



Jersey

**MENTAL HEALTH (INDEPENDENT  
MENTAL HEALTH ADVOCATES)  
(JERSEY) REGULATIONS 2018**

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## **MENTAL HEALTH (INDEPENDENT MENTAL HEALTH ADVOCATES) (JERSEY) REGULATIONS 2018**

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Jersey

## **MENTAL HEALTH (INDEPENDENT MENTAL HEALTH ADVOCATES) (JERSEY) REGULATIONS 2018**

**THE STATES**, in pursuance of Articles 79 and 94 of the [Mental Health \(Jersey\) Law 2016](#), have made the following Regulations –

Commencement [[see endnotes](#)]

### **1 Interpretation**

- (1) In these Regulations –
  - “Capacity Law” means the [Capacity and Self-Determination \(Jersey\) Law 2016](#);
  - “Law” means the [Mental Health \(Jersey\) Law 2016](#);
  - “provider” means a person other than the Minister (including a voluntary organization) which employs or engages individuals to provide services as IMHAs;
  - “responsible person” means –
    - (a) in relation to a qualifying patient liable to be detained under the Law in an approved establishment, the managers of that approved establishment; or
    - (b) in relation to a qualifying patient who is subject to guardianship, the Minister.
- (2) A word or expression used in these Regulations which also occurs in the Capacity Law shall have the same meaning for the purposes of these Regulations as the meaning given to it by the Capacity Law.
- (3) For the purposes of these Regulations and of the definition “independent” in Article 79(6) of the Law, an individual is not to be regarded as professionally concerned with a qualifying patient’s care or treatment if that individual –
  - (a) is representing the qualifying patient in accordance with arrangements made under these Regulations or Regulations under the Capacity Law in respect of independent capacity advocates; or
  - (b) has in the past represented the qualifying patient in accordance with arrangements such as described in sub-paragraph (a) and in doing so was not otherwise professionally concerned with the care or treatment of that patient.

- (4) For the purposes of these Regulations and for the avoidance of doubt, a reference to a “qualifying patient” may include a patient admitted by reason of emergency under Article 15 of the Law, for the period during which that patient remains in the approved establishment.

## **2 Minister to appoint independent mental health advocates**

- (1) The Minister must make arrangements for the appointment, either directly or by a provider, of individuals to act as independent mental health advocates (“MHAs” for the purposes of Article 79 of the Law, and referred to in these Regulations as IMHAs).
- (2) No individual shall be appointed under paragraph (1) unless –
  - (a) in the case of an appointment by the Minister, the Minister is satisfied that the individual fulfils the conditions in Regulation 3; or
  - (b) in the case of an appointment by a provider –
    - (i) the arrangements made between the Minister and that provider include a requirement that the provider be satisfied, in making the appointment, that the individual fulfils the conditions in Regulation 3, and
    - (ii) the provider is so satisfied.
- (3) The Minister may only make arrangements under this Regulation if he or she has had due regard to the diverse circumstances (including but not limited to the ethnic, cultural and demographic needs) of qualifying patients.
- (4) In particular, and without prejudice to the generality of paragraph (3), in making arrangements under this Regulation the Minister must ensure that, so far as practicable and as the Minister considers reasonable, there are appointed IMHAs with understanding of, and ability to communicate with, qualifying patients –
  - (a) who are from cultural or ethnic groups forming a minority among the population of Jersey; or
  - (b) who have physical or sensory impairments, learning disabilities or autistic spectrum disorders.

## **3 Conditions for appointment as IMHA**

- (1) The conditions mentioned in Regulation 2(2) are that the individual in question –
  - (a) has appropriate experience and training such as may be further specified in a code of practice issued by the Minister under Article 90 of the Law;
  - (b) is an individual of integrity and good character; and
  - (c) is able to act independently, including independently of any person who requests the individual to visit or interview a qualifying patient.
- (2) Evidence provided for the purpose of demonstrating fulfilment of the condition in paragraph (1)(b) must include, in respect of the individual in

question, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 of the United Kingdom as extended to Jersey, with modifications, by the Police Act 1997 (Criminal Records) (Jersey) Order 2010 (S.I. 1997/765 of the United Kingdom).

- (3) In the case of an appointment by a provider, the arrangements made between the Minister and that provider must include a requirement that such a certificate as described in paragraph (2) be provided.
- (4) The Minister may by Order prescribe such further terms and conditions as to the appointment of IMHAs as the Minister may think fit.

#### **4 Right to request services of IMHA**

- (1) A qualifying patient may, upon becoming or at any time after he or she becomes a qualifying patient, make a request to the responsible person for provision of the help of an IMHA, whether generally (subject to Regulation 7) or in relation to a specific matter.
- (2) Information to be given to a qualifying patient under Article 78 of the Law and Regulation 5 shall include information as to the right conferred by paragraph (1).

