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We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

Prevention is the cure

**AIDS
HELPLINE**

0800 012 322

DEPARTMENT OF HEALTH

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GENERAL NOTICE

Health, Department of

General Notice

344 Mental Health Care Bill, 2000: The Minister of Health intends to table the Mental Health Care Bill 2000 in Parliament during this year

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GENERAL NOTICE

NOTICE 344 OF 2000

DEPARTMENT OF HEALTH

MENTAL HEALTH CARE BILL, 2000

The Minister of Health intends to table the Mental Health Care Bill, 2000 in Parliament during this year.

Interested persons are invited to submit any substantiated comments or representations on the Mental Health Care Bill, 2000 to the Director-General of Health: Private Bag X828, Pretoria, 0001 (for the attention of Prof Freeman), within two months of the date of publication of this notice.

MENTAL HEALTH CARE BILL

PREAMBLE

Recognising that health is a state of physical, mental and social well being and that mental health services should be provided as part of primary, secondary and tertiary health services;

Recognising that the Constitution of the Republic of South Africa, 1996, prohibits the unfair discrimination of people with mental or other disabilities;

Recognising that the person and property of people with mental disorders and intellectual disabilities, may at times require protection and that members of the public and their property may similarly require protection from people with mental disorders and intellectual disabilities; and

Recognising further that there is a need to promote the provision of mental health care services in a manner which promotes the optimal mental well being of users of mental health care services and communities in which they reside;

NOW THEREFORE it is enacted as follows:

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CHAPTER I

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In *this Act*, unless the context indicates otherwise –

“administrator” means a person appointed in terms of **Section 61 or 62** to care for and administer the *property* of a *mentally ill* person and where applicable includes an interim *administrator*.

“after consultation”, in the context where a decision or act has to be taken *after consultation* with another functionary, means that the decision or act must be taken in good faith after consulting and giving serious consideration to the view of that other functionary;

“assisted care, treatment and rehabilitation” and correspondingly *“assisted care, treatment and rehabilitation services”* means the provision of health interventions to people incapable of making informed decisions by virtue of their *mental health status* and who do not refuse the health interventions;

“assisted mental health care user” means a *user* receiving *assisted care, treatment and rehabilitation*;

“associate” means a person with a substantial and material interest in the wellbeing of a *mental health care user* or a person who is in substantial contact with the *user*;

“care and rehabilitation centres” means *health establishments* for the care, treatment and rehabilitation of people with intellectual disabilities;

“clinical psychologist” means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);

“court” means a *court* of law;

"head of a health establishment" means the person who has management responsibility for the establishment concerned or their delegated appointee;

"health care provider" means a person providing health care services;

"health establishment" means institutions, facilities, buildings or places where persons receive care, treatment, rehabilitative assistance, diagnostic or therapeutic interventions or other health services and includes facilities such as community health and *rehabilitation* centres, hospitals and *psychiatric hospitals*;

"involuntary care, treatment and rehabilitation" and correspondingly *"involuntary care, treatment and rehabilitation services"* means the provision of health interventions to people incapable of making informed decisions by virtue of *mental health status* and who refuse health intervention but require such services for their own protection or for the protection of others;

"involuntary mental health care user" means a *user* receiving *involuntary care, treatment and rehabilitation*;

"medical practitioner" means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);

"mental health status" means the level of mental well being of the individual as affected by physical, social and psychological factors and which may result in a psychiatric diagnosis;

"mental health care practitioner" means a *psychiatrist, clinical psychologist* or registered *medical practitioner, nurse, social worker* or *occupational therapist* who has been trained to provide *prescribed* mental health care, treatment and *rehabilitation* services;

"mental health care provider", means a person providing mental health care services to *mental health care users* and includes *mental health care practitioners*;

"mental health care user" and *user* correspondingly means the person receiving care, treatment or rehabilitative service, or using a health service at a *health establishment*, aimed at enhancing the *mental health status* of the *user* and includes a prospective *user*, a *state patient* and *mentally ill prisoner*, and where the person concerned is below the age

contemplated in Section 39 (4) of the Child Care Act, 1983¹, or is incapable of taking decisions, in certain circumstances may mean –

- (i) the persons next of kin;
- (ii) a person authorised by any other law or *court* order to act on that persons behalf;
- (iii) a *curator ad litem* or *administrator* appointed in terms of *this Act*; and
- (iv) an executor of that person's deceased estate.

"Mental Health Review Board" and **"Review Board"** means the Board established in terms of **section 16**;

"mentally ill" and **"mental illness"** correspondingly means a positive diagnosis of a mental health related illness by a *mental health care practitioner* in terms of accepted diagnostic criteria;

"mentally ill prisoner" means a prisoner in respect of whom an order has been issued in terms of **Section 53(3)(a)** to enable the provision of care, treatment and rehabilitative services at a *health establishment* designated in terms of **Section 49**;

"Minister" means the member of cabinet responsible for health;

"national department" means the department responsible for rendering health services within the national sphere of government;

"nurse" means a person registered as such in terms of the Nursing Act, 1978 (Act No. 50 of 1978);

"occupational therapist" means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);

¹ At present the Child Care Act, 1983 sets this age at 14.

"official curator ad litem", means the Director of Public Prosecution in whose jurisdiction an order was issued declaring that person to be a *state patient*;

"prescribed" means prescribed by regulation and *"prescribe"* has a corresponding meaning;

"prison" means a prison as defined in the Correctional Services Act, 1959;

"psychiatrist" means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);

"psychiatric hospital" means a *health establishment* that provides care, treatment and *rehabilitation* services exclusively for those with *mental illness*;

"provincial department" means the department responsible for rendering health services within the provincial sphere of government;

"property" for purposes of Chapter VIII includes income, finance, business or undertaking;

"rehabilitation" means a process that facilitates the opportunity of an individual to reach an optimum level of independent functioning;

"relevant member of the Executive Council" means the member or the Executive Council responsible for health in the province;

"severe and profound intellectual disability" means a range of intellectual functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self care and requiring constant aid and supervision, to severely restricted sensory and motor functioning and requiring nursing care.

"social worker" means a person registered as such in terms of the Social Work Act, 1978 (Act No. 110 of 1978);

"state patient" means a person so classified by virtue of a *court* directive made in terms of Section 77 (6)(a) or 78(6) of the Criminal Procedure Act, 1977;

"the Constitution" means *the Constitution* of the Republic of South Africa, 1996;

"this Act" includes the section numbers, schedules, and any regulation made in terms of *this Act* but does not include the page headers, headings, footnotes and annexures;

"voluntary care, treatment and rehabilitation" means the provision of health intervention to people who give their consent to such interventions;

"with the concurrence of " in the context where a decision or act has to be taken *with the concurrence of* any functionary, means that the decision or the *Act* must be taken with the approval of that functionary and where that functionary is a body of persons, the concurrence must be expressed in accordance with the decision making procedures of that body.

2. *INTERPRETATION*

- (1) Any person interpreting and applying *this Act* must be construed in a manner that is consistent with the objectives of *this Act* set out in **Section 3** and responsibilities contemplated in **Section 4**.
- (2) If any conflict, relating to the matters dealt with in *this Act*, arises between *this Act*, and the provisions of any other law, except *the Constitution* or an Act expressly amending *this Act*, the provisions of *this Act* will prevail.

CHAPTER II

FUNDAMENTAL PROVISIONS

3. *OBJECTIVES OF THIS ACT*

- (1) The objectives of *this Act* are to –
 - (a) regulate the mental health care environment in a manner which –

- (i) enables the provision of the best possible mental health care, treatment and *rehabilitation* that available resources can afford;
 - (ii) makes effective mental health care, treatment and *rehabilitation* services available to the population equitably, efficiently and in the best interests of the *mental health care user*;
 - (iii) co-ordinates access to and the provision of mental health care, treatment and *rehabilitation* services; and
 - (iv) integrates access to and the provision of mental health care services within the general health services environment.
- (b) set out the rights and obligations of *mental health care users* and the obligations of *mental health care providers*;
- (c) regulates access to and the provision of mental health care and treatment to –
- (i) *voluntary, assisted and involuntary mental health care users*;
 - (ii) *state patients*; and
 - (iii) *mentally ill prisoners*.
- (d) regulate the manner in which the *property* of those with a *mental illness* may be dealt with by *courts* of law; and
- (e) provide for related matters.

4. **STATE'S RESPONSIBILITY FOR MENTAL HEALTH**

Within the limits *prescribed* by law, every organ of state responsible for or impacting on the delivery of health services must determine and co-ordinate the implementation of its policies and measures in a manner that –

- (a) ensures mental health care, treatment and *rehabilitation* services are provided -
 - (i) at primary, secondary and tertiary levels and at specialised *health establishments*; and
 - (ii) in a manner that promotes the provision of community based care, treatment and *rehabilitation* in the community.
- (b) promotes and advances the *mental health status* of the population.

5. ***DESIGNATION OF SPECIALISED HEALTH ESTABLISHMENTS ADMINISTERED UNDER THE AUSPICES OF AN ORGAN OF STATE***

- (1) Within 90 days of *this Act* coming into operation, the head of the *national department with the concurrence of* all the heads of the *provincial department* must designate the *health establishments* administered under the auspices of an organ of state or parts of those *health establishments* which must –
 - (a) serve as psychiatric hospitals; or
 - (b) serve as *care and rehabilitation centres*.
- (2) A designation made in terms of **subsection (1)** may at any time be revoked or varied in accordance with the procedure contemplated in that subsection.

6. ***THE PROVISION OF CARE, TREATMENT AND REHABILITATION SERVICES AT HEALTH ESTABLISHMENTS ADMINISTERED UNDER THE AUSPICES OF AN ORGAN OF STATE***

- (1) Subject to this section and the policies and measures contemplated in **Section 4**, any person requiring mental health related care, treatment and *rehabilitation* must be provided with the appropriate care, treatment and *rehabilitation* at any *health establishment* administered under the auspices of an organ of state or be referred to an appropriate *health establishment*.

- (2) In respect of the *health establishments* contemplated in **section 5(1)**, the head of the *national department with the concurrence of* the heads of the *provincial departments*², must –
- (a) determine the nature of care, treatment and *rehabilitation* service to be provided; and
 - (b) cause the resources to be provided to enable these *health establishments* to provide the care, treatment and *rehabilitation* services determined.
- (3) Without derogating from the generality of the provisions of **subsection (2)** –
- (a) *health establishments* may not cause a *mental health care user* to receive psychiatric medication for periods exceeding six months each unless authorised by a *mental health care practitioner* who is designated to provide and review psychiatric medication;
 - (b) those persons providing care, treatment and *rehabilitation* services must provide care, treatment and *rehabilitation* in a manner that facilitates community care of the *mental health care user*;
 - (c) *health establishments* providing in-patient secondary level care and treatment may not keep a *mental health care user* in admittance for periods exceeding two months each unless authorised by a *mental health care practitioner* in charge of that part of the *health establishment* responsible for providing *mental health* related care, treatment and *rehabilitation* services;
 - (d) tertiary level care, treatment and *rehabilitation* may be provided at a tertiary *health establishment* or a *psychiatric hospital* designated in terms of **section 5 (1)**.
 - (e) *psychiatric hospitals* may admit, care for and treat –

² Should reference ideally be made here to the National Health Authority?

