

Constitution of the Republic of South Africa No 108 of 1996; National Health Act No. 61 of 2003; Children's Act No 38 of 2005, Medicine and related Substances Amendment Act No. 72 of 2008; Promotion of Access to Information Act No 2 of 2000; Road Accident Fund Amendment Act, No. 43 of 2002; Compensation for Occupational Injuries and Diseases Act No 130 of 1993 as amended; Consumer Protection Act No. 68 of 2008; Prevention and Treatment of Substance Abuse Act, No. 70 of 2008; Traditional Health Practitioners Act No 22 of 2007; Choice of Termination of Pregnancy Amendment Act No. 1 of 2008; Sterilisation Amendment Act No 3 of 2005; Domestic Violence Act No 116 of 1998; Criminal Procedures Act No 51 of 1977 as amended.

MENTAL HEALTH CARE ACT (Act No 17 of 2002) + Regulations

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- Reception, detention, treatment of persons who are mentally ill
- Care, treatment and rehabilitation of persons mentally ill;
- To set out different procedures to be followed in the admission of such persons;
- To establish Review Boards;

Recognising that:

1. PHYSICAL, MENTAL AND SOCIAL WELL-BEING
2. Mental health services should be provided as part of PRIMARY, SECONDARY AND TERTIARY health services
3. Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996), prohibits against UNFAIR DISCRIMINATION of people with mental or other disabilities
4. The PERSON AND PROPERTY of a person with mental disorders or mental disabilities, may at times require PROTECTION and that members of the public and their properties may, similarly require protection from people with mental disorders or mental disabilities
5. There is A NEED TO PROMOTE the provision of mental health care services in a manner which promotes the maximum mental well-being of users of mental health care services and communities in which they reside

CHAPTER		Section
I	Definitions	1- 2
II	Fundamental Provisions	3-6
III	Rights / Duties	7-17
IV	Review Boards	18-24
V	Voluntary – Assisted –Involuntary	25-40
VI	State patients	41-48
VII	Mentally Ill Prisoners	49-58
VIII	Care / Administration Property MI Person ID Person	59-65
IX	Regulations	66-69
X	General Provisions	70-75

Regulations

12 Chapters / 48 Regulations / Annexure 1-48

DEFINITIONS

"head of a health establishment" (HHE)

"**mental health care user**" (MHCU)= A Person receiving C, T&R or using a health service; Person concerned below age 18 years; Incapable of taking decisions; State patient; Mentally ill prisoner

And in certain circumstances may include: Prospective user, Person's next of kin, An administrator....

"mental health care PROVIDER" = Person providing mental health care services:

MENTAL HEALTH CARE PRACTITIONER (MHCP) =

Psychiatrist or registered medical practitioner or

Nurse, Occupational therapist, Psychologist, Social worker -

"who has been trained to provide prescribed mental health C,T&R services"

Health Establishment (HE) =

means institutions, facilities, buildings or places where persons receive care, treatment, rehabilitative assistance, diagnostic or therapeutic interventions or other health services and includes facilities such as community health and rehabilitation centres, clinics, hospitals and psychiatric hospitals

Psychiatric Hospital =

means a health establishment that provides care, treatment and rehabilitation services for users with mental illness

Rehabilitation =

means a process that facilitates an individual attaining an optimal level of independent functioning - Care and Rehabilitation Centres

"mental health status" (MHS)

means the level of mental well-being of the individual as affected by physical, social and psychological factors and which may result in a psychiatric diagnosis

"mental illness" (MI)

means a positive diagnosis of a mental health related illness in terms of accepted diagnostic criteria made by a mental health care practitioner authorised to make such diagnosis

"severe or profound intellectual disability"

means a range of intellectual functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self care and requiring constant aid and supervision, to severely restricted sensory and motor functioning and requiring nursing care

Chapter II Fundamental Provisions

Best interest of MHCUs within the limits of the available resources
PRIMARY, SECONDARY and TERTIARY levels / Promote COMMUNITY-BASED CARE,
Designated HEs which serve as psychiatric hospitals / care and rehabilitation centres
CTR APPROPRIATE LEVEL / within professional scope of practice / Refer according to ESTABLISHED REFERRAL / ADMISSION ROUTES (Regulation 2)

