

The Provision and Access to the Independent Mental Health Advocacy (IMHA) Service Policy

Policy information

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Clinical

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Previous versions

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Not applicable

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Not applicable

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Summary of document:

An Independent Mental Health Advocacy (IMHA) Service is provided to patients detained (and/or liable to be detained) on particular sections of the Mental Health Act 1983 (MHA). This service provides an additional safeguard for qualifying patients. IMHA's specifically provide specialist advocacy within the framework of mental health legislation.

The scope of the IMHA scheme is extended in Wales, by Part 4 of the Mental Health (Wales) Measure 2010. Patients also detained under certain short term sections (MHA) and also to non-detained in patients receiving assessment or treatment for mental health problems in hospitals in Wales.

Scope:

Hywel Dda University Health Board has a statutory duty to inform a qualifying patient of their rights to IMHA services and how to access it.

All staff are aware of the qualifying patient's rights to IMHA, the right to be supported by the IMHA service and its role and how to access it.

All relevant staff record an IMHA's involvement in a case and any information they provide to help decision-making.

All relevant people will be informed when an IMHA is working to support a qualifying patient.

Staff have a duty to inform the IMHA about any changes to patients that support representation they may provide and staff have a duty to inform other professionals that an IMHA has been instructed and is working with the service user.

To be read in conjunction with:

[363 - Hospital Managers' Scheme of Delegation Policy \(sharepoint.com\)](#) – opens in new tab

[741 - Information to Patients Rights Procedure \(sharepoint.com\)](#) – opens in new tab

Patient information:

[AWW Leaflet.docx \(sharepoint.com\)](#)

Owning group:

Mental Health Legislation Committee

Date signed off by owning group

Executive Director job title:

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Reviews and updates:

V1 Policy

V2 Review

V3 Review

Keywords

IMHA, Advocate, Mental Health, Learning Disabilities, Measure

Glossary of terms

Term	Definition
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IMHA	Independent Mental Health Advocate – An advocate independent of the team involved in patient care available to offer support to patients.
Mental Health Act	The Mental Health Act 1983 is an Act of the Parliament of the United Kingdom which applies to people in England and Wales. It covers the reception, care and treatment of mentally disordered persons and other related matters.
Mental Capacity Act (2005)	An Act of Parliament that governs decision-making on behalf of people who lack capacity, both where they lose capacity at some point in their lives and where the incapacitating condition has been present since birth.
Section 130A Independent Mental Health Advocate (IMHA)	An advocate independent of the team involved in patient care available to offer support to patients. The IMHA is not the same as an ordinary advocate.

Key points:

Please summarise key points of the document

Contents

Policy information.....	1
Approval information	1
Introduction	6
Scope	6
Aim.....	6
Objectives	6
PROCEDURE	7
Qualifying/referral rules	7
Duty to arrange independent mental health advocate [IMHA] services	7
IMHA SERVICE	8
CONFIDENTIALITY, RISK AND DISCLOSURE.....	8
REQUESTS TO	9
INSTRUCTED ADVOCACY.....	9
NON-INSTRUCTED ADVOCACY	9
ACCESSING THE IMHA SERVICE.....	9
ENDING IMHA's INVOLVEMENT.....	10
DUTY TO GIVE INFORMATION ABOUT IMHA.....	10
INFORMATION FOR NEAREST RELATIVE.....	10
CORRESPONDENCE BETWEEN PATIENTS AND THEIR IMHA	11
NOTIFYING IMHAS ABOUT MEETINGS CONCERNING PATIENTS.....	11
THE ROLE OF THE IMHA.....	11
19. PRODUCTION AND INSPECTION OF RELEVANT RECORDS – PATIENTS WITH CAPACITY ..	12
20. PRODUCTION AND INSPECTION OF RELEVANT RECORDS – PATIENTS WHO LACK CAPACITY	12
Roles and Responsibilities.....	13
References.....	14

1. Introduction

An Independent Mental Health Advocacy (IMHA) Service is provided to patients detained (and/or liable to be detained) on particular sections of the Mental Health Act 1983 (MHA). This service provides an additional safeguard for qualifying patients. IMHA's specifically provide specialist advocacy within the framework of mental health legislation.

