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Contents

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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

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

Recognizing 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**;

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

Recognizing 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

Recognizing 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*;

"medics/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, 1983', 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(C)(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 11** 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 /tea/t/z 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?