RIGHTS AND DUTIES RELATING TO MHCU (Chapter III. 7-17)

- * The rights and duties are IN ADDITION to any other law.
- * Regard must be had for WHAT IS IN THE BEST INTERESTS

S.8. Respect: PERSON HUMAN DIGNITY PRIVACY

Improve mental capacity: To develop to FULL POTENTIAL Facilitate INTEGRATION INTO COMMUNITY LIFE
Must be PROPORTIONATE to mental health status
may INTRUDE ONLY AS LITTLE AS POSSIBLE to give effect to appropriate C,T&R

S.9 CONSENT TO C,T&R AND ADMISSION

MHCP or a HE may provide C,T&R-services to or admit ONLY IF:

- CONSENTED TO
 - AUTHORISED Court order or RB
 - DUE TO MENTAL ILLNESS, ANY DELAY MAY RESULT IN:
 - Death or irreversible harm to health of user
 - User inflicting serious harm to self or others
 - Causing serious damage to / loss of property to him/her or others
- Report in writing to RB (FORM 01) - C,T&R ONLY 24H unless application in terms Chap. V

S.10 UNFAIR DISCRIMINATION

No unfair discrimination on the grounds of MHS

S.11 EXPLOITATION AND ABUSE

Take steps to ensure Users protected from EXPLOITATION, ABUSE, DEGRADING TREATMENT / WITNESS MUST REPORT - FORM 02

S12 DETERMINATIONS CONCERNING MHS

Must be based on factors exclusively relevant to that person's MHS or for the purposes of giving effect to the CTR not on socio-political -, economic status, cultural -, religious background, affinity

S13 DISCLOSURE OF INFORMATION

Not disclose which a MHCU is entitled to keep confidential in terms of any other law

S14 LIMITATION ON INTIMATE ADULT RELATIONSHIPS

S15 RIGHT TO REPRESENTATION

S16 Discharge 'REPORT'

Must issue a discharge REPORT (???) to the MHCU FORM 03

S17 KNOWLEDGE OF RIGHTS

CHAPTER IV MENTAL HEALTH REVIEW BOARD

MENTAL HEALTH CARE PRACTITIONER + MAGISTRATE / ATTORNEY /
ADVOCATE + MEMBER THE COMMUNITY CONCERNED

No fewer than 3 no more than 5

Every health establishment - Single / Cluster

- Consider appeals against decisions of the head of a health establishment.
- Make decisions with regard to assisted or involuntary C, T & R-services
- Consider reviews and make decisions on assisted or involuntary MHCU
- Consider 72-hours assessment made by the head of the health establishment and make decisions to provide further involuntary C, T & R
- Consider applications for transfer of MHCU to maximum security facilities
- Consider periodic reports on MHS of mentally ill prisoners

CHAPTER V

VOLUNTARY S.25

ASSISTED S.26-31

INVOLUNTARY S.32-37

Submits **VOLUNTARILY** – entitled to appropriate CT&R or refer to appropriate Health Establishment.

▼
 INCAPABLE OF MAKING INFORMED DECISIONS

APPLICATION in PRESCRIBED MANNER = MHCA04

MAY ONLY BE MADE BY: the spouse, next of kin, partner, below the age of 18 years (parent or guardian)

Unwilling, incapable, not available = Health Care PROVIDER

HEAD HEALTH ESTABLISHMENT On receipt of the application:

