

**GUIDELINES FOR MEMBERS OF
THE EXECUTIVE COUNCIL,
DIRECTOR-GENERAL, HEADS OF
HEALTH AND HEADS OF HEALTH
ESTABLISHMENTS IN TERMS OF
THE MENTAL HEALTH CARE ACT,
NO 17 OF 2002**



health

Department:
Health
REPUBLIC OF SOUTH AFRICA

GUIDELINES FOR MEMBERS OF THE EXECUTIVE COUNCIL IN TERMS OF THE MENTAL HEALTH CARE ACT NO. 17 OF 2002

Chapter 4: Mental Health Review Boards

- Section 18 (1) The MEC in consultation with the HOD must establish MHRB's in respect of every health establishment providing care, treatment and rehabilitation in the Province.
- 20 (1) Appoint 5 members of the MHRB
(3) advertise by notice in the Provincial Gazette – calling for nominees
(4) Determine the term of office of the members of the MHRB.
- 21 (1) Deal with removal of members.
- 22 (2) Filling of vacancies – repeat procedure as per Section 20 (3)
- 23 Determine remuneration paid to members of MHRBs with concurrence of MEC: Finance.
- 24 (2) Determine chairpersons of the MHRBs.

Chapter 9: Regulations

- Section 66 (1) The Minister may after consultation with the relevant members of the Executive Council make regulations.

Chapter 10: General Regulations

- Section 72 (1) Delegation and assignment of powers and agreements
(b) MEC may delegate
(3) Delegation may be withdrawn
(6) Provincial Department may enter into agreements with NGO's

GUIDELINES FOR THE DIRECTOR – GENERAL IN TERMS OF THE MENTAL HEALTH CARE ACT NO.17 OF 2002

Chapter 2

Section 5: Designations of Health Establishments

- (1) The DG with concurrence of the HOD must within 120 days of the commencement of this Act, designate health establishments or part of a health establishment which must serve as :
 - (a) psychiatric hospitals; or
 - (b) care and rehabilitation centres.
- (2) - may revoke or vary designation

Section 6: Provision of Mental Health Care, Treatment and Rehabilitation

- (3) - determine the nature of the care, treatment and rehabilitation in respect of the health establishments designated in (1) (a) & (b)

Chapter 3

Section 13: Disclosure of Information

- (2) – may disclose information if failure to do so would seriously prejudice the health of the MHCU or the health of other people.

Chapter 6

Section 41: State Patients

- Designation of facilities to admit State patients

Section 42: Admission of State Patients

- (2) – Receive copy of order
- (3) – Determine health establishment

Section 43: Transfer of State Patients

- (1) – May transfer a State patient
- (5) – Receive copy of MHRB report
- (6) – Determine which health establishment

Section 45: Leave of Absence

- (2) (a) – Receive copy of LOA

Section 46: Periodic Review

- (3) (a) - Receive copy of review
- (4) (b) – Make written recommendations

Chapter 10

Section 49: Mentally Ill Prisoners

Designation of facilities for mentally ill prisoners

Section 53: Transfer

- (1) (b) –Receive a copy of request
- (2) – Determine which health establishment

Section 54: Transfers between Health Establishments

- (1) – May transfer Mentally ill prisoners.
- (2) – Receive copy of transfer documents from MHRB
- (3) – Determine which health establishment

Section 55: Periodic Review

- (4) (a) – Receive copy of periodic review

Section 56: Recovery of Mentally Ill Prisoner

- (a) - receive copy of discharge

GUIDELINES FOR THE HEAD OF PROVINCIAL DEPARTMENT IN TERMS OF THE MENTAL HEALTH CARE ACT NO.17 OF 2002.