The scope of the IMHA scheme is extended in Wales, by Part 4 of the Mental Health (Wales) Measure 2010. Patients also detained under certain short term sections (MHA) and also to non-detained in patients receiving assessment or treatment for mental health problems in all hospital settings in Wales and is not confined to only Mental Health settings.

Evidence shows that advocacy can lead to an improved experience of mental health services for individuals. IMHAs also provide support in decision making, challenging discrimination and promoting access to complimentary ways of healing. The patient's voice will be heard and the patient can make informed choices. Therefore their rights will be safeguarded. There will be less risk that the patients' wishes and preferences will be over looked. In respect of patients lacking capacity to instruct an advocate or to make key care decisions advocacy services keep the user at the centre of decision making functions.

2. Scope

This policy applies to inpatients and community patients who are detained under relevant section of the Mental Health Act (excluding section 135/6). This policy applies to all healthcare staff as well as Independent Mental Health Advocates (IMHA) who are in contact with and/or care for a patient as defined above.

3. Aim

The aim of this document is to:

- Ensure that eligible patients under relevant sections of the MHA are supported by the IMHA service. This ensures the potential for advocacy to secure basic rights, create choice, improve the identification and understanding of mental health and learning disability needs and promote self-advocacy. .

4. Objectives

The aim of this document will be achieved by the following objectives:

- Ensuring all staff are aware of which patients are eligible to access the IMHA service and the right to be supported by them.
- Ensure staff understand their responsibilities to enable the IMHA to fulfil their role and function.
- Ensuring all relevant staff record an IMHA's involvement in their electronic record and any information they provide to help decision-making. The record would show how a decision-maker has considered the IMHA's information as part of their decision or the reason for disagreeing with that information.
- Ensuring all relevant people will be informed when an IMHA is working to support a qualifying patient.

5. PROCEDURE

5.1. Qualifying/referral rules

A patient qualifies for access to the IMHA service if they are:

- A qualifying detained patient including those who are on Section 17 leave of absence from hospital and those on short term sections such as section 4 and section 5
- Conditionally discharged patients
- Subject to guardianship, or
- Patients subject to Community Treatment Orders
- Qualifying informal patients in a mental health and/or learning disabilities hospital unit.
- A patient with a learning disability has to have a learning disability of a type or degree which is viewed as a mental disorder under the MHA.
- Qualifying informal patients in district general hospitals undergoing assessment and/or for treatment for mental disorder including assessment of capacity.
- A patient is also a qualifying patient if they are not a detained patient but they are being considered for a treatment to which section 57 applies, or
- A patient is also a qualifying patient if they are informal and under 18 years; when the patient is being considered for electro-convulsive treatment or any treatment to which section 58A applies.

The above patient would remain as a qualifying patient until either of those treatment proposals are withdrawn or the treatment is completed or discontinued.

A patient is **not** a qualifying patient if they:

- Are held under holding powers of section 135/136

5.2. Duty to arrange independent mental health advocate [IMHA] services

Hywel Dda UHB, on behalf of the Welsh Ministers, has made arrangements for IMHAs to be available to help qualifying patients. Only independent advocates working for the contracted IMHA provider service may work or act as an IMHA.

All involved in the care of a patient have a duty to protect patients' confidentiality and this would include the IMHA service providers. IMHAs will be expected to carry an approved identity badge with a photograph of the holder to prove their identity whilst they are discharging their duties as an IMHA.

6. IMHA Service

IMHAs provide a safeguard for qualifying patients in the context of advocacy services available to patients. It does not replace any other advocacy services that are available to patients. They will operate in conjunction with those advocacy services. However, to meet the needs of certain patients who are subject to the MHA and informal inpatients and to those patients for whom certain particular treatments

are being proposed – the MHA creates a specialist advocacy service using advocates who are trained to work within the framework of mental health legislation.