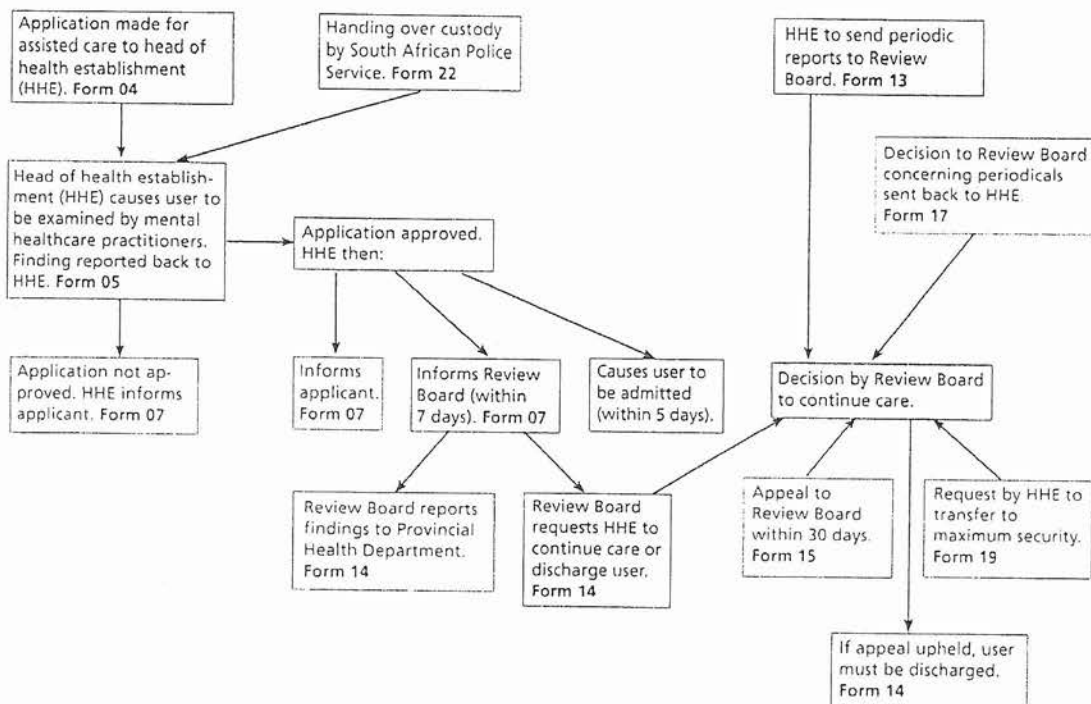
- must cause MHCU to be examined by two MHCP
- MHCP must not be the persons making the application and at least ONE of them must be qualified to conduct physical examinations.

MHCP must submit their written findings (MHCA 05)

- circumstances are applicable (S.26(b); and
- should receive **ASSISTED** CT&R as an outpatient or inpatient.

If the findings of the two MHCP differ: the HEAD-HE must cause MHCU examined by another MHCP, writing submit a report,

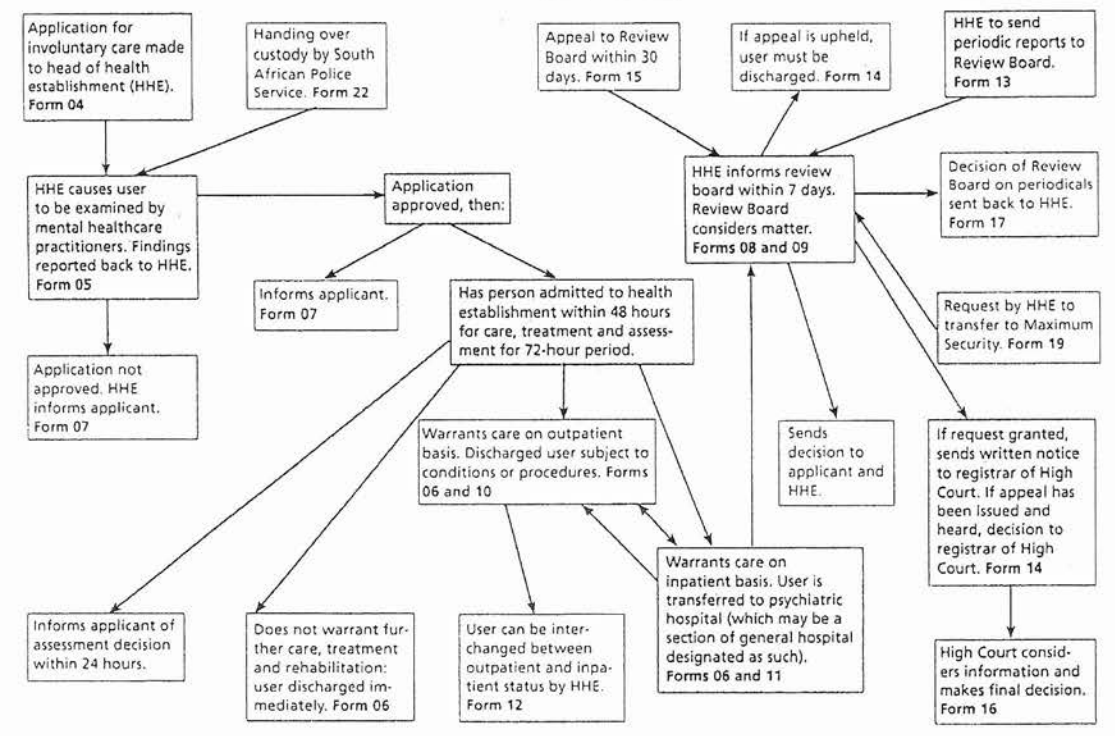
May only approve if findings of two MHCP concur, satisfied that the restrictions and intrusions on the rights to movement, privacy and dignity are proportionate CTR required – NOTICE MHCA 07



