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WELSH STATUTORY INSTRUMENTS

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**2011 No. 704**

**The National Health Service (Concerns, Complaints  
and Redress Arrangements) (Wales) Regulations 2011**

**PART 3**

**NATURE AND SCOPE OF THE  
ARRANGEMENTS FOR HANDLING CONCERNS**

**Persons who may notify concerns**

- 12.**—(1) A concern may be notified by—
- (a) a person who is receiving or has received services from a responsible body in relation to the services being received or having been received;
  - (b) any person who is affected, or likely to be affected by the action, omission or decision of a responsible body the exercise of whose functions is the subject of the concern;
  - (c) a non-officer member or a non-executive director of a responsible body;
  - (d) a member of the staff of a responsible body; or
  - (e) a partner in a responsible body.
- (2) A concern may be notified by a person (in this regulation referred to as a representative) acting on behalf of a person mentioned in paragraph (1) who—
- (a) has died;
  - (b) is a child;
  - (c) is unable to notify the concern themselves because they lack capacity within the meaning of the Mental Capacity Act 2005<sup>(1)</sup>; or
  - (d) has requested the representative to act on their behalf.
- (3) Where a representative notifies a concern on behalf of a child, the responsible body to which the concern has been notified—
- (a) must not consider the concern unless it is satisfied that there are reasonable grounds for the concern being notified by a representative instead of the child; and
  - (b) if it is not so satisfied, must notify the representative in writing and state the reason for its decision.
- (4) Where a concern is notified by a child, the responsible body must provide the child with such assistance as the child may reasonably require in order to pursue the concern.
- (5) This paragraph applies where—
- (a) a representative notifies a concern on behalf of—
    - (i) a child; or

- (ii) a person who lacks capacity within the meaning of the Mental Capacity Act 2005;  
and
  - (b) the responsible body to which the concern has been notified is satisfied that there are reasonable grounds to conclude that the representative is not a suitable person to act as representative or is not pursuing the concern in the best interests of the person on whose behalf the concern has been notified.
- (6) Where paragraph (5) applies—
- (a) save where sub-paragraph (6)(b) also applies, the concern may not be considered or further considered in accordance with arrangements made under these Regulations and the responsible body must notify the representative in writing and state the reason for the decision;
  - (b) if the responsible body is satisfied that it is necessary to do so, it may continue to investigate any issue raised by the concern notified in accordance with paragraph (5), but in these circumstances it is under no obligation to provide a response in accordance with regulation 24, unless it considers that it is reasonable to do so.
- (7) Unless paragraph (8) applies, where a concern is notified by a member of the staff of the responsible body, the responsible body must, where its initial investigation determines that there has been moderate or severe harm or death, advise the patient to whom the concern relates, or his or her representative, of the notification of the concern and involve the patient, or his or her representative, in the investigation of the concern in accordance with Part 5.
- (8) Where, in the opinion of the responsible body, it would not be in the interests of the patient to be informed of or involved in the investigation of the concern it must—
- (a) make a written record of this decision and the reasons for it; and
  - (b) keep the decision under review during the investigation of concern.
- (9) In these Regulations any reference to a person who notifies a concern or is seeking redress includes a reference to a representative of that person.