

South Africa

Mental Health Care Act, 2002

General Regulations, 2004

Government Notice R1467 of 2004

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The Minister of Health has under sections 9(2)(a), 12(2), 16, 27(2), 29(2)(a), 33(2), 34(1)(b), (3)(b)(i), (5)(a) and (7)(a), 35(2)(c) 44(4), 47(2), 48(6), 57(4), 66 and 67 of the Mental Health Care Act 2002 ([Act No. 17 of 2002](#)), in accordance with section 68 of the said Act, made the regulations in the Schedule.

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and unless the context otherwise indicates—

“**health establishment administered under the auspices of the State**” means—

- (a) a public health establishment; or
- (b) a health establishment contracted to and funded by the State to provide mental health care services on behalf of the State;

“**maximum security facility**” means a ward or unit within a psychiatric hospital, designated by or such the head of that psychiatric hospital.

“**physical means of restraint**” means temporarily physically restraining the movement of the body by one or more persons in order to prevent that the person so restrained harm himself or herself or others.

“**primary health care facility**” means a health establishment which provides primary health care;

“**private hospital**” means a hospital, which is not owned or funded by the State;

“**seclusion**” means the isolation of a user in a space where his or her freedom of movement is restricted;

“**the Act**” means the Mental Health Care Act, 2002 ([Act No. 17 of 2002](#)).

Chapter 1

Quality standards and norms

2. Co-ordination and implementation of mental health services

- (1) A person requiring, or deemed to require, mental health services must ordinarily present himself or herself at a health establishment that provides primary health care.
- (2) A mental health care user must be assessed and, if such user requires care, treatment and rehabilitation services he or she must be—
 - (a) treated and cared for at such primary health care facility;
 - (b) referred to a community based mental health care practitioner to be assessed and if treatment is required, be treated in the community; or
 - (c) referred to a hospital for assessment and/or admission.

- (3) A mental health care user who requires tertiary or specialized mental health care must be referred to a health establishment that provides tertiary or specialized services.
- (4) A mental health care user referred to a secondary or tertiary level who, following his or her discharge requires follow-up services at primary health or community levels must be referred back to the latter level and shall be provided with the relevant care, treatment and rehabilitation programme within the available resources.

3. Decision by Head of health establishment

- (1) When a head of a health establishment makes a decision in terms of these regulations that falls outside his or her scope of professional practice, he or she must act in consult the relevant mental health care practitioners.
- (2) The duties and functions to be performed by the head of a health establishment in terms of the Act or these Regulations may in the absence of such head, be performed by the person acting as head of such health establishment.

4. Home visits

Providers of mental health care may visit homes and places of employment of persons considered to be mentally ill or intellectually disabled, within the catchment areas in which they operate, if such home visit is required for the care, treatment or rehabilitation of a mental health care user.

5. Community care

- (1) Programmes and facilities for the community care, treatment and rehabilitation of people with mental health problems must be provided where possible.
- (2) Community programmes or facilities may be run by—
 - (a) organs of the State;
 - (b) health establishments under the auspices of the State;
 - (c) non-profit organizations;
 - (d) volunteer or consumer groups;
 - (e) profit making organizations;
 - (f) individuals registered with a relevant health or social service statutory council; or
 - (g) registered training institutions.
- (3) Services by a grouping referred to in sub-regulation (2) may, within their professional scope of practice, include medical care, residential community accommodation; day-centers, counseling, support or therapeutic groups, psychotherapy, vocational rehabilitation programmes, psychosocial rehabilitation programmes or other services, which would assist the recovery of the person to optimal functioning.

6. Subsidies or transfers to non-government organizations or volunteer organizations

The State must provide subsidies to appropriate non-profit organizations or volunteer organizations for the provision of community care, treatment and rehabilitation to meet the objectives of the Act.

7. Report on exploitation and abuse

- (1) A person witnessing any form of abuse against a mental care user as contempt(1) of the Act—
 - (a) must report this fact to the Review Board concerned in the form of form MHCA 01 of the Annexure; or
 - (b) may lay a charge with the South African Police Service who shall in writing notify the Review Board concerned of that charge.
- (2) When a Review Board receives a report or notification contemplated in subregulation (1) that Board must investigate that report or notification and if necessary, lay a charge with the South African Police Service.

Chapter 2 Application for mental health care and assessment

8. Emergency admission or treatment without consent

Any person or health establishment that provides care, treatment and rehabilitation services to health care user or admits such user in circumstances contemplated in section 9(1)(c) of the Act must report that fact in writing in the form of form MHCA 02 of the Annexure to the relevant Review Board.