#### **5 Information to be given concerning services of IMHAs**

- (1) Without prejudice to the generality of Article 78 of the Law, the responsible person in relation to a qualifying patient must take such steps as are reasonable to ensure that the qualifying patient understands –
  - (a) that the help of an IMHA is available to him or her; and
  - (b) how he or she can obtain such help.
- (2) The steps to be taken under paragraph (1) must be taken –
  - (a) in the case of a qualifying patient liable to be detained under the Law in an approved establishment, as soon as practicable after the patient becomes liable to be detained; or
  - (b) in the case of a qualifying patient subject to guardianship, as soon as practicable after the qualifying patient becomes so subject.
- (3) In the cases described in paragraph (2), the responsible person must (except where the qualifying patient otherwise requests) provide the qualifying patient's nearest person with a copy of any information given to the qualifying patient in writing, either at the same time as that information is given to the qualifying patient or as soon as practicable thereafter.

#### **6 Qualifying patient lacking capacity**

Where a responsible person is of the opinion, in relation to a qualifying patient, that –

- (a) it would be in the best interests of the patient to receive help from an IMHA; but

- (b) despite the provision of information under Article 78 of the Law and Regulation 5, the patient is unwilling or unable, including by reason of a lack of capacity, to exercise his or her right to request such help, the responsible person may request such help for and on behalf of the patient.

## **7 Nature of services to be provided by IMHAs**

- (1) The help to be provided by an IMHA to a qualifying patient shall include, so far as appropriate in the individual case –
- (a) help in obtaining information about, and in understanding, any of the following matters, namely –
    - (i) the provisions of the Law under which he or she is a qualifying patient,
    - (ii) the rights of the patient and his or her nearest person under the Law,
    - (iii) any conditions or restrictions to which he or she is subject by virtue of the Law,
    - (iv) the authority under which any treatment is or would be given,
    - (v) the requirements of the Law and of any subordinate legislation which apply, or would apply, in connection with the giving of such treatment,
    - (vi) any rights which may be exercised under the Law in relation to a qualifying patient; and
  - (b) (to the extent of the IMHA's knowledge or expertise in such matters) help in obtaining, and understanding, any evidence-based information about –
    - (i) the nature of any medical treatment given to the patient, or proposed or discussed in his or her case, and
    - (ii) the reasons for such treatment.
- (2) The help to be provided by an IMHA to a qualifying patient shall also include, so far as appropriate in the individual case, help by way of representation or otherwise in exercising the rights mentioned in paragraph (1)(a)(ii).
- (3) For the purpose of providing help to a patient, an IMHA may –
- (a) visit and interview the patient in private;
  - (b) visit and interview any person professionally concerned with the patient's medical treatment;
  - (c) with the patient's consent, attend meetings between the patient and any person professionally concerned with the patient's medical treatment;
  - (d) subject to paragraph (4), require the production of, and inspect, any records relating to –
    - (i) a qualifying patient's current treatment,
    - (ii) where the patient is detained in an approved establishment, his or her detention in that establishment, and



- (iii) where the patient is subject to guardianship, his or her guardianship,  
(including any such records held by the Minister or by the Health and Social Services Department).
- (4) An IMHA is not entitled to production of records, or to inspect records, unless, in a case where the qualifying patient has capacity to consent to such production or inspection, he or she does so consent, or in any other case –
  - (a) the production or inspection would not conflict with a decision made by –
    - (i) an attorney appointed under Part 2 of the Capacity Law and acting within the scope of the attorney's authority under that Law,
    - (ii) a delegate appointed under Part 4 of the Capacity Law and acting within the scope of the delegate's authority under that Law, or
    - (iii) the Royal Court; and
  - (b) the person holding the records, taking into account all the circumstances (including any known wishes or feelings of the patient, and the patient's best interests) considers that the production or inspection is appropriate.
- (5) For the purposes of paragraph (3)(a), managers of approved establishments shall make all reasonable arrangements for access to the patient by the IMHA.
- (6) An IMHA shall comply with any reasonable request for the IMHA to visit and interview a qualifying patient, made by –
  - (a) an individual appearing to the IMHA to be the patient's nearest person;
  - (b) the patient's responsible medical officer; or
  - (c) an approved practitioner.

