

MENTAL HEALTH CARE ACT, 2020*(Act 26 of 2020)***ARRANGEMENT OF SECTIONS****SECTIONS****PART I - PRELIMINARY**

1. Short title and commencement
2. Interpretation

PART II - MENTAL ILLNESS AND CAPACITY TO MAKE MENTAL HEALTH CARE AND TREATMENT DECISIONS

3. Determination of mental illness
4. Capacity to make mental health care and treatment decisions

PART III - ADVANCE DIRECTIVE AND NOMINATED REPRESENTATIVE

5. Advance directive
6. Maintenance of online register
7. Advance directive not to apply to emergency treatment
8. Reviewing, altering, modifying or cancelling the advance directive
9. Access to the advance directive
10. Advance directive for minor
11. Liability of mental health professional in relation to advance directive
12. Appointment of nominated representative
13. Nominated representative for minor
14. Duty of nominated representative

PART IV - RIGHTS OF PERSONS WITH MENTAL ILLNESS

15. Rights and duties with respect to persons with mental illness
16. Respect human dignity and privacy
17. Respect of right to live in community
18. Non-Discrimination
19. Exploitation and abuse
20. Duty to inform of individual rights

PART V - CARE AND TREATMENT OF PERSONS WITH MENTAL ILLNESS

21. Admission of persons with mental illness
22. Voluntary admission
23. Discharge reports
24. Facilitated admission
25. Treatment on facilitated admission and further steps
26. Admission of minors
27. Person with mental illness at home
28. Person with mental illness wandering on streets
29. Emergency treatment
30. Seclusion and restraints
31. Rights of relatives and care-givers
32. Leave to persons admitted as facilitated admission
33. Absence without leave of persons admitted as facilitated admission
34. Admission of person with mental illness under Court Order
35. Prisoners with mental illness

PART VI - MENTAL HEALTH CARE BOARD

36. Establishment of the Mental Health Care Board
37. Functions of the Board
38. Membership of the Mental Health Care Board
39. Secretary to the Mental Health Care Board
40. Meetings of the Board
41. Decision by circulation of papers
42. Members to continue till new members appointed

PART VII - MENTAL HEALTH CARE TRIBUNAL

43. Establishment of the Mental Health Care Tribunal
44. Membership of the Tribunal
45. Terms and conditions of members
46. Jurisdiction
47. Appeals
48. Powers of the Tribunal
49. Proceedings before the Tribunal
50. Reasons for decisions
51. Secretary to the Tribunal

PART VIII - OFFENCES AND PENALTIES

- 52. Offences and penalties

PART IX - MISCELLANEOUS

- 53. Regulations
- 54. Savings and transitional
- 55. Repeal



MENTAL HEALTH CARE ACT, 2020

(Act 26 of 2020)



I assent

A handwritten signature in blue ink, appearing to read "Danny Faure".

Danny Faure
President

19th August, 2020

AN ACT to provide mental health care and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental health care and services and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Mental Health Care Act, 2020 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Short title and
commencement

Interpretation

- 2.** In this Act, unless the context otherwise requires, —
- “advance directive” means a directive made by a person under section 5;
- “Board” means the Mental Health Care Board established under section 36;
- “care-giver” means a person who resides with the person with mental illness and is responsible for providing care to that person and includes a relative or any other person who performs this function;
- “Consultant-in-charge” means a specialist psychiatrist or physician appointed to be in charge of one or more mental health facilities;
- “mental health care or mental health treatment” includes biological and psychological treatments, social care for mental illness and curative and rehabilitative services, provided either in a health or mental health facility or in the community;
- “mental health facility” means a mental health hospital or a part of a hospital or a psycho-geriatric home for mentally ill elderly persons or a clinic or health centre or other place for in-patient or out-patient treatment of individuals with mental illness;
- “mental health professional” means any health professional trained in mental health care or mental health treatment and registered with the respective regulatory authority or council;
- “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary

demands of life, including mental conditions associated with alcohol and drugs but does not include solely intellectual disability;

“Minister” means the Minister responsible for health and the term “Ministry” shall be construed accordingly;

“nominated representative” means a person nominated or appointed under section 12 or 13;

“prescribed” means prescribed by regulation made under the Act; and

“Tribunal” means the Mental Health Care Tribunal established under section 43;

PART II - MENTAL ILLNESS AND CAPACITY TO MAKE MENTAL HEALTH CARE AND TREATMENT DECISIONS

3.(1) Mental illness shall be diagnosed in accordance with nationally or internationally accepted medical standards, including the latest edition of the International Classification of Diseases of the World Health Organization, or as may be prescribed.