- (i) *voluntary mental health care users* into special programmes;
 - (ii) *assisted mental health care users*;
 - (iii) *involuntary mental health care users*;
 - (iv) *state patients*;
 - (v) *mentally ill prisoners*;
 - (vi) persons whom the *courts* considers requires mental observation in terms of the Criminal Procedure Act 51 of 1977; and
 - (vii) persons requiring long-term admissions as part of their care, treatment and *rehabilitation*; and
- (f) *care and rehabilitation centres* -
- (i) may conduct assessments of intellectual abilities; and
 - (ii) may provide care, treatment and *rehabilitation* services to those with *severe and profound intellectual disabilities*.
- (4) Whenever a *health establishment* contemplated in this section, is presented with a person requiring care, treatment and *rehabilitation* and the *mental health care provider* attending to the person is of the view, that the person requires mental health related care, treatment and *rehabilitation*, those *mental health care providers* must provide the appropriate level of care, treatment and *rehabilitation* service within their professional scope of practice or refer the person, in accordance with established referral and admission routes, to the *health establishment* that provides the appropriate level of care, treatment and *rehabilitation* services.

CHAPTER III

RIGHTS AND DUTIES RELATING TO MENTAL HEALTH

7. APPLICATION OF THIS CHAPTER

- (1) The rights and duties of persons, bodies or institutions as set out in this Chapter are in addition to any rights and duties that they may have in terms of any other law.
- (2) In applying the rights and duties as set out in this Chapter, regard must at all times be had to the best interests of the *mental health care user*.

8. RESPECT, HUMAN DIGNITY AND PRIVACY

- (1) Every *mental health care user* is entitled to respect for their person, human dignity, and privacy.
- (2) Every *mental health care user* must be provided with care, treatment and rehabilitative services that enhances the *user's* capacity to develop to their full human potential and to ensure their integration into the mainstream of community life.
- (3) The care, treatment and *rehabilitation* service administered to *mental health care users* must be proportionate to their *mental health status* and may intrude only as little as is reasonably possible to give effect to the appropriate care, treatment and *rehabilitation*.

9. REQUIREMENT OF CONSENT FOR CARE, TREATMENT AND REHABILITATION AND ADMISSION TO HEALTH ESTABLISHMENT

- (1) Subject to *this Act* and any other law, a person or *health establishment* may provide care, treatment and *rehabilitation* service to, or admit a *mental health care user* –

- (a) only if the *user* has consented to the care, treatment and *rehabilitation* service or to being admitted;
 - (b) only if a law, *court* order or a *Mental Health Review Board* has authorised the care, treatment and *rehabilitation* services or admittance; and
 - (c) in circumstances other than as contemplated in paragraphs (a) and (b), only if due to *mental illness*, any delay in providing care, treatment and *rehabilitation* services or admitting the *user* may result in –
 - (i) the death or irreversible harm to the health of the *user*;
 - (ii) the *user* inflicting serious harm to him/herself or others; or
 - (iii) the *user* causing serious damage to or loss of *property* belonging to him/her or to others.
- (2) Any person or *health establishment* who provides care, treatment and *rehabilitation* services to a *mental health care user* or admits the *user* in circumstances contemplated in subsections (1)(c) –
- (a) must report this fact in writing in the *prescribed* manner to the relevant *Mental Health Review Board*;
 - (b) may not continue with providing care, treatment and rehabilitation to the *user* concerned for longer than 24 hours unless an application in terms of Chapter V has been made within the 24 hour period.

10. UNFAIR DISCRIMINATION

- (1) *Mental health care users* may not be unfairly discriminated against on the grounds of their *mental health status*.
- (2) Every *mental health care user* must receive care, treatment and *rehabilitation* services in accordance with standards equivalent to that applicable to any other health care user.

- (3) Policies and programmes aimed at enhancing the *mental health status* of a person must be implemented with due regard to the capacity and capability of the person concerned.
- (4) The state must take reasonable measures within its available resources to achieve the progressive realisation of the rights set out in subsection (2) and (3).

11. *EXPLOITATION AND ABUSE*

- (1) Every person, body, organisation or *health establishment* providing care and treatment to a *mental health care user* must take all reasonable steps to ensure that the *user* is protected from exploitation, physical or other abuse, neglect and degrading treatment.
- (2) Every person, body, organisation or *health establishment* providing mental health care, treatment and *rehabilitation* services must take all reasonable steps to ensure that –
 - (a) *mental health care users* are not subject to forced labour;
 - (b) care, treatment and *rehabilitation* services for *mental health care users* is administered for diagnostic and therapeutic purposes and not as punishment or for the convenience of others; and
 - (c) *mental health care users* are not physically or otherwise abused by any other person.
- (3) Every person witnessing the exploitation, physical or other abuse, neglect and degrading treatment of a *mental health care user* must report this fact as prescribed.

12. DETERMINATIONS CONCERNING MENTAL HEALTH STATUS

- (1) Any determination concerning the *mental health status* of any person must be based on factors exclusively relevant to that person's *mental health status* and may not be based on that *user's* socio-political or economic status nor on that person's cultural and religious background or affinity.
- (2) A determination concerning the *mental health status* of a *mental health care user* may only be made or referred to for purposes directly relevant to that person's *mental health status*.

13. CONFIDENTIALITY

- (1) No person or *health establishment* may disclose any information which a *mental health care user* is entitled to have kept confidential in terms of any other law.
- (2) Despite subsection (1), the head of the *national department*, a *provincial department*, or the head of the *health establishment* concerned may disclose the information contemplated in that subsection, if the failure to disclose that information would seriously jeopardise the health of the *mental health care user* or the health of others.

14. LIMITATION ON INTIMATE ADULT RELATIONSHIPS

Subject to the conditions applicable to providing care, treatment and rehabilitation services at a *health establishment*, the intimate relationships of adult mental health care user's may only be limited, if due to mental illness, the user's ability to consent is diminished.

15. RIGHT TO BE REPRESENTED

- (1) A *mental health care user* is entitled to be assisted by a representative, including a legal representative when –
 - (a) submitting an application in terms of *this Act*;

- (b) lodging an appeal in terms of *this Act*; and
 - (c) appearing before a magistrate, judge or the *Mental Health Review Board* in terms of *this Act* subject to the laws governing rights of appearances at *courts* of law.
- (2) An indigent *mental health care user* is entitled to legal aid from the State for purposes of obtaining legal representation in respect of any proceeding instituted or conducted in terms of *this Act* subject to any condition fixed in terms of Section 3(d) of the Legal Aid Act, 1969.

16. DISCHARGE REPORTS

Whenever a *mental health care user* is discharged from a *health establishment* at which the *user* was admitted for purposes of care, treatment and *rehabilitation* services, the *head of that health establishment* must cause a *prescribed* discharge report to be issued to that *user*.

17. FULL KNOWLEDGE OF RIGHTS

Subject to **Section 9(1)(c)**, every *health care provider* or *health establishment* must inform a *mental health care user* in an appropriate manner of that *user's* rights prior to administering any care or treatment on that *user*.

CHAPTER IV

MENTAL HEALTH REVIEW BOARDS

18. ESTABLISHMENT

- (1) The *relevant member of the Executive Council with the concurrence* of the head of the relevant *provincial department* must establish a *Mental Health Review Board* in respect of *health establishments* providing mental health related care, treatment and rehabilitation services in the province.

- (2) A *Mental Health Review Board* established in terms of subsection (1) may be established in terms of a single, a cluster or all *health establishments* providing the mental health related care, treatment and *rehabilitation* services.

19. POWER AND FUNCTIONS

The powers and functions of a *Mental Health Review Board* are as set out on *this Act*.³

20. COMPOSITION

- (1) A *Mental Health Review Board* may be composed of at least three persons but no more than five persons.
- (2) The membership of a *Mental Health Review Board* must be composed of at least –
- (a) a *mental health care practitioner*; and
 - (b) a magistrate or an attorney or advocate admitted in terms of the relevant statutes of the Republic.

21. APPOINTMENT TO A MENTAL HEALTH REVIEW BOARD

- (1) The *relevant member of the Executive Council* must –
- (a) determine the number of persons to compose a *Mental Health Review Board*;

³ The relevant provisions in this Act are Sections – 24 Review board; 28 initial review of assisted mental health care user; 29 considering appeals against decisions consenting to assisted mental health care, treatment of rehabilitation; 30 conducting periodic reviews and providing annual reports on assisted mental health care users; 34 72 hours assessment for to provide further involuntary care treatment and rehabilitation; 35 appeals against decisions consenting to involuntary care, treatment and rehabilitation; 37 conducting periodic reviews and providing annual reports on involuntary mental health care users; 39 transfer of mental health care users to maximum security facilities; 43 transfer of state patients between designated health establishments.; 55 transfer of mentally ill prisoners between designated health establishments; 56 periodic reports on the mental health status of mentally ill convicted prisoners.

- (b) subject to subsection (2), appoint the relevant number of persons to the *Review Board*; and
 - (c) subject to subsection (3), determine the term of office of these persons.
- (2) Whenever the *relevant member of the Executive Council* is required to appoint a person to a *Mental Health Review Board*, the relevant member must -
- (a) publish in the Provincial Gazette and by any other widely circulated means of communication, a notice calling for nominees and stating the criteria for the nominations;
 - (b) consider all nominations submitted in response to the notice; and
 - (c) make the appointment.
- (3) For purposes of administrative efficiency, the term of office of persons appointed to a *Review Board* may be staggered.

22. VACATING OF OFFICE BY MEMBERS OF A MENTAL HEALTH REVIEW BOARD

A vacancy exists in a *Mental Health Review Board* if -

- (a) a member ceases to hold a qualification by virtue of which that member was appointed;
- (b) a member has been absent for two consecutive meetings of the *Review Board* without prior notification to the *Review Board* of the absence;
- (c) a member submits a written notice of a resignation to a *relevant member of the Executive Council*, and the resignation is accepted;
- (d) a member ceases to be a South African citizen;
- (e) a member becomes incapable of holding office for a consecutive period of at least six months;

- (f) a member dies or resigns; or
- (g) the *relevant member of the Executive Council*, in the public interest, dismisses a member.

23. REMUNERATION, TRAVELLING, SUBSISTENCE AND OTHER ALLOWANCES PAYABLE TO MEMBERS OF A MENTAL HEALTH REVIEW BOARD

- (1) A member of a *Mental Health Review Board* who is not in the full-time employ of the state may be remunerated and paid travelling, subsistence and other allowances in connection with the affairs of the *Review Board*.
- (2) The *relevant member of the Executive Council with the concurrence of the relevant member of the Executive Council* responsible for State Expenditure in the Province, may determine the amount, terms and conditions of the remuneration and allowances contemplated in subsection (1), and may pay the remuneration and allowances from money appropriated for that purpose by the Provincial Legislature.

24. PROCEDURES OF A MENTAL HEALTH REVIEW BOARD

- (1) Subject to this Act, a Mental Health Review Board -
 - (a) may determine its own procedures for conducting business; and
 - (b) may consult or hear representations from any person, including a person with relevant expertise, body or authority.
- (2) The *relevant member of the Executive Council* must designate one of the appointees of the *Mental Health Review Board* as the chairperson who must preside over the meetings of the *Review Board*. The *Review Board* may determine the procedures for appointing an acting chairperson if the chairperson is not able to preside over a meeting of the *Review Board*.

- (3) Whenever a *Mental Health Review Board* is considering a matter that involves a *health establishment* at which one of the members of the *Review Board* is a practitioner, that practitioner may not be involved in considering the matter.

CHAPTER V

VOLUNTARY, ASSISTED AND INVOLUNTARY MENTAL HEALTH CARE

25. OBTAINING CARE, TREATMENT AND REHABILITATION SERVICES VOLUNTARILY

Subject to the conditions applicable to them being received or admitted at *health establishments*, *mental health care users*, who voluntarily presents themselves at a *health establishment* for care, treatment and rehabilitative services must be provided with the appropriate care, treatment and *rehabilitation* services.