9. Application for assisted mental health care

- (1) An application for assisted mental health care by a person contemplated in section 27(1) of the Act must be made in the form of form MHCA 02 of the Annexure.
- (2) Where an applicant is unable, for whatever reason, to complete a written application, that applicant must be assisted by a staff member at the health establishment concerned.
- (3) An application form referred to in sub-regulation (1) must be available at all health establishments where there are at least two mental health care practitioners able to examine such person in terms of section 27(4) of the Act.
- (4) The application form contemplated in sub-regulation (1) must when it has been completed, be submitted to the head of a health establishment.
- (5) On completion of the examination referred to in sub-regulation (3), the mental health care practitioners must submit their finding in the form of form MHCA 04 of the Annexure to the head of the health establishment concerned.
- (6) A health establishment that is unable to provide the examination contemplated in section 27 (4) of the Act, must refer an applicant to a health establishment within the closest proximity that provides that examination.
- (7) The head of the health establishment concerned must give notice in terms of section 27(9) of the Act to the applicant in the form of form MHCA 05 of the Annexure of his or her decision concerning the application for assisted care, treatment and rehabilitation in question and reasons thereof.
- (8) The head of the health establishment concerned must in terms of section 28(1) of the Act, within seven days of his or her decision referred to in sub-regulation (7), send a copy of the application for assisted care, treatment and rehabilitation to the relevant Review Board together with a copy of the findings of the two mental health care practitioners referred to in sub-regulation (5) and a copy of the notice referred to in sub-regulation (7).
- (9) The Review Board concerned must, after receiving the documentation referred to in sub-regulation (8) and after completing an investigation in terms of section 28(2) of the Act within 30 days, report

on its findings and decision to the head of the health establishment concerned, the applicant and the head of relevant provincial department in the form of form MHCA 14 of the Annexure.

10. Application for involuntary mental health care and assessment

- (1) An application for involuntary mental health care by a person contemplated in section 33(1) of the Act must be made in the form of form MHCA 04 of the Annexure.
- (2) Where an applicant is unable, for whatever reason, to complete in the written application, that applicant must be assisted by a staff member at the health establishment concerned.
- (3) The application form contemplated in sub-regulation (1) must be available at all health establishments where there are at least two mental health care practitioners who are able to examine a person in accordance with section 33(4) of the Act.
- (4) An application form contemplated to in sub-regulation (1) must when it has been completed, be submitted to the head of a health establishment.
- (5) On completion of the examination referred to in sub-regulation (3), the mental health care practitioners must submit their findings in the form of form MHCA 05 of the Annexure to the head of the health establishment concerned.
- (6) A health establishment that is unable to provide an examination contemplated in section 33 (4) of the Act, must refer an applicant to a health establishment within the closest proximity which provides that examination.
- (7) The head of the health establishment concerned must give notice in terms of section 33(8) of the Act to the applicant in the form of form MHCA 07 of the Annexure of his or her decision concerning the application for involuntary care, treatment and rehabilitation in question and reasons thereof.

11. 72-Hours assessment after head of health establishment grants application for involuntary care, treatment and rehabilitation

- (1) The assessment contemplated in section 34 of the Act must be done in accordance with form MHCA 06 of the Annexure.
- (2) A medical practitioner conducting an assessment contemplated in section 34 of the Act may determine the treatment programme and the place within the hospital where the mental health care user must be kept during the 72-hours assessment period to ensure the safety of such user and others.
- (3) If the facilities at the health establishment concerned are unsuitable for the 72-hours assessment or personnel within that health establishment are unable to cope with a mental health care user due to the potential harm which that user may inflict on himself, herself, others or property if he or she remains in that health establishment, that health establishment must transfer that user to another health establishment with suitable personnel or facilities to conduct the assessment.
- (4) The medical practitioner contemplated to in sub-regulation (2) must make a provisional diagnosis of any mental illness and initiate treatment according to standard treatment guidelines or protocols as soon as possible.
- (5) A medical practitioner must monitor the condition of the mental health care user closely and give a written report to the head of the health establishment concerned on such user's mental status at least every 24 hours during the 72-hours assessment period.
- (6) The mental health care practitioner who conducted 72-hours assessment must within 12 hours after the expiry of the 72-hours assessment period submit a joint written report in the form of form MHCA 06 of the Annexure to the head of the health establishment concerned, indicating their assessment on the physical and mental health status of the mental health care user and their recommendations concerning further treatment.

- (7) The head of a health establishment concerned may discharge or transfer a mental health care user to voluntary status during the 72-hours assessment if that user's mental condition warrants it.
- (8) If the head of the health establishment concerned, following the 72-hours assessment, is of the opinion that the mental health status of the mental health care user warrants further involuntary care, treatment and rehabilitation services on an outpatient basis, he or she must inform the Review Board in the form of form MHCA 09 of the Annexure thereof.
- (9) If the head of the health establishment concerned, following the 72-hours assessment, is of the opinion that the mental health status of the mental health care user warrants further involuntary care, treatment and rehabilitation services on an inpatient basis, he or she must request the Review Board in the form of form MHCA 07 of the Annexure to approve such further care, treatment and rehabilitation.
- (10) The Review Board must within 30 days of receipt of documents referred to in section 34(3)(c)(i) of the Act send a decision on further involuntary care, treatment and rehabilitation on an inpatient basis in the form of form MHCA 14 of the Annexure with reasons to the applicant and the head of the health establishment.