Determination
of mental
illness

(2) The mental illness of a person shall not be diagnosed or determined on the basis of —

- (a) the political, economic, social status or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status of the person; or
- (b) nonconformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community.

(3) Past treatment or hospitalisation in a mental health facility shall not by itself justify any present or future diagnosis or determination of a person's mental illness.

(4) The mental illness of a person shall be determined by a mental health professional and shall only be diagnosed by a qualified medical practitioner with expertise in mental health.

(5) The determination or diagnosis of a mental illness under this Act shall not be taken to mean that the person is of unsound mind unless he or she has been declared to be of unsound mind by a competent Court.

Capacity to
make mental
health care
or treatment
decision

4.(1) Every person, including a person with mental illness, is deemed to have capacity to make decisions regarding his or her mental health care or treatment unless the person is unable to —

- (a) understand the information that is relevant to make a decision on the person's treatment, admission or personal assistance; or
- (b) appreciate any reasonably foreseeable consequence of a decision or lack of decision on the person's treatment, admission or personal assistance; or
- (c) communicate the decision under subsection (a) by means of speech, gesture or any other manner.

(2) The information referred to under subsection (1) shall be given to a person using simple language which such person understands or by sign language, visual aids, or any other means to enable the person to understand the information.

(3) Where a person makes a decision regarding his or her mental health care or treatment which is perceived by

others as inappropriate or wrong, it shall not automatically follow that the person does not have the capacity to make a mental health care or treatment decision, so long as the person has the capacity to make the mental health care or treatment decision under subsection (1).

PART III - ADVANCE DIRECTIVE AND NOMINATED REPRESENTATIVE

5.(1) Every person, who is not a minor, shall have a right to make an advance directive in such manner as may be prescribed, specifying any or all of the following —

Advance
directive

- (a) the manner in which the person wishes to be cared for or treated for a future mental illness;
- (b) the manner in which the person wishes not to be cared for or treated for a future mental illness;
- (c) the individual or individuals, in order of precedence, the person wants to appoint as his or her nominated representative as provided for under section 12.

(2) The person nominated under subsection (1) (c) shall be an adult and shall consent to act as such representative.

(3) An advance directive under subsection (1) may be made by a person irrespective of his or her past mental illness or treatment for mental illness.

(4) An advance directive made under subsection (1) shall be invoked only when such person ceases to have capacity to make mental health care or treatment decisions and shall remain effective until such person regains the capacity to make mental health care or treatment decisions.

(5) Any decisions made by a person while he or she has the capacity to make mental health care decisions shall override any previously written advance directive by such person.

(6) Any advance directive made contrary to any written law shall be *ab initio* void.

(7) A person making an advance directive shall, until it is proved otherwise, be presumed to have the capacity to do so.

(8) An advance directive made under subsection (1) may be revoked, amended or cancelled at any time subject to section 8 or in such manner as may be prescribed, by the person who made it.

Maintenance of
online register

6. Any advance directives given under section 5 shall be registered and maintained by the Board and shall be made available in the form and manner as may be prescribed.

Advance directive
not to apply to
emergency
treatment

7. An advance directive under section 5 shall not apply to any emergency treatment given under section 29.

Reviewing
altering,
modifying or
cancelling the
advance directive

8.(1) Where a mental health professional, a relative, or a care-giver of a person desires not to follow an advance directive whilst a person with mental illness is being treated, such mental health professional, relative or care-giver of the person shall make an application to the Tribunal to review, alter, modify or cancel the advance directive.

(2) Upon receipt of the application under subsection (1), the Tribunal shall, after giving an opportunity to be heard to all concerned parties, including the person whose advance directive is in question, either uphold, modify, alter or cancel the advance directive after taking into consideration the following —

- (a) whether the advance directive was made by the person of his or her own free will and free from force, undue influence or coercion;
- (b) whether the person intended the advance directive to apply in the circumstances prompting the application;

- (c) whether the person was sufficiently well informed to make the advance directive;
- (d) whether the person had capacity to make decisions relating to his or her mental health care or treatment when such advanced directive was made; and
- (e) whether the content of the advance directive contravened any written law or any provision of the Constitution.

9. The person making the advance directive and his or her nominated representative shall have a duty to ensure that the Consultant-in-charge or a medical practitioner, or a mental health professional, as the case may be, has access to the advance directive when required.

