

THE MENTAL HEALTH CARE (AMENDMENT) BILL
(No. 1 of 2019)

Explanatory Memorandum

The object of this Bill is to amend the Mental Health Care Act to enhance the legal framework for the proper functioning of mental health care, and to provide for related matters.

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Minister of Health and Quality of Life

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ARRANGEMENT OF CLAUSES

Clause

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A BILL

To amend the Mental Health Care Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Mental Health Care (Amendment) Act 2019.

2. Interpretation

In this Act –

“principal Act” means the Mental Health Care Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) in the definition of “Commission”, by deleting the words “a Mental Health Commission” and replacing them by the words “the Mental Health Commission”;

(b) by deleting the definition of “medical officer” and replacing it by the following definition –

“medical officer” means a general practitioner, with not less than 3 years post-qualification experience, who has worked for at least 6 months in general medicine and at least 6 months in general surgery and who performs his duties under the general supervision of a psychiatrist;

(c) by inserting, in the appropriate alphabetical order, the following new definitions –

“general practitioner” has the same meaning as in the Medical Council Act;

“stabilised security patient” means a security patient who has not had florid symptoms for a period of not less than 6 months and who does not represent any danger to himself or others;

4. Section 4 of principal Act repealed and replaced

Section 4 of the principal Act is repealed and replaced by the following section –

4. Functions of Board

(1) The Board shall –

- (a) promote standards of good practice and efficacy of mental health care;
- (b) protect patients' rights and promote the physical and mental health of patients;
- (c) promote measures for appropriate care of mental health patients;
- (d) make recommendations to the Ministry regarding –
 - (i) guidelines for the planning and management of mental health care;
 - (ii) measures for the sound financial management of mental health care;
 - (iii) measures on continuing professional development and training of medical, nursing and paramedical staff; and
- (e) inspect every centre at an interval of not less than 6 months and may interview any person in the centre in the course of such inspection.

(2) The Board shall furnish a yearly report of its activities to the Ministry and such other information, in respect of its activities, as the Ministry may require.

5. Section 5 of principal Act repealed and replaced

Section 5 of the principal Act is repealed and replaced by the following section –

5. Mental Health Commission

(1) There shall be for the purposes of this Act a Mental Health Commission.

(2) The Commission shall consist of –

- (a) a Chairperson, to be appointed by the Prime Minister, who shall be a Magistrate or a law officer, of not less than 10 years' standing;
- (b) 2 specialists with more than 10 years experience in the field of psychiatry;
- (c) a public officer in the grade of Regional Health Director;
- (d) a senior medical social worker;
- (e) a person, not being a medical practitioner.

(3) The members of the Commission –

- (a) other than the Chairperson, shall be appointed by the Minister; and
- (b) shall hold office for a period of 2 years and be eligible for reappointment.

(4) The Commission shall meet once monthly and as and when required.

(5) (a) Subject to paragraphs (b) and (c), the decision of the Commission shall be taken by a majority of the votes of all the members present.

(b) At any meeting of the Commission, 4 members, one of whom shall be a medical practitioner, shall constitute a quorum.

(c) Each member shall have one vote and, in the event of equality of votes, the Chairperson shall have a casting vote.

(d) No member shall have the right to vote on any matter in relation to which he has been involved as a treating doctor.

(e) Every member shall be paid such fees as the Minister may determine.

(6) No member shall be deemed to hold a public office by reason only of his appointment.

(7) In this section –

“member” includes the Chairperson of the Commission.

6. Section 6 of principal Act repealed and replaced

Section 6 of the principal Act is repealed and replaced by the following section –

6. Functions of Commission

(1) The Commission shall be responsible for matters specified in sections 15, 17, 18, 21 and 22 and shall, in addition –

- (a) deal with complaints received from patients, their relatives and members of the public;
- (b) investigate any breach or suspected breach of discipline, professional misconduct and violation of human rights or patients’ rights;
- (c) determine, on the basis of evidence, whether the complaints and charges against a medical officer or pshychaitrist, any other officer, or any other person, have been proved;
- (d) refer to the police any suspected criminal offence under this Act;
- (e) refer any matter under paragraphs (a) to (d) and (g) to the Ministry;
- (f) notify the Board, after an enquiry, of any breach or violation of human rights;
- (g) review matters relating to admission, treatment, leave, discharge and continued treatment of security patients

who are unfit to stand trial by reason of mental disorder or who have been found not to be guilty by reason of mental disorder; and

- (h) oversee the proper functioning of the Accounts Committee.

(2) Where the Commission receives a complaint that a patient is being admitted or kept at a centre against his will, the Commission shall inquire into it immediately.

(3) The law of evidence shall apply to the proceedings before the Commission.

(4) The Commission may –

- (a) require, in writing, any person to appear before it to give evidence or produce such document or article as it may require;
- (b) take evidence on oath and, for that purpose, administer an oath.