12. Information regarding health establishments that provide assessment

- (1) The head of a provincial department must submit to all health establishments under the auspices of the State, private health establishments within the province concerned, the South African Police Service and the national department a list of the health establishments in each district in that province that provide the 72-hours assessments contemplated in section 34 of the Act.
- (2) The head of such provincial department must update the list contemplated in sub-regulation (1) on an annual basis indicating which health establishment falls in which district and submit that updated list to the bodies referred to in sub-regulation (1).

Chapter 3 Appeals

13. Appeal against decision of head of health establishment to approve application for assisted care, treatment and rehabilitation

- (1) A person referred to in section 29(1) of the Act may within 30 days of the date of the written notice issued in terms of [section 27\(9\)](#), appeal in the form of form MHCA 15 of the Annexure against the decision of the head of the health establishment to the Review Board.
- (2) An appeal contemplated to in section 29 (1) of the Act may be—
 - (a) made directly to the Review Board concerned; or
 - (b) submitted to the head of the health establishment where the application in terms of section 27 of the Act was made, who must immediately submit that appeal to the Review Board concerned.

14. Appeal against decision of head of health establishment on involuntary care, treatment and rehabilitation

- (1) A person referred to in section 35(1) of the Act may within 30 days of the date of the written notice issued in terms of [section 33\(8\)](#), appeal in the form of form MHCA 15 of Annexure against the decision of the head of the health establishment.
- (2) An appeal contemplated in section 35(1) of the Act—
 - (a) made directly to the Review Board concerned; or

- (b) submitted to the head of the health establishment where the application in terms of section 33 of the Act was made, who must immediately submit that appeal to the Review Board concerned.

15. Consideration of appeals by Review Board

- (1) If an appeal against a decision contemplated in section 27(9) and 33(8) to provide assisted or involuntary care, treatment and rehabilitation is made to a Review Board, the secretariat of that Review Board must ensure that all documentation in terms of section 29 and 35 of the Act is obtained and delivered to the members of that Review Board at least one week prior to the appeal being considered by that Review Board.
- (2) The secretariat of a Review Board must in writing and by registered post inform the appellant, the person referred to in section 27(1) or 33(1) of the Act, the relevant mental health care practitioners, the head of the health establishment concerned and any other person whom the Review Board considers to be important to the appeal hearing, of the date of the appeal and whether written or oral representation, as appropriate, must be made to the Review Board.
- (3) The Review Board may specifically invite the persons referred to in subregulation (2) to the appeal hearing.
- (4) The Review Board must give notice of the appeal hearing at least two weeks before the date of such hearing.
- (5) The Review Board may summon any person in the form of form MHCA 18 of the Annexure to appear before it as a witness to give evidence or to produce any book, record, document or other item, which in the opinion of the Review Board is relevant to the appeal.
- (6) A person referred to in sub-regulation (5) must be compensated by funds appropriated by the provincial department concerned for any reasonable expenses which such person may have incurred in order to attend the appeal hearing.

16. Order by High Court on further involuntary care, treatment and rehabilitation

Within 30 days after receipt of the documents submitted by the Review Board in terms of sections 34(7) or 35(4), the High Court must in terms of section 36 of the Act in the form of form MHCA 16 of the Annexure order—

- (a) further hospitalization of the mental health care user and, if necessary, that the financial affairs of such user be managed and administered according to provisions of Chapter VIII of the Act; or
- (b) immediate discharge of such user.

Chapter 4 Transfer and discharge

17. Discharge report

The head of a health establishment must of the Act issue a discharge report in the form of form MHCA 03 of the Annexure.

18. Involuntary outpatient mental health care user

- (1) If a mental health care user's mental health care status warrants further involuntary care, treatment and rehabilitation services on an outpatient basis in terms of section 34(3) or section 34(5) of the Act, the head of the health establishment concerned must provide that user and his or her custodian with a schedule of conditions relating to his or her outpatient care, treatment and rehabilitation in the form of form MHCA 10 of the Annexure.