Access to
the advance
directive

10. The parent or legal guardian shall have the right to make an advance directive in writing in respect of a minor and all the provisions relating to advance directive, *mutatis mutandis*, shall apply to such minor until such time he or she attains the age of majority.

Advance
directive for
minor

11. A medical practitioner or a mental health professional shall not be held liable for any unforeseen consequences —

Liability of
mental health
professional in
relation to
advance
directive

- (a) on following a valid advance directive; or
- (b) not following a valid advance directive if the advance directive is not available to the medical practitioner or mental health professional.

12.(1) Notwithstanding section 5(1) (c) every person who is not a minor, shall have a right to appoint a nominated representative.

Appointment
of nominated
representative

(2) The nomination under subsection (1) shall be made in writing with the person's signature or thumb impression or mark and be witnessed by two persons.

(3) The person appointed as the nominated representative shall not be a minor and shall be competent to discharge the duties or perform the functions assigned to him or her under this Act, and give his or her consent in writing to the mental health professional to discharge his or her duties and perform the functions assigned to him or her under this Act.

(4) Where no nominated representative is appointed by a person under subsection (1), the following persons for the purposes of this Act in order of precedence shall be deemed to be the nominated representative of a person with mental illness—

- (a) up to a second degree relative;
- (b) a care-giver;
- (c) a suitable person appointed as such by the Tribunal; or
- (d) if no such person is available to be appointed as a nominated representative, the Tribunal shall appoint the Director of Social Services as the nominated representative of the person with mental illness.

(5) A person who has appointed any person as his or his nominated representative under this section may revoke or alter such appointment at any time in the same manner provided under section 12(2).

(6) The Tribunal may, if it is of the opinion that it is in the interest of the person with mental illness to do so, revoke an appointment made by it under this section, and appoint a different representative under this section.

(7) The appointment of a nominated representative, or the non appointment of a nominated representative, shall not be construed as the lack of capacity of the person to take decisions about his or her mental health care or treatment.

(8) All persons with mental illness shall have capacity to make mental health care or treatment decisions but may require varying levels of support from their nominated representative to make decisions.

13.(1) Notwithstanding section 12, in case of minors, the parent or person having custody of a minor shall be the minor's nominated representative unless the Family Tribunal orders otherwise under subsection (2).

Nominated
representative
for minor

(2) Where on an application is made to the Family Tribunal under the Children Act (Cap 28), by a mental health professional or any other person acting in the best interest of the minor, and on evidence presented before it and the Tribunal is of the opinion that —

- (a) the parent or guardian or the person having custody of the minor is not acting in the best interests of the minor; or
- (b) the parent or guardian or the person having custody of the minor is otherwise not fit to act as the nominated representative,

the Family Tribunal may appoint, any suitable individual who is willing to act, as the nominated representative of the minor with mental illness and in the case that no such individual is available for appointment as a nominated representative, the Family Tribunal shall appoint the person acting in the capacity or performing the functions of Principal Secretary in the department or ministry responsible for children's affairs as the nominated representative of the minor with mental illness.

Duty of
nominated
representative

14. A nominated representative shall while fulfilling his or her duties under this Act —

- (a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;
- (b) give particular credence to the views of the person with mental illness;
- (c) provide support to the person with mental illness in making treatment decisions;
- (d) have the right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;
- (e) be involved in discharge planning;
- (f) apply to the mental health facility for facilitated admission;
- (g) apply to the Tribunal on behalf of the person with mental illness for discharge;
- (h) apply to the Tribunal against violation of rights of the person with mental illness.

PART IV - RIGHTS OF PERSONS WITH MENTAL ILLNESS

Rights and
duties with
respect to
persons with
mental illness

15.(1) The rights and duties of persons, bodies or institutions set out in this Part are in addition to any rights and duties that they may have under any other written law.

(2) Whosoever is performing the duties set out in this

Part shall have regard to the will and preference of the person with mental illness.

16.(1) The dignity and privacy of every person with mental illness shall be respected.

Respect
human dignity
and privacy

(2) The care, treatment and rehabilitation services administered to a person with mental illness shall be based on the principle of the least restrictive alternative.

(3) The principle of least restrictive alternative in subsection (2) means offering an option for treatment or the setting of such treatment which —

- (a) meets the person's treatment needs; and
- (b) imposes the least restriction on the person's rights.

17.(1) A person with mental illness has a right to live in, be part of, and not be segregated from the community.

Respect
of right to
live in
community

(2) Every person with mental illness shall, in so far as practicable, be provided with care, treatment and rehabilitation services and community-based programs that improve the mental capacity of that person to develop to full potential and to facilitate his or her integration into community life.

