yw'n ymwneud yn glòs yn yr un fenter fusnes ag asesydd arall, y claf neu berthynas agosaf y claf gan gynnwys bod yn bartner, yn gyfarwyddwr, yn swydd-ddeiliad arall neu'n gyfranddalwr sylweddol.

(2) Pan fo perthynas agosaf y claf yn gwneud cais, bydd gan asesydd wrthdrawiad buddiannau posibl os yw'n ymwneud yn glòs yn yr un fenter fusnes â'r perthynas agosaf gan gynnwys bod yn bartner, yn gyfarwyddwr, yn swydd-ddeiliad arall neu'n gyfranddalwr sylweddol.

### **Gwrthdrawiad buddiannau posibl ar sail perthynas bersonol**

6.—(1) Bydd gan asesydd wrthdrawiad buddiannau posibl wrth ystyried claf—

- (a) os yw'n perthyn i berson perthnasol yn y radd gyntaf;
- (b) os yw'n perthyn i berson perthnasol yn yr ail radd;
- (c) os yw'n perthyn i berson perthnasol fel hanner brawd neu hanner chwaer;

### **Potential conflict for financial reasons**

4.—(1) Subject to paragraph (4), an assessor will have a potential conflict of interest if he or she stands to make financial gain dependent upon whether or not he or she decides to make an application or give a medical recommendation.

(2) Where the application is for the admission of the patient to a hospital which is not a registered establishment, one (but not more than one) of the medical recommendations may be given by a registered medical practitioner who is on the staff of that hospital or who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient.

(3) Where the application is for the admission of the patient to a hospital which is a registered establishment, neither of the medical recommendations may be given by a registered medical practitioner who is on the staff of that hospital or who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient.

(4) For the purposes of this regulation the term "financial gain" does not include any fee paid to a practitioner in respect of the examination of a patient pursuant to section 12 of the Act or the provision of any recommendation as a result of such examination.

### **Potential conflict of interest for business reasons**

5.—(1) When considering a patient, an assessor will have a potential conflict of interest if he or she is closely involved in the same business venture as another assessor, the patient or the patient's nearest relative including being a partner, director, other office-holder or major shareholder of that venture.

(2) Where the patient's nearest relative is making an application, an assessor will have a potential conflict of interest if he or she is closely involved in the same business venture as the nearest relative including being a partner, director, other office-holder or major shareholder of that venture.

### **Potential conflict of interest on the basis of a personal relationship**

6.—(1) An assessor will have a potential conflict of interest in considering a patient, if he or she is—

- (a) related to a relevant person in the first degree;
- (b) related to a relevant person in the second degree;
- (c) related to a relevant person as a half sister or half brother;

- (ch) os yw'n briod, yn gyn briod, yn bartner sifil neu'n gyn bartner sifil i berson perthnasol;
- (d) os yw'n byw gyda pherson perthnasol megis petai yn briod neu'n bartner sifil.

(2) At ddibenion y rheoliad hwn—

- (a) ystyr "person perthnasol" yw asesydd arall, y claf, neu os mai perthynas agosaf y claf sy'n gwneud y cais, y perthynas agosaf;
- (b) ystyr "yn perthyn i berson perthnasol yn y radd gyntaf" yw fel rhiant, chwaer, brawd, merch neu fab; ac mae'n cynnwys llysberthynas;
- (c) ystyr "yn perthyn yn yr ail radd" yw fel ewythr, modryb, taid neu nain, tad-cu neu fam-gu, wŷr neu wyres, cefnder, nîth, nai, rhiant yng nghyfraith, taid neu nain yng nghyfraith, tad-cu neu fam-gu yng nghyfraith, wŷr neu wyres yng nghyfraith, chwaer yng nghyfraith, brawd yng nghyfraith, merch yng nghyfraith neu fab yng nghyfraith ac mae'n cynnwys llysberthynas;
- (ch) mae cyfeiriadau at lysberthynas a theulu yng nghyfraith ym mharagraffau (b) ac (c) uchod i'w darllen yn unol ag adran 246 o Ddeddf Partneriaeth Sifil 2004(1).

### Darpariaeth Argyfwng

7. Nid yw'r Rheoliadau hyn yn rhwystro GPIMC rhag gwneud cais nac ymarferydd meddygol cofrestredig rhag rhoi argymhelliad meddygol os byddai yna fel arall oedi gyda risg difrifol i iechyd neu ddiogelwch y claf neu bobl eraill.

- (d) the spouse, ex spouse, civil partner or ex civil partner of a relevant person;
- (e) living with a relevant person as if he or she were a spouse or a civil partner.

(2) For the purposes of this regulation—

- (a) "relevant person" means another assessor, the patient, or if the patient's nearest relative is making the application, the nearest relative;
- (b) "related in the first degree" means as a parent, sister, brother, daughter or son; and includes step relationships;
- (c) "related in the second degree" means as an uncle, aunt, grandparent, grandchild, first cousin, niece, nephew, parent-in-law, grandparent-in-law, grandchild-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law and includes step relationships;
- (d) references to step relationships and in-laws in paragraphs (b) and (c) above are to be read in accordance with section 246 of the Civil Partnership Act 2004(1).

### Emergency Provision

7. These Regulations do not prevent an AMHP making an application or a registered medical practitioner giving a medical recommendation if there would otherwise be delay involving serious risk to the health or safety of the patient or others.

*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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