

## **MENTAL HEALTH CARE ACT (2002)**

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### **Introduction**

Mentally ill, mentally handicapped or other psychologically impaired persons behave in manners that may be detrimental to their own health or the safety of other persons. This may be due to their relative lack of insight into these behaviours and the need for intervention and treatment. Laws aim to provide for their control and treatment which is for the patient's own protection as well as for the protection of the community. "Mentally ill" is a term used for all categories of mentally *abnormal* persons who are described as mentally disordered and defective. This term has replaced terminology of "mentally disordered" in previous legislations. In the past the mentally disordered or defective person was defined as "a person who in consequence of mental disorder or disease, or permanent defect of the mind, was incapable of managing himself, or constituted a danger to himself or to others." The new definition introduced is "mental illness means a positive diagnosis of a mental health related illness in terms of accepted diagnostic criteria".

The actions to be taken may be by formal or less formal (informal) procedures depending on the severity of the disturbed state and the amount of insight that the patient retains, and the need for management decides the procedure indicated. The emphasis is intended to be more on treatment and protection than on detention of the patient. Legal decisions affecting patients requiring attention include involuntary commitment (hospitalisation) and administration of their property.

### **Managing the mentally ill in terms of the Mental Health Care Act 17 of 2002**

This legislation repeals the Mental Health Act No 18 of 1973, which was widely considered to be outdated and, in part, unconstitutional. The Act is directed primarily to aspects of care provision and is thus termed the Mental Health Care Act as opposed to the previously named Mental Health and Mental Disorders Acts. Despite the difficulties associated with defining mental illness, the Mental Health Care Act sets out criteria considered essential in defining the nature and severity of mental disturbance to be addressed in relation to the provision of treatment, the facilities, the various forms of treatments, and the personal and property rights of the individual patient. The qualification to provide the necessary evidence is defined with regards to the persons and the professionals concerned.

### **Aims**

The Act aims to provide for the appropriate care, treatment and rehabilitation of persons who are mentally ill as well as to protect members of the public and their property from persons with mental disorders. The different procedures to be followed for the admission to treatment facilities are set out with the provision of Review Boards to supervise and monitor every mental health establishment. The Act has further formalised and provided for the care and administration of the property of mentally ill persons. In particular, the statutes safeguard the human rights of the mentally ill from potential exploitation and abuses. Overall the legislation provides and coordinates mental health services within the general health services and the communities in which the mentally ill person resides.

### **Human rights**

The Mental Health Care Act aims to protect the rights of mentally ill people. These rights include the right to dignified and humane treatment, freedom from discrimination in terms of access to all forms of treatment, the right to privacy and confidentiality, the right to protection from physical or psychological abuse and the right to adequate information about their clinical status. Mentally ill people have the right to be treated under the same professional and ethical standards as other ill people. This must include efforts to promote the greatest degree of self-determination and personal responsibility on the part of patients. Admission and treatment should always be carried out in the patient's best interest and in the least

restrictive environment. The rights and duties relating to mental health care users are in addition to any rights and duties that they may have in terms of any other law. The specific rights relate to:

- (a) Respect, human dignity and privacy;
- (b) Consent to care, treatment and rehabilitation and admission;
- (c) Unfair discrimination;
- (d) Exploitation and abuse;
- (e) Determinations concerning mental health status;
- (f) Confidentiality;
- (g) Limitations on intimate adult relationships;
- (h) Right to be represented;
- (i) Right to a discharge report;
- (j) Full knowledge of rights.

It is important to note that the reporting of incidents of exploitation and abuse is an important requirement addressed in the Act. Any person witnessing any form of abuse against a mental health care user (patient) must report this fact to the Mental Health Review Board concerned or may lay a charge with the South African Police Service.

### **Admission to hospital for mental health care and assessment**

The procedure followed depends on the severity of the illness. The principle of least-restrictive environment must be followed. The least restrictive and preferred situation is one in which the person has the ability to agree to admission, that is, a voluntary patient. In this case, the patient is required to understand the circumstances and the implications of the admission and agrees to be admitted and treated. Even in the presence of severe mental illness a person may have the ability to agree to admission.

Patients who are mentally ill can be admitted to a hospital under various categories. Evaluation of these patients should take place as soon as possible and with particular attention to predictability and prevention of violence to self (suicide risk) and others (dangerousness). These include voluntary and assisted patients which provide for the majority of admissions. These persons either agree to being admitted or do not object.

If the person is severely mentally ill and is placing himself/herself or others at risk as a result of that illness and is refusing the admission for treatment which he/she requires, the person will require involuntary hospitalisation. The guiding principle should be the best interests of the patient.

Patients are admitted under three categories ranging in level of restriction, that is, Voluntary, Assisted or Involuntary.

### **Voluntary care**

Voluntary patients are reviewed and treated in the same manner as persons with other health problems.

### **Emergency care** for mental health care users incapable of making informed decisions

Any person or health establishment that provides care, treatment and rehabilitation services to a mental health care user or admits the user in circumstances in which the user could not make an informed decision must report this fact in writing in the prescribed manner to the relevant Review Board within a 24-hour period. Further procedure in terms of the appropriate category must then be made.

Admission for treatment without consent depends on the capacity and behaviour of the patient. If the patient is considered to be incapable of making a informed decision, he or she may be admitted, i.e., as “assisted” or as “involuntary” mental health care user. The procedure includes making applications,

examination of the person by mental health care practitioners and a review and confirmation by a Review Board.

### **Assisted health care users**

An application in writing is made to the head of the health establishment concerned and is granted if at the time of making the application, there is reasonable belief that the mental health care user has a mental illness of such a nature that:

- (i) the user is likely to inflict serious harm to himself or herself or others; or
- (ii) care, treatment and rehabilitation of the user is necessary for the protection of the financial interests or reputation of the user.

The admission procedures for assisted patients (or patients not opposing the application) are of a less formal or compulsory nature and can be termed a “third party voluntary procedure”.

### **Involuntary (compulsory) mental health care users**

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 and rehabilitation services and is unwilling (i.e., opposes) to receive the care, treatment and rehabilitation required.

In this situation the Act provides the state with the power to commit the individual if the degree of mental illness or suspected mental illness is of such a severity as to fit the definition in the Act and the condition presents a danger to the welfare of the self or others.

### **Intervention by members of South African Police Service**

If a member of the South African Police Service has reason to believe, from personal observation or from information obtained from a mental health care practitioner, that a person, due to his or her mental illness or severe or profound intellectual disability is likely to inflict serious harm to himself or herself or others, the member must apprehend the person and ensure that person is taken to an appropriate health establishment administered under the auspices of the State for assessment. The person is handed over

into the custody of the head of the health establishment or any other person designated by the head of the health establishment to receive such persons. If, after the assessment, the person apprehended due to mental illness or severe or profound intellectual disability, is deemed likely to inflict serious harm to himself or herself or others, he or she must be admitted to the health establishment for a period not exceeding 24 hours for an application to be made for involuntary admission. If an application is not made within the 24-hour period, the person apprehended must be discharged immediately. If the person is unlikely to cause harm, the person must be released immediately.