(3) Admission to a mental health facility shall not amount to segregation from the community.

18.(1) A person with mental illness shall not be subject to discrimination on the grounds of his or her mental health status.

Non -
Discrimination

(2) Every person with mental illness shall receive care, treatment and rehabilitation services according to standards equivalent to those applicable to any other health care user.

Exploitation
and abuse

19. Every person, body, organisation or health facility providing care, treatment and rehabilitation services to a person with mental illness shall take steps to ensure that —

- (a) the person is protected from exploitation, abuse or any degrading treatment;
- (b) the person is not subjected to forced labour; and
- (c) care, treatment and rehabilitation services are not used as punishment or for the convenience of other people.

Duty to
inform of
individual
rights

20.(1) Subject to subsection (2), every health care provider shall, before initiating or administering any care, treatment or rehabilitation services, inform the person with mental illness in an appropriate manner of his or her rights.

(2) Where a person has been admitted under circumstances referred to in section 24 or 29, the nominated representative shall be given the information immediately and the person shall be given the information when the person has recovered mental capacity.

PART V - CARE AND TREATMENT OF PERSONS WITH MENTAL ILLNESS

Admission
of persons
with mental
illness

21.(1) A person with mental illness may be treated, as far as possible, at their home or near to their home without requiring care and treatment in a mental health facility.

(2) Where a person with mental illness requires treatment in a mental health facility, it shall be provided on a basis of voluntary admission:

Provided that in the circumstances stated in subsection (3) such person may be cared for and treated on facilitated admission.

(3) Where a person lacks capacity to make decisions for the person's mental health care, he or she may be provided care and treatment at a mental health facility.

22.(1) All admissions in the mental health facility shall, as far as possible, be voluntary admissions except where conditions for a facilitated admission exist.

Voluntary
admission

(2) Any person, who is not a minor and who considers himself or herself to have mental illness and desires to be admitted in any mental health facility for care and treatment may make a request to the Consultant-in-charge for admission.

(3) Where an application is received under subsection (2), the medical officer or a psychiatrist shall examine the person and make a report to the Consultant-in-charge.

(4) The Consultant-in-charge shall admit the person to the mental health facility if he or she is satisfied that —

- (a) the person has a mental illness of a severity requiring admission to a mental health facility;
- (b) the person is likely to benefit from admission and treatment to the mental health facility; and
- (c) the person has understood the nature and purpose of admission to and treatment in the mental health facility and has made the request for admission of his or her own free will, without any duress or undue influence and has the capacity to make mental health care and treatment decisions without support or requires minimal support from others in making such decisions.

(5) If a person is unable to understand the purpose, nature or likely effects of the proposed treatment and of the probable result of not accepting the treatment or requires a very high level of support in making decisions, he or she shall be deemed unable to understand the purpose of the admission and therefore shall not be admitted under this section.

(6) A person who is voluntarily admitted under this section shall not be treated without his or her informed consent.

(7) A person voluntarily admitted under this section has a right to discharge himself or herself from the mental health facility:

Provided that if the Consultant-in-charge of the mental health facility or his or her designated representative is of the opinion that the person meets the criteria for a facilitated admission under section 24, the Consultant-in-charge may prevent self-discharge for a period not exceeding 24 hours to allow for assessment as required under section 24.

Discharge
reports

23. The Consultant-in-charge of a mental health facility shall, in a prescribed form, issue a discharge report to the person with mental illness who was admitted for the purpose of receiving care, treatment and rehabilitation services.

Facilitated
admission

24.(1) In cases where a person with mental illness lacks capacity to make mental health care decisions, that person may be admitted to a mental health facility as a facilitated admission.

(2) An application for a facilitated admission shall be made by a nominated representative.

(3) The Consultant-in-charge of the mental health facility shall admit the person with mental illness upon application under subsection (2) if—

-
- (a) the person has been independently examined on the day of admission or in the preceding seven days, by two professionals, of which one is a psychiatrist or medical practitioner with mental health expertise and the other being any mental health professional, and both independently conclude, based on the examination and, if appropriate, on the information provided by others, that the person has a mental illness of such severity that the person —
- (i) has recently threatened or attempted or is attempting to cause bodily harm to himself or herself;
 - (ii) has recently behaved or is behaving violently toward another person or has caused or is causing another person to fear bodily harm from him or her; or
 - (iii) has recently shown or is showing an inability to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;
- (b) the psychiatrist or the mental health professional or medical practitioner, as the case may be, certify, after taking into account the advance directive, if any, that admission to the mental health facility is the least restrictive care option possible; and
- (c) the person is not eligible to receive care and treatment as a voluntarily admitted person under section 22.
- (4) The psychiatrist or the mental health professional or medical practitioner as the case may be, shall not be related by

blood (first degree relative) or marriage to or in a common law relationship with, the person who is being assessed for facilitated admission.