- (2) The schedule of conditions contemplated in sub-regulation (1) must be read to the mental health care user and to his or her custodian or read and translated into one of the official languages that such user can understand.
- (3) The conditions contemplated in sub-regulation (1) must include—
 - (a) the name of a custodian into whose care the mental health care user must be given;
 - (b) the name of the health establishment where the mental health care user's mental health status must be monitored or reviewed and the timeframe of each review; and
 - (c) the name of the health establishment where treatment will be provided if such treatment is not provided in the health establishment referred to in paragraph (b);
 - (d) behavior which must be adhered to by the mental health care user; and
 - (e) the name of the psychiatric hospital or care and rehabilitation center concerned where the mental health care user is to be admitted if—
 - (i) he or she relapses to the extent of being a danger to himself, herself or others if he or she remains an involuntary outpatient; or
 - (ii) the conditions of outpatient care are violated.
- (4) The health establishment concerned must forward the schedule of conditions to—
 - (a) the mental health care user;
 - (b) the custodian contemplated in sub-regulation 3(a);
 - (c) every health establishments) contemplated in sub-regulation (3)(b) and (c); and
 - (d) the Review Board concerned.
- (5) A mental health care user who does not accept the conditions regarding his or her involuntary outpatient care, treatment and rehabilitation must remain an involuntary inpatient mental health care user.
- (6) A custodian into whose control a mental health care user has been entrusted must take over the responsibility for that user when the user is discharged from the health establishment concerned where he or she received inpatient care.
- (7) If a custodian into whose control a mental health care user has been entrusted when that user was discharged, intends to change the place where that user resides and that change requires using another health establishment—
 - (a) where that user's mental health status will be monitored or reviewed; and
 - (b) where treatment will be provided,that custodian must apply in writing to the head of the current health establishment for transfer of that user to the other health establishment.
- (8) If the head of the current health establishment and the head of the health establishment to where the mental health care user is to be transferred approve the application contemplated in sub-regulation (7), that mental health care user can be transferred to the other health establishment.
- (9) Where a mental health care user does not present himself or herself for monitoring and review according to the conditions referred to in sub-regulation (1), and after the necessary measures have been taken by the health establishment concerned to locate such user, such user must be deemed to have absconded in terms of section 40(4) of the Act and in such case the health establishment concerned must inform the South African Police Service in the form of form MHCA 25 of the Annexure.

19. Transfer of involuntary mental health care user

Arrangement for a transfer contemplated section 34(4)(b) of the Act must be made in accordance with form MHCA 11 of the Annexure between the head of the psychiatric hospital, care and rehabilitation center concerned and the head of a health establishment where the involuntary is currently admitted.

20. Transfer of involuntary mental health care user from inpatient basis to outpatient basis and *vice versa*

- (1) Where required in terms of sections 8(3) or 34(5) or (6) of the Act, a mental health care user may be transferred from inpatient to outpatient care and *vice versa*, using form MHCA 12 of the Annexure.
- (2) Arrangements for a transfer referred to in sub-regulation (1) must be made between the head of the psychiatric hospital concerned and the head of a health establishment where the involuntary outpatient mental health care user is being reviewed.
- (3) Where such a transfer has taken place, notice of such transfer must be given within two weeks thereafter by the head of the health establishment concerned to the Review Board concerned for their consideration in terms of section 34(7) of the Act.

21. Periodical reports

- (1) A periodic review on—
 - (a) an assisted mental health care user in terms of section 30 of the Act;
 - (b) an involuntary mental health care user in terms of section 37 of the Act;
 - (c) a state patient in terms of section 46 of the Act;
 - (d) a mentally ill prisoner in terms of section 55 of the Act, must be done on form MHCA 13 of the Annexure.
- (2) With regard to a person referred to in sub-regulation (1)(a), (b) or (c)—
 - (a) the first review must be done by a medical practitioner six months after the commencement of care, treatment and rehabilitation services;
 - (b) the second review must be done by any mental health care practitioner 12 months after the first review referred to in paragraph (a); and
 - (c) the reviews thereafter must be done every 12 months, provided that every alternate review shall be done by a medical practitioner.
- (3) With regard to a person referred to in sub-regulation (1)(d) periodic reviews must be done every six months by a medical practitioner.
- (4) Within 30 days after the Review Board concerned has received a summary report of a periodic review referred to in sub-regulation (1)(a), (b) and (d), such Review Board must decide on the review in the form of form MHCA 17 of the Annexure.

22. Application for the transfer of a mental health care user to a maximum security facility

The head of a health establishment may in terms of section 43 or 54(2) of the Act in the form of form MHCA 19 of the Annexure request the Review Board concerned to order the transfer of a State patient or mentally ill prisoner to another designated health establishment with a maximum-security facility.

23. Order for transfer of mental health care user to maximum security facility

- (1) If the Review Board concerned approves in terms of section 39(4) of the Act the request of a head of a health establishment referred to in regulation 20(1), such Review Board may in the form of form MHCA 20 of the Annexure order the transfer of an assisted or involuntary mental health care user to a health establishment with maximum security facilities.
- (2) If the Review Board concerned approves in terms of section 43(3) or 54(1) of the Act the request of a head of a health establishment referred to in regulation 20(2) or (3), such Review Board may in the form of form MHCA 20 of the Annexure order the transfer of a State patient or mentally ill prisoner to another designated health establishment with a maximum security facility.