Chapter 2

Section 5: Designation of Health Establishments

- (1) Within 120 days submit a proposal to the head of the national department to designate health facilities

Section 28: Initial Review of Assisted MHCUs

- (3) (b) – Receive copy from MHRB

Section 30: Periodical Review

- (4) (c) - Receive copy of MHRB's recommendations

Section 35: Appeal Against the Decision

- (2) (d) –Receive copy of MHRB's decision

Section 39: Transfer of Involuntary MHCUs to Max Security

- (2) MHRB sends copy of order

Section 41: Designation of Facilities to Admit State Patients

Section 60: Care and Administration of Property, etc.

- (12) (c) - Receive written notice of recommendations of the Master of the High Court

Section 64: Termination of Administrator

- (7) (c) Receive notification of termination

GUIDELINES FOR HEADS OF HEALTH ESTABLISHMENTS IN TERMS OF THE MENTAL HEALTH CARE ACT NO.17 OF 2002

Quick Crib Sheet

Mental Health Care Act, 2002		Mental Health Care Act, 1973	
	Section		Section
Voluntary MHCUs	25	Voluntary MHCUs	3
Assisted MHCUs	26	Assisted MHCUs	4
Involuntary MHCUs	32	Involuntary MHCUs	9
Observation Cases	Regulation 46 Criminal Procedure Act, 1977 (Section 77 to 79)		
State Patients	41	State Patients	28
Mentally Ill Prisoners	53	Mentally Ill Prisoners	32

GUIDELINES FOR HEADS OF HEALTH ESTABLISHMENTS IN TERMS OF THE MENTAL HEALTH CARE ACT, 2002 (ACT OF 2002)

Section			Regulation/Form
Chapter 2	Designation of hospitals	Copy licence/authorization available	REGULATION 2
4	Coordinate and implement policies and measures.	<ul style="list-style-type: none"> • Provision of care, treatment and rehabilitation • Promoting provision of community care • Promoting rights and interest of users • Promoting and improving Mental Health status of the population 	REGULATION 2
6	Provision of Mental Health care, treatment and rehabilitation at Health Establishments	<ul style="list-style-type: none"> • Provide appropriate level of care, treatment and rehabilitation within scope of professional practice • Psychiatric medication may not be issued for more than 6 months unless authorized by Medical Health Care Practitioner so designated. • Levels of care provided must be so designated • Inpatient secondary care not more than 2 months unless authorized • Inpatient tertiary care only tertiary HEs or psychiatric hospitals. 	REGULATION 3
		<ul style="list-style-type: none"> • Psychiatric hospital may admit: <ul style="list-style-type: none"> - Voluntary Mental Health Care users in special programmes - Involuntary MHCUs - State Patients - Mentally ill prisoners - Persons referred by court for observation - Persons admitted for a long period as part of care • Care and rehabilitation centres may: <ul style="list-style-type: none"> - Conduct assessments of intellectual disabilities - Provide care, treatment and rehabilitation services to persons with severe or profound Intellectual Disability including assisted and involuntary MHCUs • Persons providing care, treatment and rehabilitation must provide such services in a manner that facilitates community care of MHCUs. 	
Chapter 3, 7	Rights and duties of users		Due regard for what is in the best interest of MHCUs

8	Respect, human dignity and privacy	<ul style="list-style-type: none"> Persons, human dignity and privacy of every MHCU must be respected Care treatment and rehabilitation services provided must improve mental capacity to develop to full potential and facilitate integration into community life Care, treatment and rehabilitation services must be proportionate to Mental Health status and intrude only as little as possible to give effect to appropriate care, treatment and rehabilitation 	
9	Consent to care, treatment and rehabilitation and admission	<ul style="list-style-type: none"> Health care providers or HEs may provide care, treatment and rehabilitation services to or admit MHCUs only if: <ul style="list-style-type: none"> MHCU has consented to care, treatment and rehabilitation or admission Authorized by a court or MHRB Due to mental illness delay may result in: <ul style="list-style-type: none"> death or irreversible harm user inflicting serious harm to self/others user causing serious damage to/loss of property to self or others Such urgency must be reported To the MHRB and may not continue for longer than 24 hours, unless Application is made in terms of Chapter 5 	FORM MHCA 01
10	Unfair discrimination	<ul style="list-style-type: none"> No MHCU may be subjected to unfair discrimination on the grounds of his/her mental health status Every MHCU must receive care, treatment and rehabilitation according to standards applicable to any other health care user Policies and programmes aimed at promoting mental health status must be implemented with regards to the mental capacity of the MHCU 	
11	Exploitation and abuse	<ul style="list-style-type: none"> Steps to be taken to ensure that: MHCUs are protected from exploitation, abuse and degrading treatment MHCUs are not subjected to forced labour Care, treatment and rehabilitation service are not used as punishment/convenience or others Any person witnessing any form of abuse must report it 	FORM MHCA 02

