

- (i) *voluntary mental health care users* into special programmed;
 - (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 programmed 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* areas 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 REVIE W BOARD**

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

³The relevant provisions in this Act are Sections - 24 Review board; 28 initial review of assisted mental heal 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 [REDACTED], appoint the relevant number of persons to the *Review Board*; and
 - (c) subject to [REDACTED], 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* maybe 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 traveling, 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.