The IMHA is required to act independently of any person who is professionally concerned with the patient's medical treatment and be able to act independently of any person who requests that IMHA to visit or interview a patient.

The involvement of an IMHA does not affect a patient's legal rights (or the rights of the nearest relative) with regard to seeking advice from a solicitor, nor does it affect any entitlement to legal aid and access to other advocacy providers including Independent Mental Capacity Advocates (IMCAs).

The IMHA service will meet the needs of qualifying patients in accordance with equality legislation.

7. Confidentiality, Risk and Disclosure

Anything that the patient tells an IMHA will remain confidential unless:

- The IMHA is instructed by the patient to divulge information; or
- Where there is good evidence of potential significant self-harm, risk to others or illegality.

IMHA will not attempt to find out any information that could be regarded as confidential about a patient, unless:

- They have been asked to do so by the patient; and
- The patient has the requisite capacity and has so requested
- In case of patients lacking capacity to instruct an IMHA they may request information in the patient's best interests

Staff will not divulge any confidential information regarding a patient to an IMHA unless:

- Asked to do so directly by the patient with capacity.
- Where an IMHA is acting in the best interests for patients lacking capacity

Staff will inform the IMHA if it is known that there is a potential risk to the advocate from a particular patient.

If staff divulge any information about a patient to an advocate then the advocate is obliged to disclose it to the patient. Hence, if there is any information that staff believe is inappropriate to be disclosed the team need to discuss with the IMHA the reasons for non-disclosure **prior** to making the disclosure.

Where patients do not have capacity the IMHA needs to inform staff whether they are working in an instructed or non-instructed way (as this may change).

8. Requests to:

8.1 Visit a Qualifying Patient

An IMHA shall comply with any reasonable request made to the IMHA by any of the following for them to visit and interview the patient. They are:

- The patient or the person identified as the patient's nearest relative
- Professionals involved in the care and treatment of the patient

Patients are free to decline advocacy when offered.

8.2 Meet with Professionals

- The IMHA is entitled to speak with anyone professionally concerned with the patient's medical treatment and care for their mental disorder.

9. Instructed Advocacy

Whenever possible, an IMHA will take instruction from the patient that they will be supporting. An advocate may help an individual to obtain information, explore options and carry out action but, throughout this process, the advocate will be directed by the individual and only act on their behalf. The role of the IMHA is to make sure the wishes of the individual are expressed and heard and that the patient has the best opportunity to engage.

10. Non-Instructed Advocacy

There will be occasions when a person lacks the capacity to instruct an IMHA. Non-instructed advocacy is a way of ensuring parity between people who can instruct advocates and those who cannot. Advocates have developed a range of approaches to providing this non-instructed support which may involve over time learning to communicate with such patients. There should be active consideration of the need to instruct an IMHA for patients lacking capacity to make key care decisions so that individual needs and wishes are placed at the centre of all decision making.

11. Accessing the IMHA Service

Staff and or qualifying patients can access the IMHAs in accordance with the following instructions:

Complete and send an **electronic copy of the IMHA referral form**. Or contact the IMHA Service by phone – Carmarthen 01267 223197 and Haverfordwest 01437 762935. Their website address is www.advocacywestwales.org.uk. A copy of the IMHA referral form can also be downloaded from that web address.

12. Ending IMHA's involvement

The purpose of the IMHA service is to provide support in relation to **specific issues**. Hence, the IMHA will continue to be involved as long as all the specific issues persist and the patient continues to work with the IMHA. Once the issues have been addressed, the IMHA will close the case.

As long as the patient continues to be a qualifying patient, they would be able to request help from the IMHA service to address any other issue/s.

13. Duty to give information about IMHA

The MHA places a duty on the **'responsible person'** to take such steps as are practicable to ensure that the qualifying patient understands:-

- That help is available to them from an IMHA, and
- How they can obtain that help.
- The patient must be informed about choices of which advocate is available to them

The managers of the hospital in which the patient is liable to be detained have delegated the responsibility to staff to ensure that the above is carried out. The above must be done verbally as soon as practicable after admission and an entry must be made in the patient records. A written copy of the information will also be given to the patient.