26. CARE, TREATMENT AND REHABILITATION OF MENTAL HEALTH CARE USERS INCAPABLE OF MAKING INFORMED DECISIONS ON THE NEED FOR CARE AND TREATMENT

- (1) Subject to **Section 9(1)(c)**, *mental health care users* may not be cared for nor treated nor provided with *rehabilitation* services without their consent at a *health establishment* whether on an outpatient or inpatient basis, unless –
- (a) an application in writing has been made to the head of the *health establishment* concerned for assistance in obtaining the necessary care, treatment or *rehabilitation* service and the application is granted;
 - (b) at the time of making the application, the *mental health care user* is suffering from a *mental illness* or a *severe or profound intellectual disability* and as a consequence of this, requires care, treatment and *rehabilitation* for their health or safety or the health and safety of others; and

- (c) at the time of the application, the *mental health care user* is incapable of making an informed decision on the need for the care, treatment or *rehabilitation*.

27. APPLICATION TO OBTAIN ASSISTED CARE, TREATMENT AND REHABILITATION

- (1) An application for *assisted care, treatment and rehabilitation* as contemplated in Section 26(1)(a) may only be made by the *mental health care user's* spouse, next of kin, partner or *associate*, parent or guardian except that –
 - (a) if the *mental health care user* is below the age of 18 on the date of the application being submitted, the application must be made by a parent or guardian of the *user* concerned;
 - (b) if a spouse, next of kin, partner, *associate*, parent or guardian is unwilling, incapable or is not available to make the application, a *health care provider* may make the application; and
 - (c) only those persons who had seen the *mental health care user* within seven days prior to making the application may make the application.
- (2) An application made in terms of this section may be withdrawn at any time.
- (3) The application must set out –
 - (a) the relationship of the applicant to the *mental health care user*;
 - (b) in the instance where the applicant is a *mental health care practitioner*, whether –
 - (i) the spouse, next of kin, partner, *associate*, parent or guardian is unwilling to make the application and the reason for the unwillingness; or
 - (ii) the spouse, next of kin, partner, *associate*, parent or guardian are incapable or unavailable to make the application and set out the steps

that were taken to locate them to determine their capability or availability to make the application;

- (c) the reasons for suggesting that care, treatment and *rehabilitation* is required; and;
 - (d) the date, time and place where the *mental health care user* was last seen within the seven day period contemplated in **subsection (1)(b)**.
- (4) Upon receipt of the application, the *head of the health establishment* concerned must cause the *mental health care user* to be examined by two *mental health care practitioners* neither of whom may be the person making the application nor a spouse, next of kin, relative, partner, *associate*, parent or guardian and at least one of whom must be qualified to conduct physical examinations.
- (5) Upon completing the examination, the *mental health care practitioners* must in writing submit to the head of the *health establishment* their findings—
- (a) on whether the *mental health care user* is incapable of making an informed decision on the need to receive the care, treatment or *rehabilitation* services required;
 - (b) on whether the circumstances as contemplated in **Section 26(b) – (d)** are prevalent in respect of the *mental health care user* concerned; and
 - (c) on whether the *mental health care user* should receive *assisted care, treatment or rehabilitation services* as an outpatient or inpatient.
- (6) If the findings of the two *mental health care practitioners* are divergent, the *head of the health establishment* concerned must cause the *mental health care user* to be examined by another *mental health care practitioner*. Upon completion of this examination, the *mental health care practitioner* concerned must submit a report in writing to the *head of the health establishment* concerned on the aspects specified in **subsection (5)**.
- (7) The *head of the health establishment* may only consent to the application if -

- (a) the findings of the two *mental health care practitioners* contemplated in subsection (4) concur that the conditions for *assisted care, treatment or rehabilitation* prevail or, if the findings are divergent, the third *mental health care practitioner* concurs that the conditions for *assisted care, treatment or rehabilitation* prevail.
- (8) The *head of a health establishment* may only consent to inpatient care, treatment and *rehabilitation* if -
 - (a) the findings of two *mental health care practitioners* concur that the conditions for inpatient care, treatment or *rehabilitation* prevails; and
 - (b) satisfied that the restrictions and intrusions on the *mental health care user's* right to movement, privacy and dignity is proportionate to the care, treatment or rehabilitative service contemplated.
- (9) Notice of the decision by the *head of the health establishment* on whether to provide *assisted care, treatment and rehabilitation* must be given to the applicant in writing. If the head refuses to grant the application or consents to inpatient care, treatment or *rehabilitation*, the reason for this decision must be set out in the written notice.
- (10) If the *head of the health establishment* consents to inpatient assisted care, treatment or *rehabilitation*, the head must as soon as it is reasonably practicable, cause the *mental health care user* to be admitted to that *health establishment* or to be referred to another *health establishment* with the appropriate facilities.

28. *INITIAL REVIEW OF ASSISTED MENTAL HEALTH CARE USER BY MENTAL HEALTH REVIEW BOARD*

- (1) Within one week of the date of the written notice issued in terms of Section 27(9), consenting to the application the *head of the health establishment* must send to the relevant *Mental Health Review Board*, a copy of the application and the written notice confirming the consent to the application.

- (2) Within one month of receipt of the documents, the *Mental Health Review Board* may conduct an investigation into –
 - (a) the incapacity of the *mental health care user* to make an informed decision on the need for the *care, treatment or rehabilitation*; and
 - (b) the circumstances under which the *mental health care user* is receiving care and treatment;
- (3) Upon completion of the investigation, the *Mental Health Review Board* must –
 - (a) request the head of the *health establishment* to –
 - (i) manage the *mental health care user* in accordance with the procedures contemplated in *Section 27(4) – (7)*, as read with the changes required by the context; or
 - (ii) discharge the *mental health care user* in accordance with accepted clinical practice; and
 - (b) report on its findings and steps taken to the head of the *provincial department*.
- (4) If at any stage prior to completing its investigation, an appeal has been lodged in terms of *Section 29*, the *Mental Health Review Board* must discontinue the review and consider the appeal.

29. APPEALS AGAINST DECISION OF HEAD OF A HEALTH ESTABLISHMENT CONSENTING TO THE APPLICATION FOR ASSISTED CARE, TREATMENT AND REHABILITATION

- (1) Any *mental health care user*, spouse, next of kin, partner, *associate*, parent or guardian, may within one month of the date of the written notice issued in terms of *Section 27(9)* consenting to the application, appeal against the decision of the head of the *health establishment* by submitting to the *Mental Health Review Board* notice containing –

- (a) the grounds of the appeal; and
 - (b) the facts on which the appeal is based.
- (2) Within one month after receipt of the notice, the *Mental Health Review Board* must-
- (a) obtain from the *head of the health establishment* concerned, a copy of the application made in terms of **Section 27** and the notice given in terms of **Section 27(9)**;
 - (b) consider the appeal in the *prescribed* manner, including providing the appellant, the applicant, the relevant *mental health care practitioners* and the *head of the health establishment* an opportunity to make oral representations on the merits of the appeal; and
 - (c) send a written notice of its decision to the appellant, applicant, *head of the health establishment* and head of the *provincial department* stating the reasons for the decision.
- (3) If the *Mental Health Review Board* upholds the appeal, all care, treatment and *rehabilitation* services administered to the *mental health care user* must be ceased in accordance with accepted clinical practices and the *user* if admitted must be discharged by the *health establishment*, unless the *user* consents to the care, treatment or *rehabilitation* service.

30. PERIODICAL REPORTS ON ASSISTED HEALTH CARE USERS

- (1) Upon the expiry of six months after the date on which care, treatment and *rehabilitation* services was commenced on an *assisted mental health care user* and after every twelve months thereafter whilst the *user* is an *assisted mental health care user*, the *head of the health establishment* must cause the *mental health status* of that *user* to be reviewed.

- (2) The review must concern itself with –
 - (a) the capacity of the *mental health care user* to express themselves on the need for care, treatment and *rehabilitation* services;
 - (b) whether there is other care, treatment or *rehabilitation* services that is less restrictive or intrusive on the *mental health care user*'s right to movement, privacy and dignity; and
 - (c) making recommendations regarding a plan for further care and treatment or *rehabilitation* services.
- (3) A synopsis of the review must be –
 - (a) contained in a report; and
 - (b) submitted to the *Mental Health Review Board*.
- (4) Within one month after receipt of the report, the *Mental Health Review Board* must –
 - (a) consider the report and obtain information from any relevant person; and
 - (b) send a written notice of its decision to the *mental health care user*, applicant, *head of the health establishment* and the head of the *provincial department* stating the reasons for the decision.
- (5) The *head of the health establishment* must comply with the decision of the *Mental Health Review Board*. If the decision is that the *assisted mental health care user* must be discharged, all care, treatment or *rehabilitation* services administered to the *user* must be ceased in accordance with accepted clinical practices and the *user*, if admitted, must be immediately discharged by the *health establishment*, unless the *user* consents to the care, treatment or *rehabilitation* service.

31. RECOVERY OF ASSISTED MENTAL HEALTH CARE USERS' CAPACITY TO MAKE INFORMED DECISIONS

- (1) If at any stage after consenting to the application for assisted care, treatment or rehabilitation service, the head of a *health establishment* has reason to believe from personal observation, from information obtained, or upon receipt of representations from an assisted mental health care user that the assisted mental health care user concerned has recovered the capacity to make informed decisions, the head must enquire from the user whether he or she is willing to voluntarily continue with the care, treatment or rehabilitation service being provided.
- (2) If the *assisted mental health care user* is willing to continue with the care, treatment or *rehabilitation* service, the provisions of **Section 25**, read with the changes required by context, applies to that *user*.
- (3) If the *assisted mental health care user* is unwilling to continue with care, treatment or *rehabilitation* service and the *head of the health establishment* is satisfied that the *user* no longer has a **mental illness** or intellectual disability as contemplated in **section 26 (b)**, the head concerned must immediately cause the *user* to be discharged in accordance with accepted clinical practices.
- (4) If the *assisted mental health care user* is unwilling to continue with the care, treatment or *rehabilitation* service and the *head of the health establishment* is satisfied that the *user* is still suffering from the *mental illness* or intellectual disability as contemplated in **section 26(b)**, the head concerned must –
 - (a) accordingly inform –
 - (i) the person who made the application in terms of **Section 27** in writing; and
 - (ii) the *mental health care practitioner*, or registered *social worker* or *nurse* administering *care, treatment or rehabilitation service* to the *mental health care user*; and

- (b) advise these persons that within one month of being informed, they may apply to the *head of the health establishment* concerned to provide *involuntary care, treatment or rehabilitation services* to the *user* and that –
 - (i) the provisions of **Section 32 and 33**, read with the changes required by context, applies to this application; and
 - (ii) the provisions of **Section 34 – 37**, read with changes required by the context, would apply to these *users* if the application is consented to.
- (5) If an application is not made within this period, the *assisted mental health care user* must be discharged.
- (6) If an application is made within this period, the *head of the health establishment* must give the *assisted mental health care user* an opportunity to respond to the application prior to making the decision on the *involuntary care, treatment or rehabilitation service*.

32. CARE AND TREATMENT OF MENTAL HEALTH CARE USERS WITHOUT THEIR CONSENT

- (1) A *mental health care user* must be cared for, treated and provided with *rehabilitation* services without their consent at a *health establishment* whether on an outpatient or inpatient basis if –
 - (a) an application in writing has been made to the *head of the health establishment* concerned to obtain the necessary care, treatment or *rehabilitation* services without the volition of the *user* and the application is granted;
 - (b) at the time of making the application, the *mental health care user* has a *mental illness* of such a nature that –
 - (i) the *user* is likely to inflict serious harm to him/herself or others; or

- (ii) care, treatment and *rehabilitation* of the *user* is necessary for the protection of the *user's* financial interests or reputation; and
- (c) at the time of the application the *mental health care user* is incapable of making an informed decision on the need for the care or treatment or is unwilling to receive the care or treatment required.