Treatment on facilitated admission and further steps

25.(1) A facilitated admission of a person to a mental health facility under section 24 is limited to a period of 14 days.

(2) Any person admitted under section 24 shall receive treatment as prescribed by the mental health professional with the consent of the nominated representative or on advance directive, if any.

(3) Where the Consultant-in-charge is of the opinion, on the expiry of the 14 days referred to in subsection (1) or earlier, that the person admitted under section 24 no longer meets the criteria for admission under that section, he or she may discharge the person or may continue the admission under section 22.

(4) If, on the expiry of 14 days specified in subsection (1), the Consultant-in-charge is of the opinion that the criteria for facilitated admission continues, the Consultant-in-charge shall apply to the Tribunal for the continuance of the person in the mental health facility under section 24.

(5) Where an application under subsection (4) is made, the Tribunal shall —

- (a) hold a hearing;
- (b) ensure that the person himself or herself and his or her representative attend the hearing;
- (c) hear evidence from the mental health professionals; and
- (d) make an order either to discharge the person or extend the facilitated admission.

(6) The order of the Tribunal for extension of the facilitated admission shall be for a period of 90 days for the first time and any subsequent extension, on application may be up to 120 days at a time.

(7) The Consultant-in-charge shall discharge the person, if he or she is of the opinion that during the extended period, the person with mental illness no longer meets the criteria for facilitated admission and inform the Tribunal of the same.

26.(1) Admission of a minor with mental illness shall be made on application of the parent or guardian or the person having custody of the minor.

Admission of
minor

(2) The procedure for facilitated admission under section 24 shall *mutatis mutandis* apply to admission of minors.

(3) Minors admitted to the mental health facility shall be accommodated separately from adults.

(4) The parent or guardian or the person having custody of the minor or a person appointed by the parent or legal guardian shall stay with the minor in the mental health facility for the period of their treatment in the mental health facility.

(5) Minors shall be treated only with the consent of the parent or guardian or the person having custody of the minor.

27.(1) Where a person at home is suffering from mental illness of such a degree that in the opinion of the nominated representative warrants care and treatment and that person is not willing to go to a mental health facility for that purpose, the nominated representative may make a request to the nearest health facility for an assessment at home.

Person with
mental
illness at
home

(2) Where a request is received under subsection (1), a health professional from the health facility shall visit the person with mental illness and make an assessment.

(3) If the mental health professional on assessment is of the opinion that the person is suffering from mental illness and is neglecting himself or herself to an extent which puts their own lives or the safety of others at risk, the mental health professional may request a police officer for assistance in moving the person to the nearest mental health facility.

(4) A police officer to whom a request is made under subsection (3), shall give all the necessary assistance to the health professional for moving the person to the nearest mental health facility.

Person with
mental illness
wandering
on streets

28. A police officer shall, on being informed by a member of the public or on seeing a person suspected of having mental illness wandering in a public place, convey such person to the nearest mental health facility for assessment.

Emergency
treatment

29.(1) Notwithstanding other provisions of this Act, any treatment for mental illness may be provided by any registered medical practitioner to a person with mental illness either at a mental health facility or in the community with or without the consent of the person with mental illness if it is immediately necessary to prevent —

- (a) death or irreversible harm to the health of the person; or
- (b) the person from inflicting serious harm to self or others.

(2) Emergency treatment under subsection (1) includes transportation of the person with mental illness to the nearest mental health facility for assessment.

(3) Any emergency treatment under this section shall be limited to 24 hours.

Seclusion
and
restraints

30.(1) A person with mental illness shall not be subjected to seclusion.

(2) A person with mental illness shall not be subjected to physical restraint unless it is the only means available to prevent immediate or imminent harm to the person concerned or to others.

(3) Physical restraint —

- (a) shall be done in an accredited mental health facility;
- (b) shall be authorised by a psychiatrist or medical practitioner with expertise in mental health;
- (c) shall not be used as a means of punishment or for the convenience of the staff; and
- (d) reasons and duration of each shall be recorded in a data base and made available to the Board on a regular basis;

(4) Physical restraint in each instance shall be restricted to a maximum period of three hours.