24. Notice of transfer of State patient or mentally ill prisoner between health establishments

- (1) The person responsible for effecting a transfer of a State patient in terms of section 43 of the Act, must in the form of form MHCA 21 of the Annexure, notify the official *curator ad litem*.
- (2) The person or body ordering the transfer in terms of section 54 of the Act, must, within 14 days of such transfer, in the form of form MHCA 21 of the Annexure notify the head of the prison where the prisoner is detained of the details of the transfer.

25. Transfer of State patient from detention center to designated health establishment and between designated health establishments

- (1) The head of the national department of Health must immediately after receipt of an order referred to in section 42(1) of the Act make arrangements in terms of section 42(3) of the Act in the form of form MHCA 23 of the Annexure for the transfer of the State patient concerned from the detention center to the health establishment designated in terms of section 41 of the Act.
- (2) Despite the determination by the head of the national department in terms of [section 42\(3\)](#) as to which health establishment the State patient concerned must be transferred to from the detention center, a head of the relevant provincial department may thereafter in terms of section 43(1) of the Act make arrangements in the form of form MHCA 24 of the Annexure for the transfer of such State patient to another health establishment designated in terms of [section 41](#).

26. Leave of absence

- (1) The head of the health establishment concerned may grant leave of absence in the form of form MHCA 27 of the Annexure to an assisted or involuntary mental health care user for a period not exceeding two months at a time: Provided that the terms and conditions to be complied with during such period of leave are stipulated on such form.
- (2) The head of a health establishment concerned may grant leave of absence in the form of form MHCA 27 of the Annexure to a State patient for a period not exceeding six months at a time: Provided that the terms and conditions to be complied with during such period of leave is stipulated on such form.
- (3) The head of a health establishment concerned may, during a period of leave, contemplated in terms of section 45 of the Act, cancel the leave when he or she is authorized to it in the form of form MHCA 28 of the Annexure and direct on that form that the State patient, assisted or involuntary mental health care user concerned be returned to the health establishment by the custodian or in terms of regulations 28 or 29.

27. Transfer of assisted or involuntary mental health care user, State patient or mentally ill prisoner with the assistance of the South African Police Service

- (1) The head of the health establishment concerned may only in exceptional circumstances and upon the recommendation of a mental health care practitioner, request assistance of the South African Police Service with the transfer of an assisted or an involuntary mental health care user, state patient or mentally ill prisoner.
- (2) A request contemplated in sub-regulation (1) must only be made if the head of the health establishment is satisfied that medical care has been provided to such user or that an attempt was made to provide such care and such head is of the opinion that such mental health care user, state patient or mentally ill prisoner is too dangerous to be transferred in a vehicle staffed only by health personnel or is likely to abscond during such transfer unless guarded.
- (3) A mental health care user contemplated in sub-regulation (1) who has to be transferred, may be held in custody at a police station for a period of not more than 24 hours in order to effect the transfer.
- (4) A health care practitioner must accompany the mental health care user contemplated in sub-regulation (1) during transfer.

28. Apprehension and handing over of person to health establishment by South African Police Service

If a member of the South African Police Services apprehends a person in terms of section 40(1) of the Act, that member must cause that person to be—

- (a) taken to a health establishment administered under the auspices of the State, listed in terms of regulation 12 by the provincial department concerned, for assessment of the mental health status of that person; and
- (b) handed over using form MHCA 22 of the Annexure 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.

29. Return of an absconded person who has been apprehended and is being held in custody by South African Police Service

- (1) If a mental health care user has absconded or is deemed to have absconded, the head of the health establishment concerned may in terms of [section 40\(4\)](#), of the Act and in the form of form MHCA 25 of the Annexure notify and request assistance from the South African Police Service to locate, apprehend and return the user to the health establishment concerned.
- (2) If a mental health care user referred to in sub-regulation (1) is apprehended by the South African Police Service in terms of [section 40\(4\)](#), of the Act in the vicinity of such health establishment, the South African Police Service must return such user immediately to such establishment and hand over to the head of such health establishment or any other person so designated by that head to receive such user, provided that form MHCA 26 of the Annexure must be completed at the time the user is handed over.
- (3) If a mental health care user who has absconded from a health establishment is apprehended by the South African Police Service in terms of sections 40(4), 44(1) or 57(1) of the Act and that apprehension does not take place in the vicinity of that health establishment, the South African Police Service must—
 - (a) notify the head of the health establishment that such user has been apprehended and is in the custody of the South African Police Service; and

- (b) provide the information with regard to the physical and mental condition of that user that the notifying member is able to provide.
- (4) The head of the health establishment contemplated in sub-regulation (1) must, if circumstances so require, take steps to ensure that a mental health care practitioner from a health establishment nearest to the police station where the mental health care user is held in custody or another suitable mental health care practitioner, examines that mental health care user and provides the treatment may be required at the police station or the nearest local health establishment.
- (5) After an examination contemplated in sub-regulation (4), it is the responsibility of the member in command of the South African Police Service station where the mental health care user is being detained, to consult with the head of the health establishment concerned and to make arrangements for the return of such mental health care user, taking into account the physical and mental condition of such user: Provided that if that user is—
 - (a) too dangerous to be transferred in a vehicle staffed only by health personnel;
 - (b) likely to abscond during the transfer, unless guarded,that user must be conveyed by the South African Police Service or a member of the South African Police Service must accompany that user while being conveyed.
- (6) A mental health care user may be held in custody at a police station for a period of not more than 24 hours to effect the return of that user.