(5) The Commission shall, after conducting an enquiry, forward to the Board, not later than 14 days after completion of the proceedings, its report and a copy of the proceedings, including any document or exhibit produced.

(6) The Commission shall –

- (a) keep a record of all its proceedings and decisions;
- (b) every 6 months, furnish to the Board a report of all its decisions and such other information as the Board may require.

7. New sections 6A and 6B inserted in principal Act

The principal Act is amended by inserting, after section 6, the following new sections –

6A. Managerial Committee

(1) There shall be for the purposes of this Act a Managerial Committee.

(2) The Managerial Committee shall consist of –

(a) a Chairperson who shall be a public officer holding the office of medical superintendent;

(b) 2 specialists in the field of psychiatry of at least 5 years' service in the grade of specialist or senior specialist; and

(c) a nursing administrator.

(3) Every member shall –

(a) be appointed by the Minister; and

(b) hold office for a period of 2 years and be eligible for reappointment.

(4) The Managerial Committee shall meet twice a week or as and when required.

(5) (a) The Managerial Committee may co-opt such officer from the Ministry as it may determine to provide assistance in relation to any matter before it.

(b) A co-opted member shall not have the right to vote at any meeting of the Managerial Committee.

(6) (a) Subject to paragraphs (b) and (c), the decision of the Managerial Committee shall be taken by a majority of the votes of all the members present.

(b) At any meeting of the Managerial Committee, 3 members shall constitute a quorum.

(c) Each member shall have one vote and, in the event of equality of votes, the Chairperson shall have a casting vote.

(d) No member shall have the right to vote on any matter in relation to which he has been involved as a treating doctor.

(7) Every member shall be paid such fees as the Minister may determine.

(8) The Managerial Committee shall –

(a) keep a record of all its proceedings and decisions;

(b) every 3 months, furnish to the Commission a report of all its decisions and such other information as the Commission may require.

(9) In this section –

“member” includes the Chairperson.

6B. Functions of Managerial Committee

The Managerial Committee shall –

(a) subject to section 6, review matters relating to –

(i) the admission and discharge of security patients who are suspected of having committed a criminal offence or who are in the custody of the police or are detainees in a reform institution referred to in the Reform Institutions Act;

(ii) the involuntary admissions, treatment, leave, discharge and continued treatment of patients;

(b) refer to the Commission complaints of patients, relatives and visitors;

(c) bring to the notice of the Commission any breach or suspected breach of discipline, professional misconduct or violation of patients’ rights.

8. Section 13 of principal Act amended

Section 13 of the principal Act is amended by repealing subsection (4) and replacing it with the following subsection –

(4) In this section –

“voluntary patient” –

(a) means a patient who, in the opinion of the medical officer or psychiatrist examining him at a centre –

(i) requires treatment in a centre;

(ii) is capable of consenting to, and consents to, his admission and treatment; and

(b) includes a minor patient whose legal guardian may consent to his admission.

9. Section 17 of principal Act amended

Section 17 of the principal Act is amended, in subsection (2), by inserting, after the word “Commission”, the words “or the Managerial Committee, as the case may be,”.

10. Section 18 of principal Act amended

Section 18 of the principal Act is amended, in subsection (2), by inserting, after the word “Commission”, the words “or the Managerial Committee, as the case may be,”.

11. Section 20 of principal Act amended

Section 20 of the principal Act is amended –

(a) in subsection (2), by deleting the words “This section” and replacing them by the words “Subsection (1)”;

(b) by adding the following new subsection –

(3) Where the Commission is satisfied that the stabilised security patient does no more represent any danger to himself or to others, it may temporarily transfer a stabilised security patient to an open ward.

12. Section 21 of principal Act amended

Section 21 of the principal Act is amended, in subsection (1) –

- (a) by inserting after the word “Commission”, the words “or the Managerial Committee, as the case may be,”;
- (b) by inserting, after the words “a patient”, the words “or stabilised security patient”.

13. Section 22 of principal Act amended

Section 22 of the principal Act is amended, in subsection (1)(a), by inserting, after the word “Commission”, the words “or the Managerial Committee, as the case may be,”.

14. Section 27 of principal Act amended

Section 27 of the principal Act is amended by deleting the word “Commission” and replacing it by the words “Managerial Committee”.

15. Section 37 of principal Act repealed and replaced

Section 37 of the principal Act is repealed and replaced by the following section –

37. Discharge of security patient

(1) Where the Commission is satisfied that a person who is confined pursuant to an order under section 115 of the Criminal Procedure Act –

- (a) does no more represent any danger to himself or to others; and
- (b) is no more required to stay in a centre,

it may recommend that the patient be discharged.

(2) The Minister may, on the recommendation of the Commission approve, in writing, the discharge of the security patient.

16. Section 39 of principal Act amended

Section 39 of the principal Act is amended by deleting the words "5,000 rupees" and " 2 years" and replacing them by the words "100,000 rupees" and " 5 years", respectively.

17. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of the different sections of this Act.