33. APPLICATION TO OBTAIN INVOLUNTARY CARE, TREATMENT AND REHABILITATION

- (1) An application for *involuntary care, treatment and rehabilitation* may only be made by the *mental health care user's* spouse, next of kin, partner or *associate*, parent or guardian except that -
 - (a) if the *mental health care user* is below the age of 18 on the date of the application being submitted, the application must be made by a parent or guardian of the *user* concerned;
 - (b) if a spouse, next of kin, partner, *associate*, parent or guardian is unwilling, incapable or is not available to make the application, a *health care provider* may make the application; and
 - (c) only those persons who had seen the *mental health care user* within seven days prior to making the application may make the application.
- (2) An application made in terms of this section may be withdrawn at any time.
- (3) The application must set out -
 - (a) the relationship of the applicant to the *mental health care user*;
 - (b) in the instance where the applicant is a *mental health practitioner*, whether -
 - (i) the spouse, next of kin, partner, *associate*, parent or guardian is unwilling to make the application and the reason for the unwillingness; or

- (ii) the spouse, next of kin, partner, *associate*, parent or guardian are incapable or unavailable to make the application and set out the steps that were taken to locate them to determine their incapability or availability to make the application;
 - (c) the reasons for suggesting that *care, treatment or rehabilitation* is required; and
 - (d) the date, time and place where the *mental health care user* was last seen within the seven day period contemplated in **subsection (1)(b)**.
- (4) Upon receipt of the application, the *head of the health establishment* concerned must cause the *mental health care user* to be examined by two *mental health care practitioners* neither of whom may be the person making the application nor a spouse, next of kin, relative partner, *associate*, parent, guardian or the head and least one of whom must be qualified to conduct physical examinations.
- (5) Upon completing the examination the *mental health care practitioners* must in writing submit to the head of the *health establishment* their findings –
 - (a) on whether the *mental health care user* is incapable of making an informed decision on the need for or is unwilling to receive the *care, treatment or rehabilitation service* required;
 - (b) on whether the circumstances as contemplated in **Section 32(b) – (d)** are prevalent in respect of the *mental health care user* concerned; and
 - (c) on whether the *mental health care user* should receive *involuntary care, treatment or rehabilitation services*.
- (6) If the findings of the two *mental health care practitioners* are divergent, the *head of the health establishment* concerned must cause the *mental health care user* to be examined by another *mental health care practitioner*. Upon completion of this examination, the *mental health care practitioner* concerned must submit a report in writing to the *head of the health establishment* concerned on the aspects specified in **subsection (5)**.

- (7) The *head of the health establishment* may only consent to the application if the findings of the two *mental health care practitioners* contemplated in subsection (4) concur that the conditions for *involuntary care, treatment and rehabilitation* prevail or, if the findings are divergent, the third *mental health care practitioner* concurs that the conditions or *involuntary care, treatment or rehabilitation* prevail.
- (8) Notice of the decision by the *head of the health establishment* on whether to provide *involuntary care, treatment and rehabilitation* must be given to the applicant in writing. If the head refuses to grant the application or consents to inpatient care, treatment and *rehabilitation*, the reason for this decision must be set out in the written notice.
- (9) If the *head of the health establishment* consents to *involuntary care, treatment and rehabilitation*, the head must within 48 hours, cause the *mental health care user* to be admitted at that *health establishment* or with the concurrence of the head of any other *health establishment* with the appropriate facilities, refer the user to that other *health establishment*.

34. **72 HOUR ASSESSMENT TO PROVIDE FURTHER INVOLUNTARY CARE, TREATMENT AND REHABILITATION**

- (1) If the *head of the health establishment* grants the application contemplated in terms of Section 33(8), the head must, in addition to ensuring the provision of appropriate care, treatment and *rehabilitation* services, cause the *mental health status* of the *mental health care user* to be assessed in a manner *prescribed* by the *Minister* for a period of 72 hours. The assessment must include consideration of whether –
 - (a) the *involuntary care, treatment and rehabilitation* must be continued; and
 - (b) the *involuntary care, treatment and rehabilitation* must be provided on an outpatient or inpatient basis.

- (2) Within 24 hours after the expiry of the 72 hour assessment period, the *head of the health establishment* must cause the findings of the assessment to be submitted to the applicant.
- (3) If following on this assessment, the head of the *health establishment* is of the opinion that the *mental health status* of the *mental health care user* –
 - (a) no longer warrants *involuntary care, treatment or rehabilitation*, the *user* must be discharged immediately unless the *user* consents to the care, treatment or *rehabilitation*; or
 - (b) warrants further *involuntary care, treatment or rehabilitation*, the head of the *health establishment* must –
 - (i) within one week of the expiry of the 72 hour assessment period submit a written request to the *Mental Health Review Board* to provide further *involuntary care, treatment or rehabilitation* and the request must contain –
 - (aa) a copy of the application;
 - (bb) a copy of the notice given in terms of **Section 33 (7)**;
 - (cc) a copy of the assessment findings; and
 - (dd) the basis for the request.
 - (ii) give notice to the applicant of the date on which the relevant documentation was submitted to the *Mental Health Review Board*;
 - (iii) if the *mental health care user* has to be cared for, treated or *rehabilitated* on an outpatient basis, discharge the *user* subject to the *prescribed* conditions or procedures relating to his or her outpatient care, treatment or *rehabilitation*;
 - (iv) if the *mental health care user* has to be treated, cared for or *rehabilitated* on an inpatient basis and the *user* has been admitted to a *health establishment* -

- (aa) which is a *psychiatric hospital*, keep, care for, treat or rehabilitate the *user* at that hospital until the *Mental Health Review Board* makes its decision;
 - (bb) which is not a *psychiatric hospital*, transfer the *user* to a *psychiatric hospital* for *care, treatment and rehabilitation* until the *Mental Health Review Board* makes its decision.
- (4) Subject to section (5), within one month after receipt of the relevant items, the *Mental Health Review Board* must –
 - (a) consider the request in the *prescribed* manner, including providing the applicant, the independent *mental care health practitioners* and the *head of the health establishment* the opportunity to make oral representations on the merits of the request; and
 - (b) send a written notice of its decision and the reasons for the decision to the applicant and the *head of the health establishment*; and
 - (c) if the *Mental Health Review Board* decides to grant the request, submit the items referred to in subsection 3(b)(i) and (ii) and the written notice contemplated in paragraph (b) to the Registrar of the High Court for the consideration of a High Court Judge.
- (5) If at any stage prior to making a decision on whether to grant a request to provide further *involuntary care, treatment or rehabilitation services*, an appeal has been lodged against the decision of the head of the *health establishment* in terms of section 35, the *Mental Health Review Board* must consider the appeal before considering the request.

**35. APPEALS AGAINST DECISION OF HEAD OF A HEALTH ESTABLISHMENT
CONSENTING TO THE APPLICATION FOR INVOLUNTARY CARE, TREATMENT
AND REHABILITATION**

- (1) Any *mental health care user*, spouse, next of kin, partner, *associate*, parent or guardian, may within one month of the date of the written notice issued in terms of

Section 33(7) consenting to the application, appeal against the decision of the *head of the health establishment* by submitting to the *Mental Health Review Board* a notice containing –

- (a) the grounds of the appeal; and
 - (b) the facts on which the appeal is based.
- (2) Within one month after receipt of the notice, the *Mental Health Review Board* must–
- (a) obtain from the *head of the health establishment* concerned, a copy of the application made in terms of **Section 33** and the notice given in terms of **Section 33 (7)** as well as a copy of the findings of the assessment conducted in terms of **Section 34 (1)** if available;
 - (b) consider the appeal in the *prescribed* manner, including providing the appellant, the applicant, the independent mental health practitioners and the *head of the health establishment* an opportunity to make oral representations on the merits of the appeal; and
 - (c) send a written notice of its decision to the appellant, applicant, *head of the health establishment* and head of the *provincial department* stating the reasons for the decision.
- (3) If the *Mental Health Review Board* upholds the appeal, all care, treatment and *rehabilitation* services administered to the *mental health care user* must be ceased in accordance with accepted clinical practices and the *user*, if admitted, must be immediately discharged by the *health establishment*, unless the *user* consents to the care, treatment or *rehabilitation* services.
- (4) If the *Mental Health Review Board* does not uphold the appeal, it must submit the items referred to in **subsection (2)(a) and (c)** to the Registrar of the High Court for the consideration of the High Court Judge.

36. JUDICIAL REVIEW OF NEED FOR FURTHER INVOLUNTARY CARE AND TREATMENT

Within one month of receiving the information submitted by the *Mental Health Review Board* in terms of Section 34 (4) and 35 (4), whichever is the later, the High Court Judge –

- (a) must consider the information submitted and any other representations submitted to the High Court Judge by the person contemplated in Section 35(1);
- (b) may obtain information from any relevant person; and
- (c) thereafter must order-
 - (i) the further hospitalisation of the *mental health care user*;
 - (ii) the immediate discharge of the *mental health care user*; and/or
 - (iii) that the financial or other affairs of the *mental health care user* be managed and administered in accordance with the provisions of Chapter VIII.

37. PERIODICAL REPORTS ON INVOLUNTARY MENTAL HEALTH CARE USERS

- (1) Upon the expiry of six months after the date on which care, treatment and *rehabilitation* services was commenced on an *involuntary mental health care user* and after every 12 months thereafter whilst the *user* is an *involuntary mental health care user*, the *head of the health establishment* must cause the *mental health status* of that *user* to be reviewed.
- (2) The review must concern itself with –
 - (a) the capacity of the *mental health care user* to express themselves on the need for care, treatment or *rehabilitation* services;
 - (b) whether the *mental health care user* is likely to inflict serious harm on him/herself or others;

- (c) whether there is other care, treatment or *rehabilitation* services that is less restrictive or intrusive on the *mental health care user's* right to movement, privacy and dignity; and
 - (d) making recommendations regarding a plan for further care, treatment or *rehabilitation* services.
- (3) A synopsis of the review must be –
- (a) contained in a report; and
 - (b) submitted to the *Mental Health Review Board*.
- (4) Within one month after receipt of the report, the *Mental Health Review Board* must –
- (a) consider the report including obtaining information from any relevant person; and
 - (b) send a written notice of its decision to the *mental health care user*, the applicant, head of the *health establishment* and the head of the *provincial department* stating the reasons for the decision.
- (5) The *head of the health establishment* must comply with the decision of the *Mental Health Review Board*. If the decision is that the *involuntary mental health care user* must be discharged, all care, treatment and *rehabilitation* services administered to the *user* must be ceased in accordance with accepted clinical practices and the *user*, if admitted, must be immediately discharged by the *health establishment* unless the *user* consents to the care, treatment⁴ or *rehabilitation* services.
- (6) The Registrar of the High Court must be notified in writing of a discharge effected in terms of this section.

⁴ This provision and subsection (6) must be discussed with the Justice Department to synchronise the administration of section 36 and this section.

38. **RECOVERY OF INVOLUNTARY MENTAL HEALTH CARE USERS' CAPACITY TO MAKE INFORMED DECISIONS**

- (1) If at any stage after consenting to the application for *involuntary care, treatment or rehabilitation services*, the *head of a health establishment* has reason to believe from personal observation, from information obtained or upon receipt of representations from an *involuntary mental health care user*, that an *involuntary mental health care user* has recovered the capacity to make informed decisions, the head must enquire from the *user* whether he or she is willing to voluntarily continue with the care, treatment and *rehabilitation* services being provided.
- (2) If the *involuntary mental health care user* is willing to continue with the care, treatment and *rehabilitation* services, the provision of **Section 25**, read with the changes required by context, applies to that *user*.
- (3) If the *involuntary mental health care user* is unwilling to continue with care, treatment or *rehabilitation* services and the *head of the health establishment* is satisfied that the *user* no longer has a *mental illness* as contemplated in **section 32 (b)**, the head concerned must immediately cause the *user* to be discharged in accordance with accepted clinical practices.