(5) The family members, care giver or nominated representatives shall immediately be informed, when the person with mental illness is physically restrained.

31.(1) Nominated representatives, relatives and care-givers of a person with mental illness shall have the right —

Rights of
relatives and
care givers

- (a) to visit the person with mental illness in the mental health facility;
- (b) to provide feedback to the mental health facility including complaints about any deficiency in services;

- (c) to support from mental health services to enable them to effectively perform their care-giving role; and
- (d) to social assistance on an equal basis as provided to care-givers of persons with physical illness.

(2) Nominated representatives, relatives and care-givers as the case may be, shall be involved in setting treatment goals, planning for treatment, discharge, care and treatment after discharge from the mental health facility.

(3) The involvement of nominated representatives, relatives and care-givers under subsection (2) in the case of voluntarily admitted person, shall be done with the consent of the person with mental illness and in the case of persons under facilitated admission with the consent of the person making application under section 24 (2).

Leave to persons admitted as facilitated admission

32.(1) The Consultant-in-charge of the mental health facility may grant leave to a person admitted as a facilitated admission in a mental health facility for a period not exceeding seven days at a time.

(2) The Consultant-in-charge of the mental health facility may, at any time revoke the leave if he or she is satisfied that it is necessary for the improvement of, or to prevent deterioration of the mental health of the person.

(3) Where a person with mental illness who has been granted leave under subsection (1) refuses on revocation of the leave or on the expiry of the leave to come back to the mental health facility, the Consultant-in-charge may follow the procedures specified in section 33 for his or her return to the mental health facility.

Absence without leave of persons admitted as facilitated admission

33.(1) Where a person with mental illness admitted as a facilitated admission is missing from the mental health facility without being granted leave, the Consultant-in-charge of the

mental health facility shall inform the police and the person who had made the application for admission of that person.

(2) The police shall have the responsibility to convey the person back to the mental health facility.

34.(1) An order under section 136 or section 138 or section 275 of the Criminal Procedure Code, made by the appropriate Court directing the admission of a person with mental illness into any suitable mental health facility, shall be sufficient authority for the admission of such person in such facility to which such person may be lawfully transferred for care and treatment.

Admission of person with mental illness under Court order

(2) The admission of a person referred to in subsection (1) to a mental health facility will be regarded as if it is a facilitated admission and the Director of Social Services or his or her representative will be the person's nominated representative.

(3) The consultant-in-charge of a mental health facility wherein any person referred to in subsection (1) is detained, shall at a frequency decided by the appropriate Court but not less than once in every six months, make a report regarding the mental and physical condition of such person to the Tribunal.

(4) On receipt of a report referred to in subsection (3), the Tribunal shall hold a hearing and ensure that the person and his or her legal representative attend the hearing and hear evidence from the mental health professionals concerned.

(5) Following the hearing referred to in subsection (4), the Tribunal shall make recommendations to the appropriate court or the President as the case may be for further treatment or further detention or release from the mental health facility of the person, from the mental health facility.

(6) The person referred to under subsection (1) may not

be discharged from the mental health facility except as ordered by the appropriate Court or the President as the case may be.

Prisoners
with mental
illness

35.(1) Where an officer in charge of a prison is of the opinion that a prisoner is suffering from mental illness, the officer shall make an application to the Consultant-in-charge of a mental health facility for transfer of the prisoner to the mental health facility for assessment by a psychiatrist.

(2) On the directions of the Consultant-in-charge of the mental health facility, the psychiatrist shall assess the person and may recommend —

- (a) outpatient treatment and send the prisoner back to prison; or
- (b) admission to the mental health facility either as a voluntary admission or a facilitated admission, as the case may be.

(3) Where a prisoner is admitted to the mental health facility under subsection (2), the time spent by the prisoner at the mental health facility shall be treated as time spent in prison.

(4) When a prisoner is discharged after treatment in the mental health facility, he or she shall be sent back to prison for continuation of his or her sentence or shall be discharged by the prison service if the sentence has been served.

PART VI - MENTAL HEALTH CARE BOARD

Establishment
of the Mental
Health Care
Board

36. There is established a Board to be known as the Mental Health Care Board.

Functions of
the Board

37. The functions of the Board are —

- (a) to oversee the planning and management of

mental health care and treatment in the Seychelles;

- (b) to promote standards of best practice and efficiency of mental health care services;
- (c) to set standards for accreditation of mental health care facilities;
- (d) to set criteria and standards for specific mental health care services, interventions, and treatments as necessary;
- (e) to inspect with sufficient frequency every mental health care facility to ensure that the conditions, treatment and care of patients comply with the provisions of this Act;
- (f) to review the use of restraints in mental health care facilities; and
- (g) to advise and assist the Government on other matters related to mental health care and treatment in the Seychelles.