30. Discharge of State patient

- (1) A person contemplated in section 47(1) of the Act who is not the official *curator ad litem* or administrator of a State patient may apply in the form of form MHCA 29 of the Annexure to a judge in chambers for the discharge of that State patient.
- (2) The official *curator ad litem* or administrator of a State patient may apply in the form of form MHCA 30 of the Annexure to a judge in chambers for the discharge of a State patient.
- (3) On considering an application, the judge in chambers may make an order in the form of form MHCA 31 of the Annexure that the State patient be discharged conditionally.
- (4) If the head of a health establishment, after receiving a report contemplated in section 41(3) of the Act, has reason to believe that the State patient has not fully complied with the terms and conditions applicable to the discharge or that the mental health status of the State patient has deteriorated, that head must use form MHCA 34 of the Annexure for the purpose of section 48(5) of the Act.
- (5) A State patient who has been discharged conditionally must for the purpose of section 48(6) of the Act, make an application in the form of form MHCA 35 of the Annexure.

31. Procedure on expiry of term of imprisonment of mentally ill prisoner

An application in terms of section 58(3) of the Act must be made in the form of form MHCA 38 of the Annexure.

Chapter 5 Surgical procedures, medical or therapeutic treatment

32. Psycho-surgery

- (1) No psychosurgery may be performed on a mental health care user who is not capable of giving informed consent for such surgery.

- (2) Before any psychosurgery is performed on a mental health care user, a medical report constructed and signed by at least two independent psychiatrists must state whether in their opinion, all mental health treatment previously applied has failed and psychosurgery is necessary.
- (3) Psycho-surgery may only be performed by a registered neuro-surgeon who has agreed to perform the operation.

33. Electro-convulsive treatment

- (1) Electro-convulsive treatment must be conducted by a medical practitioner with special training in mental health and may only be carried out under a general anaesthetic together with a muscle relaxant
- (2) No mental health care user may have more than one electro convulsive treatment carried out in a 24-hour period and such treatment may not be administered more frequently than on alternate days.
- (3) The provisions of regulation 35 relating to consent must be adhered to in the case of electro-convulsive treatment
- (4) A health establishment under the auspices of the State or a private health establishment may only perform electro-convulsive treatment by the head of the provincial department concerned.
- (5) Whenever electro-convulsive treatment is performed a register kept for that purpose must be signed and completed by the relevant medical practitioner and a transcript of the register must be submitted by the health establishment concerned to the Review Board on a quarterly basis in the form of form MHCA 47 of the Annexure.

34. Sleep therapy

The use of "sleep therapy" is prohibited in respect of mental health care users.

35. Consent to treatment or operations for illness other than mental illness

- (1) An involuntary mental health care user, an assisted mental health care user, a state patient or a mentally ill prisoner who is capable of giving informed consent to treatment or an operation, must decide whether to have treatment or an operation or not.
- (2) Where a mental health care practitioner deems a user to be incapable of consenting to treatment or an operation due to mental illness or intellectual disability, then a curator, if a court has appointed one, a spouse, next of kin, a parent or guardian, a child over the age of 18, a brother or sister, or a partner or associate, may consent to the treatment or operation.
- (3) The head of the health establishment where the mental health care user resides or the head of a facility licensed in terms of regulation 42(1) where the mental health care user resides, may grant consent to treatment or an operation if—
 - (a) none of the persons contemplated in sub-regulation (2) is available and unsuccessful attempts have been made to locate them and this has been confirmed in writing;
 - (b) the relevant alternatives have been discussed with the head of the health establishment or the head of the licensed facility concerned above and that head is satisfied that the most appropriate intervention is to be performed; and
 - (c) the medical practitioner who is going to perform that operation recommends the treatment or operation.
- (4) The information requested in sub-regulation (1) and in paragraphs (a), (b) and (c) of sub-regulation (3) must be documented in the clinical record of the mental health care user concerned before the treatment or operation.