39. **TRANSFER OF MENTAL HEALTH CARE USERS TO MAXIMUM SECURITY FACILITIES**

- (1) The *head of a health establishment* may in writing submit a request to the relevant *Mental Health Review Board* for the transfer of an *assisted or involuntary mental health care user* to a *health establishment* with maximum security facilities if that *user* –
 - (a) has or has attempted to abscond; or
 - (b) has or in the opinion of the *head of the health establishment* is likely to inflict harm on others in the *health establishment*.
- (2) The *Mental Health Review Board* may not accede to the request for purposes of punishing the *mental health care user* concerned.

- (3) If the *Mental Health Review Board* accedes to the request it must forward a copy of the order concerned to the head of the *provincial department*.
- (4) Within two weeks of receiving the order, the head of the *provincial department* must make the necessary arrangements with the appropriate *health establishment* and effect the transfer as ordered.
- (5) The *head of a health establishment* may *with the concurrence of* the head of the *health establishment* with maximum security facilities may effect transfer, pending the decision of the *Mental Health Review Board* if the conduct of the *mental health care user* has or is likely to give rise to an emergency.

40. INTERVENTION BY MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE

- (1) If a member of the South African Police Services has reason to believe, from personal observation or from information obtained from a *mental health care practitioner*, that a person by virtue of a *mental illness* is likely to be a danger to him/herself or others or likely to inflict serious harm to him/herself or others, the member must apprehend the person and cause the person to be admitted at an appropriate *health establishment* for purposes of having the *mental health status* of that person to be assessed.
- (2) The provisions of Sections 33-38, applies to the person apprehended except that-
 - (a) for purposes of Sections 33, a spouse, next of kin, partner, *associate*, parent or guardian will be deemed to be the applicant or in the event of their unwillingness, incapacity or unavailability to act as an applicant, the *mental health care practitioner* attending to the person, will be deemed to be the applicant; and
 - (b) for purposes of the operation of these sections, the provisions of Sections 33(1)-(3) will be deemed to have been complied with.

- (3) If an assisted or *involuntary mental health care user* has absconded or has been deemed to have absconded⁵ or who has to be transferred for the purposes contemplated in **Section 39**, the head of the *provincial department* may request assistance from the South African Police Service to locate and return the patient to the *health establishment* concerned or assist in the transfer.
- (4) The South African Police Service is obliged to accede to the request for assistance made in terms of this section.
- (5) When requesting the assistance, the estimated level of dangerousness of the assisted or *involuntary mental health care user* must be conveyed to the member of the South African Police Service providing the assistance.

CHAPTER VI

STATE PATIENTS

41. DESIGNATION OF HEALTH ESTABLISHMENTS FOR STATE PATIENTS

The head of the *national department with the concurrence of* the heads of the *provincial departments*⁶ must designate the *health establishments* which may admit, care for, treat and provide rehabilitation services to *state patients*.

42. ADMISSION OF STATE PATIENTS TO DESIGNATED HEALTH ESTABLISHMENTS

- (1) When a direction is issued by a *court* in terms of Section 77(6)(a) or 78(6) of the Criminal Procedure Act, 1977, the Registrar or Clerk of the Court concerned must, in addition to his/her obligations as set out in any other law in terms of which the order was issued, send a copy of this order to the official in charge of the relevant

⁵Discussion must be held with the Justice Department on procedures for informing a High Court Judge if an *involuntary mental health care user* escapes or has deemed to have escaped.

⁶This should ideally be a reference to the National Health Authority

detention centre at which that *state patient* is or will be detained and to the relevant *official curator ad litem*.

- (2) Within one month of receipt of the order, the official in charge of the detention centre must forward a copy of the order to the head of the *national department* together with a request that the *state patient* be transferred to a *health establishment* designated in terms of **Section 41**.
- (3) As soon as it is practicable after receipt of the order, the head of the *national department* must -
 - (a) determine the *health establishment* at which the *state patient* must be transferred to;
 - (b) ensure that arrangements are made to effect the transfer of the *state patient* to the appropriate *health establishment* designated in terms of **section 41**; and
 - (c) in writing notify the head of the *correctional facility* and the *official curator ad litem* of the details of the transfer.
- (4) Within two weeks of being notified of the details of the transfer, the official in charge of the detention centre must cause the *state patient* to be transferred to the *health establishment* identified in the notice.

43. *TRANSFER OF STATE PATIENTS BETWEEN DESIGNATED HEALTH ESTABLISHMENTS*

- (1) Notwithstanding the *national department's* determination as contemplated in **section 42 (3)**, the head of the *provincial department* may at any time thereafter transfer a *state patient* to another *health establishment* designated in terms of **section 41** -
 - (a) in the province in respect of which the head has jurisdiction; or

- (b) in another province *with the concurrence of* the head of that other *provincial department*.
- (2) A transfer as contemplated in *sub-section (1)* may only be done if it is necessary for the care, treatment and *rehabilitation* of the *state patient* concerned.
- (3) Notwithstanding the *national department's* determination as contemplated in *section 42 (3)*, a relevant *Mental Health Review Board* may order the *state patient* to be transferred to another designated *health establishment* designated in terms of *section 41* with maximum security facilities.
- (4) An order contemplated in *subsection (3)* may only be given –
 - (a) if the *state patient* has been or is likely to inflict harm on others; and
 - (b) upon receipt of a written application from head of the *health establishment* at which the *state patient* is located setting out the facts on which the request is based.
- (5) Upon issuing the order contemplated in *subsection (3)*, the *Mental Health Review Board* concerned must forward a copy of the order concerned to the head of the *national department*.
- (6) Within two weeks of receiving the order, the head of the *national department* must
 - (a) determine the *health establishment* at which the *state patient* must be transferred to; and
 - (b) ensure that the necessary arrangements are made with the appropriate *health establishment* to effect the transfer as ordered.
- (7) The *head of a health establishment* may *with the concurrence of* the head of the *health establishment* with maximum security facilities, effect the transfer pending the decision of the *Mental Health Review Board* if the conduct of the *state patient* has or is likely to give rise to an emergency.

44. *STATE PATIENTS WHO ABSCOND*

- (1) If a *state patient* has absconded or has been deemed to have absconded, the head of the relevant designated *health establishment* must by written notice –
 - (a) immediately inform the South African Police Service of this fact and request it to locate and return the patient to the *health establishment* concerned; and
 - (b) inform the Registrar or Clerk of the relevant *Court* concerned and the *official curator ad litem* of this fact in writing within two weeks of having notified the South African Police Service.
- (2) The South African Police Service is obliged to accede to the request for assistance made in terms of this section.
- (3) When requesting the assistance, the estimated level of dangerousness of the *state patient* must be conveyed to the member of the South African Police Service providing the assistance.

45. *LEAVE OF ABSENCE FROM DESIGNATED HEALTH ESTABLISHMENTS*

- (1) The *head of a health establishment* designated in terms of **section 41**, may in writing grant a leave of absence to the *state patient* from the designated *health establishment* concerned on such terms and conditions that they deem appropriate.
- (2) The written notice must specify –
 - (a) the commencement and return period of the leave; and
 - (b) the terms and conditions to be adhered to by the *state patient* during the period of leave.
- (3) At any stage during the period of leave, the *head of the health establishment* concerned may cancel the leave and require the *state patient* to return to the designated *health establishment* if the head has reason to believe that the relevant *state patient* is not complying with the terms and conditions applicable to the leave.

- (4) The cancellation notice referred to in subsection (3) must specify the date by which the *state patient* must return to the designated *health establishment*.
- (5) If the *state patient* fails to return to the designated *health establishment* concerned on the return date specified in the notices referred to in subsection (2) and (3), the patient will be deemed to have absconded.

46. PERIODICAL REPORTS ON STATE PATIENTS

- (1) Upon the expiry of six months after the date on which care, treatment or *rehabilitation* services was commenced on a *state patient* and after every 12 months thereafter whilst the *user* is a *state patient*, the head of the relevant designated *health establishment* at which the *state patient* was admitted, must cause the *mental health status* of that *user* to be reviewed.
- (2) The review must concern itself with –
 - (a) the *mental health status* of the *state patient*; and
 - (b) making recommendations regarding –
 - (i) a plan for further care, treatment and *rehabilitation* for the *state patient*;
 - (ii) the merits of granting the *state patient* leave of absence; and/or
 - (iii) the discharge of the *state patient*.
- (3) A synopsis of the review must be –
 - (a) contained in a report; and
 - (b) submitted to –
 - (i) the head of the *national department*; and
 - (ii) the *official curator ad litem* and if appointed, the *administrator*.

- (4) Within one month after receipt of the report, the head of the *national department* must –
- (a) cause the report to be considered, obtain information from the person making the report and make recommendations concerning the –
 - (i) further care, treatment and *rehabilitation* for the *state patient*;
 - (ii) granting the *state patient* a leave of absence; and/or
 - (iii) the discharge of the *state patient*.
 - (b) send a written notice of its recommendation to the *head of the health establishment* concerned.

47. APPLICATIONS FOR DISCHARGE OF STATE PATIENTS

- (1) Any one of the following persons may apply to a High Court Judge for the discharge of a *state patient* –
- (a) the *state patient*;
 - (b) the *official curator ad litem* or if appointed the *administrator*;
 - (c) the *head of the health establishment* at which the *state patient* has been admitted to;
 - (d) the *medical practitioner* responsible for administering care, treatment and *rehabilitation* services to a *state patient*;
 - (e) a spouse, *associate* or the next of kin of a *state patient*; or
 - (f) any other person authorised to act on behalf of the *state patient*.
- (2) Subject to **subsection (3)**, the application must set out or contain –
- (a) the reasons for the application;

- (b) a report from a *clinical psychologist* if the *state patient* has been assessed by such a person;
 - (c) in the case where the applicant is the *official curator ad litem* or the *administrator*, the application must contain a report containing a history of the *state patient's mental health status* and a prognosis concerning the patient's *mental health status* from –
 - (i) the head of the relevant designated *health establishment* at which the *state patient* has been admitted; and
 - (ii) two *mental health practitioners* at least one of whom must be a *psychiatrist*.
 - (d) in the case where the applicant is not an *official curator ad litem* or *administrator* an indication of whether the current curators may have a conflict of interest with the *state patient* and supply proof that a copy of the application has been given to the curators concerned;
 - (e) in the case where the applicant is an *associate* or the person contemplated in paragraph (d), the nature of the substantial or material interest or the nature of the conflict;
 - (f) all information or reports relevant to the application that are in the possession of the applicant; and
 - (g) if known, the details of any prior application for the discharge of the *state patient*.
- (3) In the case where the applicant is not the *official curator ad litem* or *administrator*, the Registrar of the High Court must submit a copy of the application to the *official curator ad litem* or if appointed the *administrator* concerned. The curator or *administrator* as the case may be, must within 30 days of receipt of the application, submit to the High Court judge concerned a written report which –
- (a) must set out and contain a history of the *state patient's mental health status* and a prognosis concerning the patient's *mental health status* from –

- (i) the head of the designated *health establishment* at which the *state patient* has been admitted; and
 - (ii) two *medical practitioners* at least one of whom must be a *psychiatrist*; and
 - (b) must contain a report from a *clinical psychologist* if the *state patient* has been assessed by such a person;
 - (c) must indicate whether an application has been made for the discharge of the *state patient* concerned within a period of 12 months preceding the present applicant and if so, indicate the status of that application; and
 - (d) must set out recommendations on whether the present application should be granted and the basis for the recommendation.
- (4) When considering an application made in terms of this section, the High Court Judge –
- (a) must establish whether an application for the discharge of the *state patient* concerned is pending or had been considered within a period of 12 months preceding the present application, in which case, the present application must be dismissed;
 - (b) must establish whether the current *administrator* has a conflict of interest with the *state patient*, in which case request the Master of the High Court to appoint another *administrator* to assist in the processing of the present application; and
 - (c) may call for further information and assistance from the applicant, mental health practitioner or a relevant curator, as may be necessary to process the application.
- (5) The *administrator* appointed in terms of subsection 4(b) –
- (a) must adduce any available evidence relevant to the application;

- (b) must perform the functions and duties as required by the High Court Judge concerned to process the application; and
 - (c) is entitled to be remunerated by the *national department* responsible for justice in accordance with the tariff and scale of benefits and allowances determined for this purpose by the member of cabinet responsible for Justice.
- (6) Upon considering the application, the High Court Judge may order that the *state patient* –
- (a) remain a *state patient*;
 - (b) be reclassified and be dealt with as a voluntary, assisted or *involuntary mental health care user* in terms of Chapter V;
 - (c) be discharged unconditionally; or
 - (d) be discharged conditionally.