38.(1) The Board shall consist of the following members —

- (a) the Principal Secretary, Ministry responsible for Health (*ex-officio*);
- (b) the Chief Medical Officer, Ministry responsible for Health (*ex-officio*);
- (c) the Consultant-in-charge of Mental Health Services, Ministry responsible for Health (*ex-officio*);
- (d) the Director of Social Services, Ministry responsible for Social Affairs (*ex-officio*);

Membership
of the Mental
Health Care
Board

- (e) the Chairperson, National Council for the Disabled (*ex-officio*);
- (f) the Chief Nursing Officer (*ex-officio*);
- (g) the Chief Allied Health Officer (*ex-officio*);
- (h) a user of mental health services;
- (i) a family member or care-giver of a person with mental illness; and
- (j) two representatives from civil society with an interest and knowledge of mental health issues.

(2) The Minister shall appoint the members of the Board on such terms and conditions and such allowances and remuneration as may be prescribed.

(3) The Minister shall appoint one of the members of the Board as Chairperson of the Board.

(4) The appointment of the Chairperson and members of the Board shall be published by notice in the Gazette.

(5) The members of the Board who are not *ex-officio* members shall hold office for three years and are eligible for reappointment for a maximum of two consecutive terms.

(6) A member, except an *ex-officio* member, may resign from office by letter addressed to the Minister for Health.

(7) Where a person is appointed to replace another person under subsection (6) on the person so appointed shall serve as a member for the remaining period of office of the person replaced.

39.(1) There shall be a Secretary appointed by the Board.

Secretary to
the Mental
Health Care
Board

(2) The Secretary shall be responsible for the convening of all meetings of the Board, maintaining records of the Board, implementing the decisions of the Board, and do all such things as the Board or the Chairperson may lawfully require the Secretary to do.

40.(1) The Board shall meet at least six times a year but otherwise —

Meeting of
the Board

(a) as the Chairperson may direct; or

(b) as may be requested in writing to the Chairperson by not less than six members of the Board.

(2) The time and place of a meeting of the Board shall be determined by the Chairperson.

(3) Seven members of the Board shall constitute a quorum for a meeting.

(4) A meeting of the Board shall be presided over by the Chairperson but in the absence of the Chairperson the members present at the meeting shall elect a member to preside over the meeting and that member shall have all the powers of the Chairperson at the meeting.

(5) All matters for determination by the Board at a meeting shall be decided by a simple majority of votes of the members present and voting thereon.

(6) Each member has one vote and in the event of an equality of votes the member presiding at the meeting shall have a casting vote.

(7) A member who has a direct interest in a matter that falls to be decided at a meeting of the Board shall notify the of

Chairperson or, if the member is the Chairperson, the Secretary, of the interest and shall not be present or vote at the meeting where the matter is considered or decided unless the Board authorises otherwise.

(8) The Board shall, through the Chairperson, submit an annual report of its activities to the Minister and the Minister shall cause a report to be tabled before the National Assembly.

Decision by circulation of paper

41. Where a matter requires a decision of the Board and it is not convenient or possible for the Board to meet to determine the matter, the Secretary shall, on the instructions of the Chairperson, circulate papers regarding the matter to all members for consideration and decision or approval and if the members unanimously approve a decision or resolution by signing it, the decision or resolution shall have the same effect as a decision or resolution passed at a meeting of the Board.

Members to continue till new members appointed

42. Notwithstanding section 38(5) where at the end of the period specified in that section, all the members of the Board vacate office and the new members of the Board have not been appointed, the persons vacating as members shall continue until the appointment of the new members of the Board or for a further period of three months, whichever occurs first.

PART VII - MENTAL HEALTH CARE TRIBUNAL

Establishment of the Mental Health Care Tribunal

43. There is hereby established a Tribunal to be known the Mental Health Care Tribunal.

Membership of the Tribunal

44.(1) The Chairperson of the Tribunal shall be a Magistrate nominated by the Chief Justice.

(2) The Minister shall appoint four other members who shall serve on the Tribunal, which shall consist of the following —

(a) a consultant psychiatrist or a medical

practitioner with training and experience in mental health of at least ten years;

- (b) a representative from the Attorney General's Chambers;
- (c) a representative from the Ministry of Health;
- (d) a civil society representative with an interest or special expertise in mental health care and treatment.