- Responsible person for informing qualifying inpatients is delegated to staff based on In-patient units including general hospitals.
- Responsible person for informing patients subject to Community Treatment Orders is delegated to care coordinators.
- Responsible person for informing conditionally discharged patients is delegated to care coordinators
- Responsible persons for informing informal patients being considered for Section 57 or Section 58A treatment is the approved clinician / responsible clinician / key worker or care coordinator
- The responsible person/s for patients subject to guardianship is the local social services authority.

14. Information for Nearest Relative

The Mental Health Act administration team has a system to send a copy of the written information regarding the IMHA service to nearest relatives unless the patient requests otherwise, in line with Hywel Dda UHB Procedures 363 - Hospital Managers Scheme of Delegation 741 - Information to Patients – Patients' Rights .

15. Correspondence between patients and their IMHA

Hospital Managers cannot withhold correspondence between patients and their IMHAs.

16. Notifying IMHAs about meetings concerning patients

In arranging meetings for eligible patients such as ward rounds, care and treatment planning reviews consideration should be given for facilitating IMHAs attendance with or for the patient by proper consultation or notice where practicable.

16. The role of the IMHA

The role of the IMHA centres on the provision of effective assistance to qualifying patients ensuring that they understand the legal procedures of the MHA and the rights and safeguards to which they are entitled. It may include assistance in obtaining information about and understanding any of the following:

- Any conditions or restrictions to which the patient is subject to
- The medical treatment the patient is receiving, or which is being proposed or discussed, and the reasons for this
- The legal authority for the provision of such medical treatments and the safeguards
- care, treatment and discharge planning
- Supporting patients by attending meetings at their request on their behalf, but subject to the consent of the mental health professional who is convening the meeting
- Supporting the patient to apply to and obtaining legal representation to the Mental Health Review Tribunal for Wales or hospital managers' hearings, and in attending these if so requested. Following these, supporting the patient in understanding the outcomes.
- Providing information and signposting patients about other services which are available to them.
- IMHAs may assist patients with the complaints process.

The help shall also include help in obtaining information about and understanding any entitlement of rights and representation in exercising those rights.

The IMHA will additionally:

- Ensure that the patient's voice is heard by supporting them to engage with the multi-disciplinary team
- Support patients to access information, and to understand the options available to them
- May attend care planning and other meetings at which the patient is involved.
- May attend meetings at which the patient does not attend on request by the patient or when working non instructed
- Support patients in exploring options, making better informed decisions and in engaging with the development of their care plans
- Support the patient to counteract any actual or potential discrimination

17. Production and inspection of relevant records – Patients with capacity

As part of providing help to the patient, an IMHA may require the production of, and inspect, relevant records, relating to the detention or treatment in any hospital or held by a local social services authority, or any records in relation to any after care services provided for the patient under sec 117 aftercare.

However, an IMHA is not entitled to the production of or to inspect records **unless:**

- the patient has capacity to consent and the patient does consent

The above reference to capacity is to be read in accordance with the MCA.

18. Production and inspection of relevant records – Patients who lack capacity

There will be instances when the patient concerned lacks the necessary capacity to consent to the IMHA inspecting the records that relates to their detention and treatment. In such cases the IMHA may have access to records relating to their detention or treatment only when:

- the production and inspection of records would not conflict with a decision made by a donee or deputy or the Court of Protection
- the person who is holding the records thinks it is appropriate and the records in question are relevant to the support to be provided by the IMHA.

The IMHA should be asked to declare why they are seeking access to the records and the nature of the information being requested and it must be in the determined best interests of the patient.

The above reference to capacity is to be read in accordance with the MCA.

The competence of children with respect to the MCA is to be similarly taken into consideration for access to notes and records where the child does not have the competence to make such a decision.

19. Monitoring

Mental Health Advocacy contract review monitoring is undertaken quarterly by the MH&LD Service Transformation team and that entails a detailed look at finances, quality of service, patient experience and case studies, performance figures and any issues that arise. Discussion also takes place around any improvements required and qualifications of advocates.