48. *CONDITIONAL DISCHARGE OF STATE PATIENTS, AMENDMENTS TO CONDITIONS OR REVOCATION OF CONDITIONAL DISCHARGE*

- (1) If the High Court Judge orders that the *state patient* be discharged conditionally as contemplated in Section 47(6)(d), the written order contemplated in that section, must specify the terms and conditions of the discharge and the period of the conditional discharge.
- (2) In respect of the *state patients* who have been conditionally discharged, the *head of the health establishment* at which the *state patient* was admitted must –
 - (a) cause their *mental health status* to be monitored at that *health establishment*; or
 - (b) arrange for another *health establishment* to monitor the *state patient* if the conditional discharge requires that the *state patient* present him/herself at that *health establishment* for care, treatment or *rehabilitation*.

- (3) The person conducting the monitoring must submit a written report to the *head of the health establishment* at which the *state patient* was originally admitted to –
 - (a) in accordance with any term and condition that may be applicable to the conditional discharge;
 - (b) at least at the end of every six month period from the date of the conditional discharge being ordered; and
 - (c) at the end of the conditional discharge period.
- (4) If at the end of the conditional discharge period, the head of the *health establishments* concerned, is satisfied that the *state patient* has materially complied with the terms and conditions applicable to the discharge, and that the *mental health status* of the *state patient* has not deteriorated the head must –
 - (a) immediately unconditionally discharge the *state patient*; and
 - (b) in writing accordingly inform the *state patient* and the Registrar of the Court concerned.
- (5) If upon considering any report submitted in terms of **subsection (2)**, the head of the *health establishment* concerned has reason to believe that the *state patient* has not materially complied with any term or condition applicable to the discharge, or that the *mental health status* of the *state patient* has deteriorated, the head may apply to the Registrar or the High Court concerned for an order amending the conditions or revoking the conditional discharge and forward a copy of this application to the *official curator ad litem*.
- (6) A *state patient* who has been discharged conditionally may at any time after six months have elapsed from the date of the order and at intervals of no less than six months thereafter, apply in the *prescribed* manner to the High Court concerned for –
 - (a) an amendment of the conditions applicable to the discharge; or
 - (b) an unconditional discharge.

- (7) The application for the amendment of a conditional or an unconditional discharge, must set out –
 - (a) the condition to be amended;
 - (b) the duration of the condition; and
 - (c) the reasons for the amendment or revoking the conditional discharge.

CHAPTER VII

PRISONERS WHO ARE MENTALLY ILL

49. DESIGNATION OF HEALTH ESTABLISHMENTS FOR PRISONERS WHO ARE MENTALLY ILL

The head of the *national department* must *with the concurrence of* the heads of the *provincial departments* by regulation designate the *health establishments*, which may admit, care for, treat and provide *rehabilitation* services to *mentally ill prisoners*.

50. ENQUIRY INTO THE HEALTH MENTAL STATUS OF A CONVICTED PRISONER

- (1) If it appears to the head of a *prison*, either through personal observation or by means of information provided, that a prisoner may be *mentally ill*, the head of the *prison* must cause the *mental health status* of the prisoner to be enquired into by –
 - (a) a *psychiatrist*; or
 - (b) where a *psychiatrist* is not readily available, by –
 - (i) a *medical practitioner*; and
 - (ii) a *mental health care practitioner*.
- (2) Upon completion of the enquiry, the person(s) conducting the enquiry must submit a written report to the head of the *prison*. The written report must specify -

- (a) the *mental health status* of the convicted prisoner; and
- (b) a plan for the care, treatment and *rehabilitation* of that prisoner.

51. CARE FOR, TREATMENT AND REHABILITATION OF PRISONERS WITH MENTAL ILLNESSES

If the person(s) conducting the enquiry referred to in **section 50** finds that the *mental illness* of the prisoner is of such a nature that the prisoner concerned could appropriately be cared for, treated or *rehabilitated* in the *prison*, the head of the *prison* must take the necessary steps to ensure that the required levels of care, treatment and *rehabilitation* services are provided to the prisoner concerned.

52. TRANSFER OF PRISONERS WHO ARE MENTALLY ILL TO A DESIGNATED HEALTH ESTABLISHMENT

If the person(s) conducting the enquiry referred to in **section 50**, finds that the *mental illness* of the convicted prisoner is of such a nature that the prisoner concerned ought to be cared for and treated in a *health establishment* designated in terms of **section 49**, the head of the *prison* must request a magistrate to cause a subsequent enquiry to be conducted into the *mental health status* of the prisoner for purposes of establishing whether a transfer to a *health establishment* designated in terms of **section 49** would be appropriate. This enquiry must be conducted in accordance with the procedure outlined in **section 50**.

53. MAGISTERIAL ENQUIRY CONCERNING TRANSFER TO DESIGNATED HEALTH ESTABLISHMENT

- (1) When initiating the subsequent enquiry contemplated in **section 52**, the head of the *prison* must forward to the magistrate a report containing the written reports referred to in **Section 50 (2)**.
- (2) Upon receipt of this report, the magistrate must commission two *mental health care practitioners* at least one of whom must be a *psychiatrist*, *clinical psychologist* or a *medical practitioner* with special training in mental health to

enquire into the *mental health status* of the prisoner concerned and make recommendations on whether the prisoner concerned should be transferred to a *health establishment* designated in terms of **section 49**.

- (3) If the *mental health care practitioners* recommend that –
- (a) the prisoner should be cared for and treated in a *health establishment* designated in terms of **section 49**, the magistrate must issue a written order to the head of the *prison* to transfer the prisoner concerned to that *health establishment* in accordance with the procedure outlined in **section 54**; or
 - (b) the prisoner need not be cared for and treated in a *health establishment* designated in terms of **section 49**, but instead be cared for and treated in the *prison* at which the convicted prisoner is located, the magistrate must issue a written order to the head of the *prison* to take the necessary steps to ensure that the required levels of care and treatment are provided to the prisoner concerned.

54. *PROCEDURE TO TRANSFER MENTALLY ILL PRISONERS TO A DESIGNATED HEALTH ESTABLISHMENT*

- (1) When an order to transfer a *mentally ill* prisoner to a *health establishment* designated in terms of **section 49** has been received by the head of the *prison*, the head must forward a copy of the order to –
- (a) the *administrator* if appointed; and
 - (b) the head of the *national department* together with a request that the *mentally ill prisoner* be transferred to the *health establishment* designated in terms of **section 49**.
- (2) As soon as it is practicable after receipt of the order, the head of the *national department* must –
- (a) determine the *health establishment* at which the *mentally ill prisoner* must be transferred;

- (b) ensure that arrangements are made to effect the transfer of the *mentally ill prisoner* to the appropriate *health establishment* designated in terms of **section 49**; and
 - (c) in writing convey the details of the transfer to the head of the *prison* and the *administrator*, if appointed in respect of that prisoner.
- (3) Within two weeks of being notified of the transfer, the head of the *prison* must cause the *mentally ill prisoner* to be transferred to the *health establishment* identified in the notice.
- (4) Whenever a transfer is effected in terms of this section, the *head of the health establishment* receiving the *mentally ill prisoner* is –
- (a) deemed to be in lawful custody of the prisoner concerned only upon receiving the prisoner concerned; and
 - (b) responsible for the safe custody of the prisoner concerned.

55. *TRANSFER OF MENTALLY ILL PRISONERS BETWEEN DESIGNATED HEALTH ESTABLISHMENTS*

- (1) The head of the *national department* may at any time transfer a *mentally ill prisoner* to another *health establishment* designated in terms of **section 49**.
- (2) A transfer as contemplated in **subsection (1)** may only be done if it is necessary for the care, treatment and *rehabilitation* of the *mentally ill prisoner*.
- (3) Notwithstanding the *national department's* determination as contemplated in **section 54(2)** or a transfer effected in terms of that section, a relevant *Mental Health Review Board* may order the *mentally ill prisoner* to be transferred to another *health establishment* designated in terms of **section 49** with maximum-security facilities.
- (4) An order contemplated in **subsection (3)** may only be given –

- (a) if the *mentally ill prisoner* has been or is likely to inflict harm to others; and
 - (b) upon receipt of a written application from head of the *health establishment* at which the *mentally ill prisoner* is located setting out the facts on which the request is based.
- (5) Upon issuing the order contemplated in subsection (3), the *Mental Health Review Board* concerned must forward a copy of the order concerned to the head of the *national department*.
- (6) Within two weeks of receiving the order, the head of the *national department* must
 - (a) determine the *health establishment* at which the *mentally ill prisoner* must be transferred to; and
 - (b) ensure that necessary arrangements are made with the appropriate *health establishment* or *correctional facility* to effect the transfer as ordered.
- (7) The *head of a health establishment* concerned may *with the concurrence of the head of the health establishment* with maximum security facilities may effect transfer, pending the decision of the *Mental Health Review Board* if the conduct of the *mentally ill prisoner* has or is likely to give rise to an emergency.
- (8) Whenever a transfer is effected in terms of this section –
 - (a) the person or body ordering the transfer must in writing notify the relevant head of the *prison* of the details of the transfer, within two weeks of the transfer; and
 - (b) the *head of the health establishment* receiving the *mentally ill prisoner* is –
 - (i) deemed to be in lawful custody of the prisoner concerned only upon receiving the prisoner concerned; and
 - (ii) is responsible for the safe custody of the prisoner concerned.

56. PERIODIC REPORTS ON THE MENTAL HEALTH STATUS OF MENTALLY ILL CONVICTED PRISONERS

- (1) Every six months after the date on which care, treatment and *rehabilitation* was commenced on a *mentally ill prisoner* and whilst the prisoner is *mentally ill*, the head of the relevant designated *health establishment* must cause the *mental health status* of that *mentally ill prisoner* to be reviewed.
- (2) The review must concern itself with –
 - (a) the *mental health status* of the *mentally ill prisoner*; and
 - (b) making recommendations regarding –
 - (i) a plan for further care, treatment and *rehabilitation* for the *mentally ill prisoner*; and/or
 - (ii) the merits of returning the *mentally ill prisoner* to the *prison* from which the prisoner was initially transferred.
- (3) A synopsis of the review must be –
 - (a) contained in a report; and
 - (b) submitted to the
 - (i) *Mental Health Review Board*;
 - (ii) the relevant magistrate;
 - (iii) the *administrator*, if appointed; and
 - (iv) the head of the relevant *prison*;
- (4) Within one month after receipt of the report, the *Mental Health Review Board* must –
 - (a) consider the report including obtaining information from any relevant person and make a recommendation regarding –

- (i) a plan for further care, treatment and *rehabilitation* for the *mentally ill prisoner*; and/or
 - (ii) the return of that prisoner to the *prison* from which the prisoner was initially transferred; and
- (b) send a written notice of its recommendation to the *mentally ill prisoner* or the *administrator* if appointed, the head of the relevant designated *health establishment*, the head of the *national department* and the magistrate. The notice must also provide the reasons for the recommendation.