## **8 Cessation of services of IMHA**

- (1) The provision of services by any individual IMHA to any particular patient shall cease upon the occurrence of any of the events listed in paragraph (2).
- (2) The events mentioned in paragraph (1) are that –
  - (a) the patient ceases to be a qualifying patient;
  - (b) the patient declines the continuation of the services of the IMHA;
  - (c) the IMHA is unable to provide such services because he or she –
    - (i) ceases to be domiciled in Jersey,
    - (ii) is under sentence of imprisonment,
    - (iii) is declared bankrupt,
    - (iv) lacks the capacity to provide such services, or

- (v) is suspended from any appointment by the Minister or by a provider of advocacy services;
  - (d) the appointment of the IMHA is terminated under Regulation 9;
  - (e) in the case of the provider in question being a registered charity within the meaning given to that term by the [Charities \(Jersey\) Law 2014](#) or an entity meeting the charity test under that Law, the provider ceases to be so registered or to meet that test;
  - (f) in the case of the provider in question being a company registered under the [Companies \(Jersey\) Law 1991](#), the provider ceases to be so registered.
- (3) Where the services of the IMHA in question were provided by the Minister, upon the occurrence of such an event as listed in paragraph (2)(c) or (d) the Minister must take all such steps as are reasonable to ensure that the qualifying patient (and with the consent of the qualifying patient, his or her nearest person, if any) is informed of –
- (a) the date when those services are to cease; and
  - (b) relevant details of the services which are to be provided in substitution for the services which have ceased,
- and must do so before the date mentioned in sub-paragraph (a) or as soon as reasonably practicable after that date.
- (4) Where the services of the IMHA in question were provided to a qualifying patient by a provider of advocacy services, upon the occurrence of such an event as listed in paragraph (2)(c), (d), (e) or (f) the provider must –
- (a) inform the Minister, as soon as reasonably practicable, of the occurrence of the event; and
  - (b) take all such steps as are reasonable to ensure that the qualifying patient (and with the consent of the qualifying patient), his or her nearest person, if any) is informed of –
    - (i) the date when those services are to cease, and
    - (ii) relevant details of the services which are to be provided in substitution for the services which have ceased,and must do so before the date mentioned in clause (i) or as soon as reasonably practicable after that date.
- (5) Where a patient ceases to be a qualifying patient by reason of being discharged from liability to detention, the notice of discharge to be given by the responsible medical officer under Article 27(4) of the Law shall contain a statement that the provision of services of an IMHA will cease on the date of discharge.

## 9 Termination of appointment of IMHA

- (1) Where an individual ceases to fulfil any of the conditions for appointment specified in Regulation 3 –
- (a) in the case of an individual appointed by the Minister, the Minister must terminate the appointment;

- (b) in the case of an individual appointed by any provider, that provider must terminate the provision of services by that individual; and
  - (c) the individual must immediately cease to provide services as an IMHA.
- (2) The Minister or the provider, as the case may be, must as soon as reasonably practicable give notice in writing of termination of an appointment under this Regulation, to –
  - (a) the individual in question;
  - (b) any patients to whom services were provided by the individual; and
  - (c) in relation to each such patient, any nearest person (with the consent of the qualifying patient), responsible medical officer, guardian or managers of an approved establishment, as the case may be,and the Minister or the provider must take all such steps as are reasonable, including but not limited to giving notice in writing, to ensure that any qualifying patient and any other person mentioned in subparagraph (c) is informed of relevant details of the services which are to be provided in substitution for the services which have ceased as a result of the termination of appointment.
- (3) A provider which continues, in breach of paragraph (1)(b), to provide services by an IMHA whose appointment has been terminated, is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (4) An individual whose appointment as an ICA has been terminated but who nevertheless –
  - (a) holds himself or herself out as providing the services of an ICA; or
  - (b) by his or her omission, allows another person to believe that he or she is capable of providing such services or entitled or authorized to provide such services,is guilty of an offence and liable to a fine of level 3 on the standard scale.

## **10 Fees and expenses of IMHAs**

The Minister may by Order make provision regarding payment of fees to, and the reimbursement of expenses of, IMHAs providing services under these Regulations (whether individually or by way of providers of advocacy services), including (but not limited to) provision as to the level of such fees, and different provision for different cases or types of case.

## **11 General**

- (1) Nothing in the Law or in these Regulations shall prevent a qualifying patient from declining, at any time, the provision of help under these Regulations.
- (2) The appointment of IMHAs under these Regulations is without prejudice to and shall not affect the appointment of an independent capacity advocate or any entitlement to the help or services of an independent capacity advocate under the Capacity Law.

- (3) Notwithstanding paragraph (2), an individual may be appointed as an IMHA and as an independent capacity advocate, whether generally or in relation to a particular patient.

## **12 Citation**

These Regulations may be cited as the Mental Health (Independent Mental Health Advocates) (Jersey) Regulations 2018.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	Project No (where applicable)
Mental Health (Independent Mental Health Advocates) (Jersey) Regulations 2018	<a href="#">R&amp;O.48/2018</a>	1 October 2018	<a href="#">P.47/2018</a>

Projects available at [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

### Table of Renumbered Provisions

Original	Current
None	

### Table of Endnote References

*There are currently no endnote references*