12	Determinations concerning Mental Health Status	<ul style="list-style-type: none"> Based on factors relevant only MH status or For purposes giving effect to the Criminal Procedure Act And not on Socio-political or economic status, cultural or religious background or affinity and May only be made or referred to for purposes directly relevant to the MH status of the user 	
13	Disclosure of information	<ul style="list-style-type: none"> A person or HE may not disclose any information which a MHCU is entitled to keep confidential in terms of any other law Despite this <ul style="list-style-type: none"> the DG of Health the HOD provincial the HHE may Disclose if failure to do so would seriously prejudice the health of the MHCU or other people MH care providers may temporarily deny MHCUs access to information contained in their health records if disclosure is likely to: <ul style="list-style-type: none"> seriously prejudice the user or cause user to conduct him/herself in a manner that can seriously prejudice his/her health or other people 	
14	Limitation of intimate adult relationships	<ul style="list-style-type: none"> Subject to conditions applicable to the provision of care, treatment and rehabilitation, the HHE may limit relationships of adult MHCUs only if due to mental illness, the ability of user to consent is diminished 	
15	Right to representation	<ul style="list-style-type: none"> MHCUs are entitled to a representative including a legal representative when: <ul style="list-style-type: none"> Submitting an application Lodging an appeal or Appearing before a magistrate or MHRB subject to the laws concerning appearance at a court of law Indigent MHCUs are entitled to legal aid provided by the state in respect of any condition fixed in terms of the legal aid 	

17	Knowledge of rights	<ul style="list-style-type: none"> Every health care provider must before administering any care, treatment and rehabilitation services inform a MHCU in an appropriate manner of his/her rights unless the circumstances referred to in Section 9(1)(c) i.e. due to mental illness (24 hour admission) 	FORM MHCA 17, 18, 19 AND 20
Chapter 4 18	Mental Health Review Boards	See Act - Sections 18 to 24	FORM MHCA 17, 18, 19 AND 20
Chapter 5 25	Voluntary care, treatment and rehabilitation	<ul style="list-style-type: none"> Admit voluntary MHCUs 	FORM - as per any provincial health establishment
26	Assisted MHCUs	(4)(a) Approve application for assisted care, treatment and rehabilitation	REGULATION 9 FORM MHCA 04
27		(4)(a) Cause the MHCU to be examined by x2 MHCPS (5)(Reports)(4)(a) to HHE (5)(b) Whether the user should receive in or outpatient care (6) IN case of existence of differences in reports from MHCPS - No 3 (8) HHE approval of inpatient assisted care, treatment and rehabilitation on conditions (9) HHE to give written notice of decision to applicant (10) HHE to admit applicant within 5 days or refer to another health establishment to give in or outpatient care	FORM MHCA 05 FORM MHCA 06 FORM MHCA 07
28	Initial review	(1) Within 7 days HHE to send copy of application to MHRB (2) Within 30 days MHRB to investigate and decide on further treatment or not (4) Appeals may stop this process	FORM MHCA 04
29	Appeals against the decision	<ul style="list-style-type: none"> (2)(c) MHR approves appropriate care, treatment and rehabilitation 	REGULATION 13
30	Periodic review	(1) HHE 1st periodical after 6 months and thereafter 12 months (3) Copy to MHRB (4) And within 30 days of receipt MHRB must give written notice to HHE of decision (5)(b) HHE must comply with decision of the MHRB	FORM MHCA 13