57. *RECOVERY OF MENTAL HEALTH STATUS OF MENTALLY ILL PRISONERS*

- (1) If the *head of a health establishment* has reason to believe from personal observation or from information obtained, that a *mentally ill prisoner* has recovered from the *mental illness* to such an extent that the prisoner no longer requires care and treatment or that the requisite care and treatment can appropriately be given at a *prison*, the head must –
- (a) compile an appropriate discharge report;
 - (b) return the prisoner to the *prison* from which the prisoner was initially transferred; and
 - (c) inform the relevant magistrate of this fact in writing.

58. *MENTALLY ILL PRISONERS WHO ABSCOND FROM A DESIGNATED PSYCHIATRIC FACILITY OR DESIGNATED HEALTH ESTABLISHMENT*

- (1) If a *mentally ill prisoner* has absconded, the head of the relevant designated or designated *health establishment* must by written notice –
- (a) immediately inform the South African Police Service of this fact and request them to locate and return the *mentally ill prisoner* to the *health establishment* concerned;

- (b) inform the relevant magistrate and the head of the *prison* from where the *mentally ill prisoner* was initially transferred of this fact in writing within two weeks of having notified the South African Police Service.
- (2) The South African Police Service is obliged to accede to the request for assistance made in terms of this section.
- (3) When requesting the assistance, the estimated level of dangerousness of the *mentally ill prisoner* must be conveyed to the member of the South African Police Service providing the assistance.

59. EXPIRY OF TERM OF IMPRISONMENT

- (1) Subject to the provisions of this section, *mentally ill prisoners* must be released from the *prison* or *health establishment* designated in terms of **section 49** at which they are detained, upon the expiry of their term of imprisonment.
- (2) At least three months before the expiry of the term of imprisonment, an application may be made in accordance with the relevant provisions in **Chapter V** to the head of the relevant designated *health establishment* for the provision of assisted or involuntary care and treatment, as the case may be, to the *mentally ill prisoner* concerned.
- (3) At least one month before the expiry of the term of imprisonment, an application may be made to a magistrate for the continued detention of a *mentally ill prisoner* in the relevant designated *health establishment* pending the finalisation of the application contemplated in **subsection (2)**. An application in terms of this subsection may only be made in respect of a *mentally ill prisoner* who was being cared for and treated in the relevant designated *health establishment*.

CHAPTER VIII

CARE AND ADMINISTRATION OF PROPERTY OF THE MENTALLY ILL

60. APPOINTMENT OF AN ADMINISTRATOR FOR THE CARE AND ADMINISTRATION OF PROPERTY OF THE MENTALLY ILL

- (1) An *administrator* may be appointed for the care and administration of the *property* of a *mentally ill* person by the Master of the High Court upon -
 - (a) consideration by the Master of an application submitted in terms of **section 61**; and
 - (b) consideration of a finding and recommendation by a High Court Judge when conducting an enquiry contemplated in **section 62** that the *mental health status* of the person is of such a nature that the person is incapable of managing his or her *property* and that an *administrator* be appointed in respect of that person.
- (2) An *administrator* may only be appointed in respect of the *property* of a *mentally ill* person if the procedures set out in **sections 61 and 62** have been complied with.

61. APPLICATION TO THE MASTER OF THE HIGH COURT FOR THE APPOINTMENT OF AN ADMINISTRATOR

- (1) Any person over the age of 18 may apply to the Master of the High Court for the appointment of an *administrator* for a *mentally ill* person.
- (2) The application must be made under oath in writing and must -
 - (a) set out the relationship of the applicant to the person in respect of whom the application is made and -
 - (i) if the applicant is not the spouse or next of kin of that person, the reason why the spouse or next of kin have not brought the application; and

- (ii) if they are not available to make the application, what steps have been taken to establish their whereabouts prior to making the application;
 - (b) enclose all available mental health related medical certificates or reports relevant to the person's *mental health status* and his or her incapability to manage his or her *property*;
 - (c) set out the grounds on which the applicant believes that the person is incapable of managing his or her *property*;
 - (d) state that within a period of seven days immediately preceding the submission of the application, the applicant had been in the presence of the person in respect of whom the application is made;
 - (e) state an estimate of the value of the *property* and the annual income of the person in respect of whom the application is made, as at the time of submitting the application;
 - (f) attach proof that a copy of the application has been given to the person in respect of whom the application is made;
 - (g) provide the particulars and contact details of the person who would be most suited to serve as an *administrator* for the person in respect of whom the application is made; and
 - (h) state the name and contact details of the persons who may be able to provide further information relating to the *mental health status* of the person in respect to whom the application is made.
- (3) Upon receiving the application and considering the allegations and facts contained in the application, the Master of the High Court may -
- (a) appoint an interim *administrator* pending the outcome of the application;
 - (b) appoint an *administrator* if the estimated property value and annual income of the person in respect of whom the application is made, is below the *prescribed* amount.

- (4) Within 60 days of receiving the application, the Master of the High Court may cause an investigation into the merits of the application to be conducted by a magistrate or any other person within 30 days of being appointed to conduct the investigation or such extended periods as may be granted by the Master. The person conducting the investigation -
- (a) must verify all material allegations and facts contained in the application and call on the person in respect of whom the application is made or his or her legal representative to respond to the application; and
 - (b) may –
 - (i) summon any person to appear before them to provide information and documents relevant to the application; and
 - (ii) enquire into the financial standing of the person in respect of whom the application is made; and
 - (c) must submit a report on their findings to the Master.
- (5) Within two weeks of completing the investigations or considering the magistrate's report, the Master may –
- (a) subject to **subsection 61 (3)(b)** appoint an *administrator*;
 - (b) decline to appoint an *administrator*; or
 - (c) refer the matter for the consideration of a High Court Judge in chambers.
- (6) If the Master declines to appoint an *administrator* or refuses to refer the application for the consideration by a High Court Judge, the Master must by written notice inform the applicant in writing of the reasons for the decision.
- (7) In the event of the Master declining to appoint an *administrator*, the applicant may within one month of receiving the written notice referred to in **subsection (6)** appeal against the Master's decision by submitting a written notice of appeal to a High Court Judge in chambers, setting out the grounds of the appeal. A copy of this notice must also be submitted to the Master.

- (8) If the Master decides to refer the application for the consideration of a High Court Judge, or the applicant appeals against the decision of the Master, the Master must, within two weeks of receiving the notice of appeal or having taken the decision to refer the application for consideration by the High Court Judge, submit to the High Court Judge a copy of –
- (a) the application;
 - (b) a written summary of his or her findings made pursuant to the investigation or the written report of the magistrate as the case may be;
 - (c) the reasons for refusing the application or for referring the application to the High Court Judge; and
 - (d) in the case of an appeal, the applicant's notice of appeal.
- (9) Within one month of receiving the relevant items, the High Court Judge must –
- (i) consider the application or appeal as the case may be in the *prescribed* manner, including providing the appellant, the applicant, the independent *mental health practitioners* and the head of the *health establishment* to make oral representations on the merits of the application or appeal; and
 - (ii) send a written notice of his or her decision to the applicant or appellant as the case may be, the head of the *health establishment* and head of the *provincial department* stating the reasons for the decision.
- (10) The costs for conducting the investigation contemplated in **subsection (4)** must be paid out of the income derived from the property of the person concerned or the property itself or if the Master or High Court Judge is of the view that the application was frivolous or vexatious, out of the property of the applicant.

62. **RECOMMENDATION TO APPOINT ADMINISTRATOR BY HIGH COURT JUDGE
IN THE COURSE OF CONDUCTING AN ENQUIRY IN TERMS OF THIS ACT OR
IN THE COURSE OF ANY LEGAL PROCEEDING**

- (1) If A High Court Judge, in the course of conducting an enquiry in terms of *this Act* or in the course of any legal proceeding, has reason to believe that the person in respect of whom an enquiry or legal proceeding is being held or conducted, may be incapable of managing his or her property, may as part of that enquiry or proceeding initiate an investigation into the *mental health status* of that person and the capacity of that person to manage his or her property.
- (2) When conducting the investigation, the High Court Judge may call for further information and assistance from any relevant person as may be necessary for purposes of establishing the *mental health status* of the person concerned and the capacity of that person to manage his or her *property*.
- (3) If upon completing the investigation, the High Court Judge finds that the *mental health status* of the person concerned is of such a nature that the person is incapable of managing his or her property, the Judge may recommend that an *administrator* be appointed in respect of that person, and in writing, notify that person and the Master's office of the finding and recommendation and the reasons for it.
- (4) Within 60 days of being notified of the High Court Judge's recommendation, the Master must -
 - (a) cause an investigation to be conducted into the estimated value of the property and annual income of the person concerned;
 - (b) cause an investigation to be conducted to determine who would be most suited to serve as *administrator* for the person concerned; and
 - (c) appoint the *administrator* which could be himself or herself if the estimate property value and annual income of the person concerned is below the *prescribed* amount.

- (5) The costs for conducting the investigation contemplated in subsection (4) must be paid out of the income derived from the property of the person concerned or the property itself.

63. CONFIRMATION OF APPOINTMENT OF ADMINISTRATOR

The date on which the appointment of an *administrator* becomes effective is the date on which the Master of the High Court signs the official notice of appointment.

64. POWERS, FUNCTIONS AND DUTIES OF ADMINISTRATORS AND MISCELLANEOUS PROVISIONS RELATING TO THE APPOINTMENT OF ADMINISTRATORS

- (1) Within 60 days of being appointed as *administrator*, the *administrator* must lodge security with the Master in an amount to be determined by the Master except that on good cause shown by the *administrator*, the Master may -
- (a) reduce the amount of security required; or
 - (b) dispense with security.
- (2) If at any stage whilst acting as an *administrator*, the Master becomes aware that sequestration proceedings have been commenced against the *administrator* or is likely to be instituted or if the Master has reason to believe it is in the best interest of the person in respect of whom an *administrator* has been appointed, the Master may -
- (a) increase the amount of security to be paid by an *administrator*, or
 - (b) appoint a co-administrator, in which case all acts relating to the property of the person concerned must be done with the consent of both *administrators*.
- (3) An *administrator* has the following powers and functions -
- (a) to take care of and administer the property of the person concerned and perform all acts incidental thereto; and

- (b) subject to any other law, carry on any business or undertaking of the person concerned.
- (4) The powers and functions of an *administrator* are subject to the following limitations –
- (a) an *administrator* may not alienate or mortgage any immovable property of the person concerned unless authorised to do so by a *court* order or the Master consents to this; and
 - (b) an *administrator* or his or her spouse, child, parent, partner, *associate* or agent may not purchase or otherwise acquire any property of the person concerned unless the Master consents to this or the purchase or acquisition was authorised by written instrument made by the person concerned prior to the appointment of the *administrator*.
- (5) Upon being appointed, an *administration* must –
- (a) pay all monies received on behalf of the person concerned into the hands of the Master except –
 - (i) if the Master directs otherwise;
 - (ii) if a written instrument of the person made before the *administrator* was appointed, authorises otherwise; or
 - (iii) for money required for the repayment of any debt, the payment of expenses relating to the safe custody of the property of the person concerned, the maintenance or education of the person concerned or his or her dependants, or to pay for the current expenditure of the business or undertaking of the person concerned.
 - (b) submit and update an inventory of the property of the person concerned in the *prescribed* manner; and
 - (c) submit annual accounts of the property of the persons concerned in the *prescribed* manner.