36. Use of mechanical means of restraint

- (1) Mechanical means of restraint may not be used during the transfer of a mental health care user or within a health establishment unless pharmacological or other means of calming, physical means of restraint or seclusion of the user are inadequate to ensure that the user does not harm himself or herself or others.
- (2) Where mechanical means of restraint is required in order to administer pharmacological treatment, such means should be applied for as short a period, depending on the condition of the mental health care user concerned, as is necessary to effect the treatment.
- (3) While the mental health care user is under restraint, he or she must be subject to observation at least every 30 minutes and such observations should be recorded in the clinical notes.
- (4) Whenever mechanical means of restraint is utilized—
 - (a) a register kept for that purpose must be signed and completed by the relevant medical practitioner;
 - (b) the form of mechanical means of restraint, the time period used, the times when the mental health care user was observed and the reason for administering such means of restraint must be outlined by the medical practitioner in the register contemplated in paragraph (a); and
 - (c) the head of the health establishment concerned must receive a report on a daily basis that indicates all incidents involving the use of mechanical means of restraint.
- (5) A transcript of the register contemplated in sub-regulation (4) must be submitted by the health establishment concerned to the Review Board on a quarterly basis in the form of form MHCA 48 of the Annexure.
- (6) Mechanical means of restraint may not be used as punishment.

37. Seclusion

- (1)
 - (a) A mental health care user may not be secluded as a punishment and seclusion may only be used to contain severely disturbed behaviour, which is likely to cause harm to others.
 - (b) Seclusion may not be used as a punishment.
- (2) While a mental health care user is secluded, he or she must be subject to observation at least every 30 minutes and that observation should be recorded in the clinical notes.
- (3) Whenever seclusion is utilized—
 - (a) a register, signed by a medical practitioner, must be completed;
 - (b) the time period that the mental health care user concerned needed to be secluded and the reason for secluding that mental health care user must be outlined and the seclusion must be outlined in the relevant register by the medical practitioner; and
 - (c) the head of the health establishment concerned must on a daily basis receive a report indicating all incidents of seclusion.
- (4) A transcript of the register referred to in sub-regulation (2) must be submitted by the health establishment concerned to the Review Board on a quarterly basis in the form of form MHCA 48 of the Annexure.

Chapter 6 Maximum-security facilities

38.

Arrangements for the transfer of a mental health care user to another health establishment must be made between the heads of the two health establishments concerned.

Chapter 7 Compulsory records

39.

The following records must be kept in a health establishment that provides mental health care, treatment and rehabilitation—

- (a) a register recording the admission, discharge, death, transfer and change in legal status of every mental health care user in that facility and leaves of absence or abscondments;
- (b) a medical record of all information concerning the physical and mental health of a mental health care user and records of treatments which have been prescribed and administered including the date on which an entry into such records has been made, the full signature, name in print and all the qualification(s) of the mental health care practitioner who made that entry;
- (c) administrative records of legal documents and copies of correspondence concerning the mental health care user; and
- (d) a record of any minor or major injury sustained by a mental health care user in that psychiatric hospital or care and rehabilitation center.

40. **Monthly reports**

The head of a health establishment contemplated in regulation 44 must on a monthly basis submit to the head of the provincial department a return of the number of patients, their legal status and the information contemplated in regulation 44.

Chapter 8 Observation and treatment

41. **Observation and treatment of mental health care users referred to health establishment by a court of law in terms of the Criminal Procedures Act, 1977 ([Act No. 51 of 1977](#))**

- (1) A person referred by a court of law to a health establishment in terms of section 7 of the Criminal Procedure Act for observation must be informed that a report will be submitted by a mental health care practitioner to the court of law and that he or she is under no obligation to divulge information.
- (2) If a person contemplated in sub-regulation (1) is found to be mentally ill to the degree that he or she is a danger to himself or herself or others and psychiatric treatment has become a matter of urgency, such treatment must be commenced immediately even before the report contemplated in sub-regulation (1) has been submitted to a court of law.
- (3) Where a person has been referred by a court of law to a health establishment for observation, such person may, with the assistance of the South African Police Services, be taken to a health

establishment for any neuro-psychiatric or physical health investigation that cannot be done at the place where that person is being detained provided that, while the person is undergoing investigation at the health establishment, the South African Police Services shall remain responsible for the safe custody of that person.

- (4) When the person contemplated in sub-regulation (2) has undergone that investigation contemplated in subregulation (3), that person must be transferred with the assistance of the South African Police Services to the place where that person is being detained, or that alternative place, including a psychiatric hospital, that may have been arranged arising from the investigation, provided that the documentation relating to that investigation must be sent together with the person to the place where he or she is being transferred.