31	Recovery of capacity	<ul style="list-style-type: none"> • (i) HHE - In the event of recovery of capacity of MHCU - a decision on voluntary care must be made • In the case of voluntary care • (3)(a) HHE may discharge • (4) HHE may advise involuntary care 	REGULATION 17 FORM 03
32	Care, treatment and rehabilitation without consent	<ul style="list-style-type: none"> • (a) HHE application for involuntary care conditions 	FORM MHCA 04
33	Involuntary admission	<ul style="list-style-type: none"> • (1) Application for involuntary care conditions • (4) To HHE and MHCBCPs x2 to examine person • (5) Reports to HHE • (6) If discrepancies MHCP No 3 • (7) HHE approval • (8)(a) HHE to inform applicant • (9)(a) admit within 48 hours • (a) Refer if care, treatment and rehabilitation required not appropriate 	FORM MHCA 04
34	72 hour assessment	<ul style="list-style-type: none"> • (1) HHE approves application for involuntary care • (1)(b) Admit MHCU and request assessment x2 - (Doctor+Mental Health Care Practitioner) • (2) HHE within 24 hours following 72 hour assessment must make available assessment to applicant • (3) HHE (a) does not warrant - discharge or voluntary care • (b)(i) As outpatient discharge as inpatient and set conditions from patient care • (ii) Inform MHRB • (c) If further care as inpatient HHE must • (c) Within 7 days report to the MHRB • (aa) Copies - application (Section 33) • (bb) - Notice (Section 33(8)) • (cc) - Assessment findings • (dd) - Basis of request • (ii) Give notice to applicant and notice to MHRB • (4)(a) If psycho hospital - keep until MHRB decides <ul style="list-style-type: none"> - (b) If psycho hospital - T/F not - (5) If fit - case must be outpatient • (6) HHE may cancel discharge • (7)(a) MHRB may give HHE opportunity to make oral or written representations • (b) MHRB decision to HHE • (8) If appeal against HHE decision MHRB must stop review process 	REGULATION 11 FORM MHCA 06 REGULATION 18 FORM MHCA 08 FORM MHCA 09 REGULATION 19 FORM MHCA

35	Appeal against HHE decision	<ul style="list-style-type: none"> • Appeal procedure against HHE • Documents from HHE • Opportunity for HHE to make written/oral representations • Written decision from MHRB to HHE • If appeal upheld: <ul style="list-style-type: none"> - All treatment stopped and MHCU must be discharged • If MHRB does not uphold the appeal documents sent to Registrar of High Court for review 	FORM MHCA 15
36	Judicial review	High Court must within 30 days of receipt of documents consider the matter and make order accordingly	REGULATION 16 FORM 16
37	Periodic review	<ul style="list-style-type: none"> • 6 months after admission and every 12 months hereafter HHE must cause reports to be written • Details and reviews to be written • HHE must submit a review to MHRB\ <ul style="list-style-type: none"> - If MHRB says discharge <ul style="list-style-type: none"> - Stop all care, treatment and rehabilitation - If MHCU admitted - discharge unless he/she consents - HHE must comply with MHRB decision • If discharge certify requests of High Court 	REGULATION 21 FORM MHCA 13 FORM MHCA 14 FORM MHCA 17
38	Recovery of capacity	<ul style="list-style-type: none"> • In the case of a MHCU who is unable to make informed decision - reclassify • Section 25 applies • If unwilling and no longer mentally ill - discharge 	
38	Transfer to max sec facility	<ul style="list-style-type: none"> • Assisted/involuntary MHCUs - request to MHRB if <ul style="list-style-type: none"> - Previously absconded - Inflicted or likely to inflict harm on others • HHE submits copy of reports to <ul style="list-style-type: none"> - Applicant - to enable them to make Representations to MHRB • MHRB must approve request • If yes - copy to HHE • Provincial department must make the arrangements within 14 days • HHE in emergency effects the transfer if necessary immediately whilst waiting for MHRB decision 	REGULATION 22 & 23 FORM MHCA 20