- reasonable belief suffering of mental illness of such a nature that-
 - likely to inflict serious harm to him-/herself or others; or
 - CT&R-services is necessary protection financial interests or reputation;
- at the time of the application is incapable of making an informed decision on the need to receive CT&R-services required;
- is unwilling to receive CT&R-services required.

Same as S. 27 "Assisted" but:

The HHE may only approve the application, if the findings of two MHCP concur **THAT CONDITIONS FOR INVOLUNTARY CTR EXIST**:
 WITHIN 48 HOURS ADMIT to DESIGNATED HE 72-HOUR ASSESSMENT
MEDICAL PRACTITIONER AND ANOTHER MHCP, IF AVAILABLE, TO ASSESS THE PHYSICAL AND MHS - MHCA 06



Outcome:

- DISCHARGE Does not warrant; discharge immediately unless user consents
- OUTPATIENT warrants further involuntary CTR_ on outpatient basis - discharge subject to prescribed conditions or procedures (MHCA 10)
- CONTINUE warrants further involuntary CTR inpatient basis admitted to a psychiatric hospital

APPEAL AGAINST DECISION OF HHE

MHCU / spouse / next of kin / partner / associate / parent / guardian
(MHCA 15)

PERIODIC REVIEW AND ANNUAL REPORTS

Six months after the commencement of C,T&R and every 12 months thereafter
(MHCA 13)

S. 40

INTERVENTION MEMBERS SOUTH AFRICAN POLICE SERVICE

If SAPS has reason to believe: from personal observation, from information obtained from MHCP
Due to MI or M/Disability is likely to inflict serious harm to him/herself or others

MUST APPREHEND

Hand over in custody of HHE or designated person – MHCA 22

Due to the nature of mental illness MHCU may at times display aggressive behaviour to themselves or to others and property. This may warrant emergency intervention in the form of **RESTRAINT OR SECLUSION**. Seclusion and restraint, mechanical or otherwise, are emergency interventions that involve the curtailment of freedom of the MHCU. Should only be used in extreme circumstances and as a last resort. Physical restraint should be limited to brief periods during which medication to control the behaviour is administered and while awaiting the medication to take effect. Always exclude serious treatable medical conditions as the underlying cause.

SECLUSION

means the isolation of a user in a space where his or her freedom of movement is constricted and restricted.

PHYSICAL MEANS OF RESTRAINT or mechanical restraint

means the use of any instrument or appliance whereby the movements of the body or any of the limbs of a user are restrained or impeded. It means temporary physically restraining the movements of the body by one or more persons in order to prevent the person so restrained from harming self, others or destroying property.

Guiding principles, indications, contraindications and special considerations and the procedure see Policy guidelines on seclusion and restraint of MHCUs

Director General: Health