

- (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 *riser*, 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
 - (old) 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 *cure, 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**

With in 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**.

3% **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.

⁴This 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* 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/item* 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