(3) The name of the Chairperson and members shall be published in the *Gazette*.

(4) A member shall hold office for a term of three years and may be reappointed for one further term.

(5) A member of the Tribunal shall not take part in any hearing in relation to a matter in which the member has a direct interest.

(6) A member of the Tribunal or any other person acting under the direction of the Tribunal shall not be under any civil or criminal liability in respect of anything done or purported to be done in good faith in pursuance of this Act.

45. Members shall be appointed on such terms and conditions and such allowances and remuneration as may be prescribed by regulations.

Terms and conditions of members

46.(1) The Tribunal shall have exclusive jurisdiction to hear and determine mental health matters.

Jurisdiction

(2) Without prejudice to the generality of the foregoing, the Tribunal shall hear and determine —

- (a) appeals by persons with mental illness against facilitated admission;

- (b) appeals on renewal or extension of facilitated admission;
- (c) complaints regarding violation of rights of persons with mental illness in mental health care facilities.

Appeals

47. Any person aggrieved by a decision of the Tribunal may appeal to the Supreme Court subject to the same conditions as appeals from a decision of the Magistrates' Court.

Powers of
the Tribunal

48. The Tribunal shall have powers to —

- (a) summon any person to appear before it;
- (b) examine on oath, affirmation or otherwise a witness or any person appearing before it; and
- (c) require any person to produce any document which the Tribunal considers relevant.

Proceedings
before the
Tribunal

49.(1) The Tribunal shall sit as and when there is a matter for the Tribunal to adjudicate upon and laws relating to evidence shall be applicable to witnesses or persons appearing before the Tribunal.

(2) Three members of the Tribunal, of whom one shall be the Chairperson, shall constitute the quorum.

(3) Each member of the Tribunal shall have an equal vote and decisions shall be reached by a majority vote and in the event of equality of votes the Chairperson shall have a casting vote.

(4) A decision of the Tribunal shall have the same force and shall be executed in the same manner as a judgment or order of the Supreme Court under the Seychelles Code of Civil Procedure Act.

(5) A party before the Tribunal may be represented by an attorney-at-law or by a representative of the party or any other person as the case may be.

(6) The Tribunal shall, before making a decision —

- (a) afford the parties the opportunity to be heard; and
- (b) observe the rules of natural justice.

(7) Notwithstanding the foregoing, the Tribunal shall have power to conduct proceedings in whatever manner it considers most appropriate.

50. At the conclusion of the proceedings, the Tribunal shall prepare and deliver its decision together with the reasons for such decision.

Reasons for
decisions

51. The Minister shall appoint a Secretary to the Tribunal who shall be responsible for —

Secretary to
the Tribunal

- (a) ensuring the overall smooth running of the Tribunal;
- (b) convening the sittings of the Tribunal after consultation with the Chairperson and members;
- (c) the issuing of summonses and notices on behalf of the Tribunal;
- (d) the implementation of decisions made by the Tribunal;
- (e) taking appropriate steps to enable the Tribunal to enforce its orders; and
- (f) ensuring that orders or directions given by the Tribunal are complied with.

PART VIII - OFFENCES AND PENALTIES

Offences and penalties

52.(1) Any person who willfully falsifies an advance directive or falsifies an appointment of an appointed representative shall be guilty of an offence and liable on conviction to imprisonment for a term of 5 years or a fine not exceeding SCR50,000 or with both such imprisonment and fine.

(2) Any person who commits any act of cruelty to, or abuse or willful neglect of any patient with mental illness shall be guilty of an offence and liable on conviction to imprisonment for a term of 15 years or a fine not exceeding SCR50,000 or with both such imprisonment and fine.

PART IX - MISCELLANEOUS

Regulations

53.(1) The Minister may make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the provision of subsection (1), regulations may provide for —

- (a) standards for determination of illness;
- (b) manner of making an advance directive;
- (c) manner of revoking, amending, or cancelling an advance directive; and
- (d) form of discharge report under section 23.

(3) Regulations made under this section may provide for offences punishable with a fine not exceeding SCR50,000 and imprisonment not exceeding 2 years or with both such fine or imprisonment.

Savings and transitional

54. All acts done under the Mental Health Act (Cap 127), decisions taken prior to the date of commencement of

this Act, shall continue to have effect until it is amended, annulled or withdrawn in accordance with the provisions of this Act.

55. The Mental Health Act, 2006 (Cap 127), is hereby Repeal
repealed.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 22nd July, 2020.



Mrs. Tania Isaac
Clerk to the National Assembly