65. TERMINATION OF ADMINISTRATORSHIP

- (1) The term of office of an *administrator* in terms of *this Act* may only be terminated
- (a) upon consideration of an application to this effect made by –
 - (i) the person in respect of whom an *administrator* was appointed; or
 - (ii) the *administrator*.
 - (b) by the Master on his or her own initiative if -⁷
- (2) The application contemplated in subsection (1)(a) must –
- (a) be made in writing;
 - (b) be sent to the Master of the High *Court*; and
 - (c) contain the following –
 - (i) the grounds on which the application is based;
 - (ii) enclose all medical certificates or reports issued subsequent to the appointment of the *curator bonis* and relevant to the *mental health status* of the person concerned; and
 - (iii) state the estimated value of the *property* of the person concerned at the time of submitting the application.
- (3) Upon receipt of the application, the Master must cause the application to be processed in the following manner⁸ -
- (4) ⁹

⁷ Instructions needed eg. misconduct, sequestration, etc.

⁸ Instructions needed.

⁹ Further provisions are needed to deal with Section 65(1)(b) instance of termination.

CHAPTER IX**REGULATIONS****66. GENERAL POWER TO ISSUE REGULATIONS**

- (1) The *Minister after consultation* with all the *relevant members of the Executive Council* may issue regulations on the matters listed below –
- (a) surgical procedures or medical or therapeutic treatment for *mental health care users* as may be deemed appropriate;
 - (b) the setting of quality standards and norms for care, treatment and *rehabilitation of mental health care users*;
 - (c) the establishment of maximum security hospitals for *mental health care users* who are a danger to themselves and others;
 - (d) the seclusion of *mental health care users* and use of mechanical means of restraint;
 - (e) the establishment of facilities for *state patients* and *mentally ill prisoners*;
 - (f) the observation, detention care, treatment and *rehabilitation of mental health care users* referred to a *health establishments* by *courts of law*;
 - (g) the establishment of child and adolescent facilities for the promotion of their *mental health status* and their admission, care, treatment and *rehabilitation at health establishments*;
 - (h) the discharge or leave of absence of *mental health care users* on their recovery or on the application from spouses or *associates*;
 - (i) the temporary or permanent removal from or transfer of *mental health care users* to a *health establishment* including the utilisation of the South African Police Services to assist in effecting a removal or transfer and the conditions applicable to any removal or transfer;

- (j) the books and records which must be kept by a *health establishment* in respect of a *mental health care user* and the entries which must be made therein, including the accounts, returns, reports, extracts, copies, statements, notices, documents and information which must be sent to the *Minister* or organ of state;
- (k) the payment of maintenance costs and expenses incurred in connection with the transfer, detention, care, treatment and *rehabilitation* and maintenance of any *mental health care user* in *health establishments* administered under the auspices of an organ of state;
- (l) licensing of *health establishments* providing mental health care, treatment and *rehabilitation* services and conditions attending to such licences;
- (m) matters concerning the powers, functions, guidelines for exercising these powers and functions and reporting obligations of a *Mental Health Review Board*;
- (n) the care, treatment and *rehabilitation* of *mental health care users* with infectious or communicable diseases; and
- (o) any other matter necessary or expedient to achieving the purpose of *this Act*.

67. *CONTENT OF REGULATIONS*

- (1) A regulation issued in terms of *this Act* may -
 - (a) confer a power or duty on any person, body or public authority;
 - (b) contain conditions and provide for exemptions; and
 - (c) be made in respect of -
 - (i) different parts of the Republic; or
 - (ii) different categories of persons.

- (2) In any regulation issued in terms of *this Act*, the **Minister**, as the case may be, may -
 - (a) designate as authoritative any published methodology, procedure, practice or standard that is generally recognised as authoritative within the relevant profession; and
 - (b) require any person or body to comply with that designated methodology, procedure, practice or standard.

68. **PROCEDURE FOR ISSUING REGULATIONS**

- (1) The **Minister** must comply with the following procedures when intending to issue or amend regulations in terms of *this Act* -
 - (a) the intention to issue the regulation must be announced by notice in the Gazette and other appropriate means of communication.
 - (b) the notice must specify -
 - (i) that a draft regulation has been developed for comment; and
 - (ii) where a copy of the draft regulation may be obtained.
 - (c) the period for comment must be at least 30 days.
 - (d) at any time before issuing the regulation, discussions or consultations in any form may be held with any relevant interest group.
 - (e) the comments received must be considered before issuing the regulations.
- (2) When intending to issue or amend any other regulation, the **Minister** may hold discussions and consultations with any relevant interest group.
- (3) The provisions of subsection (1) and (2) do not apply in respect of
 - (a) any regulation which the public interest requires to be made without delay; and

- (b) an amendment to correct a textual error.
- (4) Any regulation affecting state revenue or expenditure may be made only *with the concurrence of* the member of the Cabinet responsible for Finance.
- (5) Any regulation affecting the South African Police Services may be made only *with the concurrence of* the member of Cabinet responsible for safety and security.
- (6) Any regulation affecting the terms and conditions of a person employed by the *national department*, a *provincial department* or a district health authority, or any labour relations matter, may be made only *with the concurrence of* the member of the Cabinet responsible for the Public Service and Administration.
- (7) Any regulation relating to the appointment of an *administrator* including the threshold amounts for the appointment of the Master as *administrator* and the terms of these appointments as set out in *this Act*, may be made only with the concurrence of the member of Cabinet responsible for Justice.

69. **CONDITIONS AND EXEMPTIONS CONTAINED IN REGULATIONS**

- (1) At any time and with respect to any institution, person, body, or organisation, the *Minister*, as the case may be, by notice in the Gazette, sent by post, or hand delivered, may -
 - (a) impose, vary or withdraw any condition contemplated in a regulation; or
 - (b) grant, vary or withdraw an exemption contemplated in a regulation.
- (2) The *Minister*, as the case may be, may not vary or withdraw a condition or exemption issued in terms of **subsection (1)** unless the person or body to whom it applies has made a representation to them in connection with it.

70. **RESTRICTIONS AND PROHIBITIONS CONFERRED IN REGULATIONS**

- (1) If a regulation creates a restriction or prohibition, to the extent that the public health is not prejudiced, the restriction or prohibition must -

- (a) be in proportion to the object pursued by that regulation; and
 - (b) limit the conduct of business, and the movement of persons and goods, as little as is reasonably possible.
- (2) If failure to comply with a restriction or prohibition in terms of any regulation is an offence for which a person may be subject to criminal liability, that regulation must provide that, to the extent practicable, before being subject to criminal liability, the affected person must be given notice of the offence and an opportunity to comply with the regulations.

CHAPTER X

GENERAL PROVISIONS

71. OFFENCES & PENALTIES

- (1) It is an offence to -
- (a) misrepresent a material fact in any application, report, record, certificate made or issued in terms of *this Act*;
 - (b) make a false entry in any application, report, record or certificate made, issued or kept in terms of *this Act*;
 - (c) obstruct or hinder persons exercising a power or function in terms of *this Act*;
 - (d) exploit, physically or otherwise abuse, neglect or degradingly treat a *mental health care user* or permit a *user* to be treated in this manner;
 - (e) assist or incite *mental health care users* to abscond from a *health establishment* at which they have been admitted or detained in terms of *this Act*; or

- (f) assist or incite *mental health care users* not to comply with any care, treatment or *rehabilitation* plan or terms of a leave of absence or conditional discharge granted in terms of *this Act*.
- (2) Any person found guilty of having committed an offence in terms of this section will be liable on conviction to a fine not exceeding R5 000 or to imprisonment not exceeding six months or both.

72. *ESTABLISHMENT OF ADVISORY OR TECHNICAL COMMITTEES*

- (1) The *Minister* may, appoint any advisory or technical committees for purposes of achieving the objectives of *this Act*.
- (2) When appointing an advisory or technical committee, the *Minister*, by regulation, may determine -
 - (a) its composition, functions, and working procedure;
 - (b) the terms, conditions, remuneration and allowances applicable to its members; and
 - (c) any other incidental matters relating to it.

73. *ASSIGNMENT AND DELEGATION OF POWERS*

- (1) Subject to section 15 of the Exchequer Act, 1975 (Act No 66 of 1975),
 - (a) The *Minister*, in writing, may delegate any power conferred on the *Minister* by *this Act* or any other Act -
 - (i) any person in the employ of the State; or
 - (ii) any board or body established in terms of *this Act*; and

- (b) the *relevant member of the Executive Council*, in writing, may delegate any power conferred on that member by *this Act* or by, the *Minister*, in terms of *this Act*, to any person or body mentioned in subsection a(i) or (ii).
- (2) Any person or body to whom a power is delegated in terms of subsection (1) may exercise that power subject to the direction of the *Minister*, or *relevant member of the Executive Council*, who delegated that power.
- (3) At any time, the Minister or relevant member of the Executive Council may -
 - (a) withdraw a delegation made in terms of subsection (1); and
 - (b) withdraw or amend any decision made by a person or body in terms of a delegated power contemplated in subsection (1).
- (4) Until it is withdrawn or amended, any decision made by a person or body in terms of a delegated power contemplated in subsection (1) is deemed to have been made by the *Minister* or *relevant member of the Executive Council*, as the case may be.
- (5) Any right or privilege acquired, or any obligation or liability incurred, as a result of a decision in terms of a delegated power contemplated in subsection (1) cannot be affected by any subsequent withdrawal or amendment of that decision.

74. LIMITATION OF LIABILITY

- (1) A legal proceeding against a body or person in respect of any act or omission in terms of *this Act*, may be instituted only within 12 months of the earlier of -
 - (a) the date the claimant became aware of that act or omission; and
 - (b) the date the claimant might reasonably be expected to have become aware of that act or omission.
- (2) At least one month before instituting legal proceedings contemplated in subsection (1), a claimant must serve written notice of intention to institute proceedings on -
 - (a) the *Minister*,

- (b) the *relevant member of the Executive Council* in the province in which the cause of action arose; or
 - (c) the defendant concerned.
- (3) Notice in terms of *subsection (2)* to the *Minister* or a Member of the Executive Council is deemed to be notice to the defendant concerned.
- (4) If the *Minister*, or a relevant Member of the Executive Council, is the defendant or respondent in any proceedings contemplated in *subsection (1)*, any process by which those proceedings are initiated may be served on the *Minister* or member of Executive Council, as the case may be.
- (5) A *court* may dispense with the requirements of *subsections (1) or (2)* if the interests of justice require.

75. *RESTRICTION OF LIABILITY*

- (1) The State Liability Act 1957 (Act No 20 of 1957) applies, with the changes required by context, to each body established in terms of *this Act*, but a reference in that Act to "the *Minister* of the Department concerned" must be interpreted as referring to the Chairperson or head of the relevant body.
- (2) No member of staff, person or contractor of a body listed in *subsection (1)* is liable for any report, finding, point of view, or recommendation that is given in good faith and submitted to the *Minister*, Parliament or published generally in terms of *this Act*, except insofar as that report or publication -
- (a) discloses any fact which, in terms of *this Act*, it is an offence to disclose;
 - (b) violates a *mentally ill prisoner's* right to confidentiality in terms of *this Act*; or
 - (c) permits the identification of a person in any way contrary to *this Act*.

76. REPEAL OF LAWS AND TRANSITIONAL ARRANGEMENTS

- (1) The laws mentioned in **Schedule 1**¹⁰ are repealed to the extent indicated in this Schedule.
- (2) The repeal of those laws does not effect any transitional arrangement contained in **Schedule 2**¹¹.
- (3) The transitional arrangements in **Schedule 2** must be read and applied as substantive provisions of *this Act*.

77. STATE BOUND

This Act binds the State.

¹⁰ To be drafted at the end of the drafting process.

¹¹ To be drafted at the end of the drafting process.

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