20. Roles and Responsibilities

Chief Executive

Is responsible for ensuring that responsibility for management of the legal and appropriate admission and care of patients is delegated to an appropriate executive lead and assuring this procedure is implemented within the Health Board.

Mental Health & Learning Disability Lead Executive

Is overall responsible for the effective delivery of MHA and related legislation and policies, ensuring that there are appropriate quality assurance mechanisms in place in relation to this policy.

Director of Nursing Mental Health & learning Disabilities

Co-ordinates the contract monitoring for the IMHA service and has responsibility for ensuring Service Managers and appropriate staff implement MHA legislation and guidance.

Service Managers

Are responsible for ensuring that teams implement MHA legislation and guidance observing the MHA Code of Practice. They are also responsible for ensuring systems are in place and monitoring of implementation within their area of responsibility, ensuring that all regulatory authority inspector reports are action planned and acted upon, this is done via the Mental Health Legislation Scrutiny Group

Mental Health Legislation Committee

The purpose of the Mental Health Legislation Committee is to assure the board on the following:

- Those functions of the Mental Health Act, 1983 which have been delegated to officers and staff are being carried out correctly; and that the wider operation of the 1983 Act in relation to the UHB's area are operating correctly.
- The provisions of the MH Wales Measure (2010) are implemented and exercised reasonably, fairly and lawfully
- The UHB is compliant with the Mental Health Act, 1983, Code of Practice for Wales
- Provides quarterly assurance to the Board via a written report.

Monthly Ward Managers Forum

- Receives and scrutinises quarterly updates from the advocacy service. It provides feedback from the advocates who have been working with patients. i.e. number of referrals, type of referrals, outcomes etc. This is for information only, there are no Welsh Government targets on the delivery of the IMHA service.
- Ensures documents remain fit for purpose and responds to any issues which transpire through the governance process.
- Reviews audit work and agrees action plans in relation to the MH Measure

MHA Administration Team

Whilst there are no specific training requirements in relation to this and the MHA administration and the IMHA service provide training in relation to IMHAs as part of existing MHA training programme across the UHB. They also ensure referrals are made to the IMHA service where necessary.

Health Care Professionals

Are responsible for ensuring that reasonable effort is made to ascertain whether or not a patient is offered the services of an IMHA and referring them to the service where necessary.

Support and Administrative Staff working within clinical areas

- Must be aware of this policy and its content;
- Direct any patient who has a query about their legal rights to a health care professional unless they are competent to address the issues raised.

IMHA Service provider

Is responsible for helping qualifying patients (those detained under the Act, conditionally discharged, subject to guardianship or a CTO) understand the legal provision to which they are subject under the Act and the rights and safeguards to which they are entitled. This could include assistance in obtaining information about any of the following:

- The provisions of the legislation under which they qualify for an IMHA;
- Their rights under the Act and how those rights can be exercised.

They are also responsible for providing training where necessary to staff across the UHB.

21. References

Further information can be obtained from the following sources:

- 1) The Mental Health Wales Measure (2010) and Explanatory Memorandum
- 2) The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011 and Explanatory Memorandum
- 3) Mental Health Act Code of Practice for Wales 2016
- 4) Welsh Government Guidance for Commissioners and Providers – Delivering the IMHA Service in Wales Dec 2011
- 5) Advocacy Code of Practice 2018 – NDTi and Advocacy Standards – www.qualityadvocacy.org.uk.
- 6) Welsh Government (2003) National Standards for the Provision of Children's Advocacy
- 7) Welsh Government (2005) a Study of Advocacy Service for Children and Young People in Wales Advocacy Service.

The following are English Documents about Advocacy in England

- 1) National institute for Mental Health in England (2008) Independent Mental Health Advocacy: Guidance for Commissioners
- 2) National Mental Health Development Unit (2009) Independent Mental Health Advocacy: Effective Practice Guide
- 3) Clinical Guideline 136 Patient Experience in Mental Health Services 2011 NICE.