Chapter 9

Authorisation and licensing

42. Authorization and licensing of private hospital providing mental health services

- (1) An application for a licence to operate a hospital must be made in accordance with the applicable general health legislation.
- (2) A hospital, which wishes to admit assisted or involuntary mental health care users, such hospital must in addition to a licence contemplated in subregulation (1), apply in writing to the national department for a licence to admit such users.
- (3) A written application for a licence contemplated in sub-regulation (2) must indicate that—
 - (a) the mental health care practitioners who will examine assisted or involuntary mental health care users in terms of sections 27 and 33 of the Act, will not be employed as staff at that hospital and will have no material or financial interest in that hospital;
 - (b) the hospital has been inspected and audited by designated officials of the provincial department concerned and found to be suitable to accommodate assisted and/or involuntary mental healthcare users or assisted and voluntary mental health care users, as the case may be; and
- (4) “Suitable to accommodate” in subregulation 3(b) includes—
 - (a) a lockable ward in addition to an open ward;
 - (b) suitable mental health care practitioners, including at least one psychiatrist, as well as other trained staff deemed necessary to carry out all necessary duties;
 - (c) procedures for ensuring the safety of assisted and involuntary mental health care users and other health users in that hospital; and
 - (d) an approved activity or psychosocial rehabilitation ward programme,
- (5) The conditions of a licence contemplated in sub-regulation (2) must be clearly stipulated by the provincial department concerned, and must include—
 - (a) the number of people to be accommodated;
 - (b) whether such service is to be used for children, adults or geriatrics;
 - (c) service requirements;
 - (d) duration of the licence;
 - (d) that the licence is not transferable; and
 - (e) that the renewal of a licence must be done by the province, based on an inspection.

- (6) If a condition of a licence contemplated in sub-regulation (5) is not complied with, the national department concerned may withdraw that a licence.

43. Licensing of community facilities

- (1) Any service not directly run under the auspices of an organ of the State and which is not a designated hospital, but which provides residential or day-care facilities for 5 people or more with mental disorders must in terms of the Act—
 - (a) obtain a licence from the provincial department concerned to operate; and
 - (b) be subjected to at least an annual audit by designated officials of the provincial department concerned.
- (2) The conditions of a licence contemplated in sub-regulation (1) must be clearly stipulated by the national department concerned and must include—
 - (a) the physical address of the relevant service;
 - (b) the number of people to be accommodated;
 - (c) whether such service is to be used for children, adults or geriatrics;
 - (d) service requirements;
 - (e) the duration of the licence; and
 - (f) that the licence is not transferable.
- (3) If a condition of a licence as contemplated in sub-regulation (1) or (2) is not complied with, the provincial department concerned may withdraw that licence.

Chapter 10 Educational programmes

44. Establishment and implementation of educational programmes for mental health care users admitted at health establishments

- (1) The National Department of Education must, after consultation with the national department and the National Department of Social Development, establish educational programmes for users in the compulsory age groups or those entitled to basic adult education programmes.
- (2) Any decision about where a user contemplated in sub-regulation (1) must receive educational support should be based on assessing and determining the intensity of support needed and where such support can be reasonably provided.
- (3) The assessment contemplated in sub-regulation (2) must be conducted by a committee consisting of a representative of the Provincial Department of Education, the National Department and the National Department of Social Development in accordance with the career and in consultation with the person concerned.
- (4) Any final decision about the placement of a user must be approved by the head of the provincial Department of Education concerned.
- (5) Exemptions from compulsory education resulting from a person being mentally ill or intellectually disabled must be made by a committee contemplated in subregulation (3) and based on the functional level of the mental health care user concerned.

Chapter 11

Care and administration of property of mentally ill person or person with severe or profound intellectual disability

45. Application to Master of High Court for appointment of an administrator

The Master of a High Court must make a decision contemplated in section 60 (8) of the Act in terms of form MHCA 40.

Chapter 12

General provisions

46. Payment of maintenance costs and expenses in facilities run under auspices of the State

- (1) Voluntary or assisted mental health care users must be assessed and charged according to a patient fee structure.
- (2) Appeals against a fee contemplated in sub-regulation (1) must be directed for consideration to the head of the health establishment concerned.
- (3) An involuntary mental health care user is exempted from payment of a fee contemplated in sub-regulation (1).
- (4) An awaiting trial prisoner who is admitted for observation in terms of the Criminal Procedure Act, must be charged in accordance with the tariff agreed to between the Department of Health and the Department of Justice and Constitutional Development and must be paid by the latter Department.
- (5) A mentally ill prisoner who is admitted for treatment must be charged in accordance with the tariff agreed to between the Department of Health and the Department of Correctional Services and must be paid by the latter Department.

47. Estimated property value and annual income

- (1) The estimated property value for the purposes of sections 60(4)(b), 60(5)(c) and 61(4)(b) of the Act is R200 000.
- (2) The annual income for the purposes of sections 60(4)(b), 60(5)(c) and 61(4)(b) of the Act is R24 000.

48. Repeal

- (1) Government Notice No. R. 565 of 27 March 1975 as amended by Government Notices Nos. R. 1000 of 11 June 1976, R. 599 of 15 April 1977, R. 2315 of 24 November 1978, R. 2295 of 19 October 1979, R. 2629 of 10 December 1982, R.943 of 6 May 1983 and R.858 of 19 April 1985 is hereby repealed.
- (2) Government Notice No. R. 1061 of 4 June 1982 is hereby repealed.

Annexures

Forms

[Editorial note: The forms have not been reproduced.]