40	Intervention by SAPS	<ul style="list-style-type: none"> - Person taken for assessment - Handed over in custody of HHE - Absconded MHCUs HHE may request SAPS assistance 	REGULATION 27, 28, 29
Chapter 6 41	Application for discharge	<ul style="list-style-type: none"> • Designation of facilities • Patients transferred within 14 days from detention center to health establishment for treatment 	FORM MHCA 21
43	Transfer of State Patients	<ul style="list-style-type: none"> • State Patients may be transferred from one institution to another <ul style="list-style-type: none"> - within a province - to another province - by a MHRB - max sec 	REGULATION 24 & 25 FORM MHCA 21 FORM MHCA 24
44	State Patients who abscond	<ul style="list-style-type: none"> • HHE must notify SAPS • Registrar of Court and Curator • Must state dangerousness of patient 	FORM MHCA 25 FORM MHCA 26
45	Leave of absence	<ul style="list-style-type: none"> • HHE may grant leave of absence • a&b conditions of leave of absence • HHE may cancel leave of absence • If does not return - absconded 	REGULATION 26 FORM MHCA 27 FORM MHCA 28
46	Periodic reviews discharge	<ul style="list-style-type: none"> • HHE must cause mental status of state patient to be reviewed <ul style="list-style-type: none"> - After 6 months - Every 12 months and thereafter • Copies of review/report to <ul style="list-style-type: none"> - National Department of Health - Curator - Administrator (if appointed) • Review written report from National Department of Health within 30 days 	FORM 13B
47	Application for discharge	<ul style="list-style-type: none"> • (d) HHE may apply for State Patient discharge to the judge in chambers • (c) 1 Report and mental health status from the HHE 	REGULATION 30 FORM MHCA 29 FORM MHCA 30 FORM MHCA 31
48	Conditional discharge	<ul style="list-style-type: none"> • HHE must cause mental status to be monitored • Receive written reports 6 months • On completion of conditional discharge HHE must discharge unconditionally 	FORM MHCA 32 FORM MHCA 33

Chapter 7 53	Mentally ill prisoner	<ul style="list-style-type: none"> Inform the State Patients, the Registrar of the High Court and the official curator ad litteram If not satisfied what conditions have been complied with HHE may apply to amend conditions or revoke discharge HHE must within 14 days of receipt of notice cause the MI prisoners to be transferred and admitted <ul style="list-style-type: none"> HHE is then deemed in his law file Be responsible for safe custody 	FORM MHCA 24 FORM MHCA 25
55	Periodic reviews	<ul style="list-style-type: none"> HHE every 6 months to submit Submit copies to MHRB, Magistrate, Administrator and Head of the Prison Receive copy of MHRB recommendation 	REGULATION 31 & 32 FORM MHCA 36 & 37
56	Recovery of MI prisoner	<ul style="list-style-type: none"> If HHE believes MI prisoner has recovered <ul style="list-style-type: none"> Compile a discharge report Inform head of prison Inform Magistrate 	FORM MHCA 21
57	MI prisoner who abscond	<ul style="list-style-type: none"> HHE must notify SAPS Magistrate If dangerous HHE must inform SAPS 	FORM MHCA 25
58	Expiry of term of imprisonment	<ul style="list-style-type: none"> At least 90 days before date of expiry term per Chapter 5 <ul style="list-style-type: none"> e. assisted or involuntary care required At least 30 days before date of expiry of term of imprisonment HHE may apply to Magistrate for continued detention pending finalisation if subsection (2) 	REGULATION 33 FORM MHCA 38

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