

THE MENTAL HEALTH BILL, 2019

MEMORANDUM

The objects of this Bill are to—

- (a) provide for the promotion and protection of the rights of persons with mental illness, mental disorder, mental impairment or mental disability;
- (b) establish the National Mental Health Council and provide for its functions;
- (c) provide for mental health services in correctional facilities;
- (d) give effect to certain provisions of the United Nations Convention on the Rights of Persons with Disabilities, Principles for the protection of persons with mental illness and the improvement of mental care General Assembly Resolution 46/119 of 17th December, 1991 and other international human rights instruments to which Zambia is a State Party;
- (e) repeal the Mental Disorders Act, 1949; and
- (f) provide for matters connected with, or incidental to, the foregoing.

A. MWANSA,
Solicitor-General

THE MENTAL HEALTH BILL, 2019

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY PROVISIONS

Sections

1. Short title
2. Interpretation
3. General principles for determination of condition of mental patient

PART II

LEGAL CAPACITY AND RIGHTS OF MENTAL PATIENTS

4. Legal Capacity
5. Duty to respect and uphold rights and dignity of mental patients
6. Prohibition of discrimination, degrading treatment and use of derogatory names
7. Promotion of mental health and preventive programmes

PART III

THE NATIONAL MENTAL HEALTH COUNCIL

8. Establishment of National Mental Health Council
9. Seal of Council
10. Functions of the Council
11. Board of Council
12. Functions of Board
13. Delegation of functions of Board
14. Director-General and other staff

PART IV

MENTAL HEALTH SERVICES

15. Access to mental health services

PART V

RIGHTS AND RESPONSIBILITIES OF MENTAL PATIENTS

16. Right of mental patient
17. Responsibilities of mental patient
18. Privacy, dignity and confidentiality

PART VI

STANDARDS OF CARE AND TREATMENT

19. Standards of treatment and care
20. Notice of health care standards and rights
21. Minimum standards for mental health facilities

PART VII

CONSENT

22. Consent to admission, treatment, care, rehabilitation and palliation services and admission to health facility
23. Proxy consent to treatment
24. Advance decisions

PART VIII

ADMISSION, TREATMENT, CARE, REHABILITATION OR PALLIATION

25. Admission, treatment, care, rehabilitation or palliation
26. Involuntary admission and treatment in emergency

PART IX

SPECIAL TREATMENT

27. Special treatment
28. Clinical or experimental research and development of drugs

PART X

CRIMINAL PROCEDURES FOR FORENSIC MENTAL PATIENTS

29. Designation of health facility for forensic mental patients
30. Admission of forensic mental patient to designated health facility
31. Referral of forensic mental patients between designated health facilities
32. Forensic mental patient who absconds
33. Periodic review of mental health status of forensic mental patient

PART XI

MENTAL ILL INMATES AND UNCONVICTED INMATES

34. Assessment of mental health status of inmate
35. Treatment, care, rehabilitation and palliation of inmates with mental illness
36. Referral of mentally ill inmate or unconvicted inmate to designated health facility
37. Review of mental health status of mentally ill inmate
38. Discharge procedure of mentally ill inmate

PART XII

GENERAL PROVISIONS

39. Regulations
40. General penalty
41. Repeal of Mental Disorder Act, No. 21 1949
42. Savings and transitional provisions

SCHEDULE

A BILL

ENTITLED

An Act to provide for the promotion and protection of the rights of persons with mental illness, mental disorder, mental impairment or mental disability; to establish the National Mental Health Council and provide for its functions; provide for mental health services in correctional facilities; give effect to certain provisions of the United Nations Convention on the Rights of Persons with Disabilities, Principles for the protection of persons with mental illness and the improvement of mental care General Assembly Resolution 46/119 of 17th December, 1991 and other international human rights instruments to which Zambia is a State Party; repeal the Mental Disorders Act, 1949; and provide for matters connected with, or incidental to, the foregoing.

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ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Mental Health Act, 2019. Short title
- 5 2. In this Act unless the context otherwise requires— Interpretation
 - “Board” means the Board of Council constituted under section 11;
 - “child” has the meaning assigned to the word in the Constitution; Cap. 1
 - 10 “Council” means the National Mental Health Council established under section 8;
 - “community leader” means a civil society leader, chief, headperson, minister of religion or any person of good standing in a community;

N.A.B. 1, 2019

	“community mental health service” means a mental health service within a community;	
	“correctional centre” means an institution where a mental patient who commits an offence is held in custody for treatment and rehabilitation;	5
	“court” means a court of competent jurisdiction;	
Act No. 6 of 2012	“discrimination” has the meaning assigned to the word in the Persons with Disabilities Act, 2012;	
	“emergency” includes a situation where there is immediate and imminent danger to the health and safety of a person or others and it is demonstrated that the time required to comply with substantive procedures would cause sufficient delay and harm to the concerned mental patient or others;	10
	“forensic mental patient” means a person who is referred to a mental health facility by a court for assessment in order to determine whether or not that person is mentally fit to stand trial, or to be held criminally responsible for an offence;	15
	“health care provider” means a person registered and licensed under the Health Professions Council of Zambia or the General Nursing Council of Zambia or, any other health regulatory body;	20
Act No. 24 of 2009	“health facility” has the meaning assigned to the words in the Health Professions Act, 2009;	
Act No. 24 of 2009	“health practitioner” has the meaning assigned to the words in the Health Professions Act, 2009;	25
	“in-charge” means an officer with commensurate authority to superintend the management of a health facility;	
	“informed consent” means consent obtained freely, without threats or improper inducements, after appropriate disclosure to the mental patient of adequate and clear information in a form and language understood by the mental patient on—	30
	(a) the diagnostic assessment;	
	(b) the purpose, method, likely duration and expected benefit of the proposed treatment;	35
	(c) alternative modes of treatment, including those less intrusive; and	
	(d) possible pain or discomfort, risks and sideeffects of the proposed treatment;	40

5 “informed decision” means a decision by a mental health services user about a diagnostic or therapeutic procedure, based on choice, which requires the decision to be voluntary and that the mental patient has the capacity for choice, which rests on the following key elements:

- (a) possession of a set of values and goals for which the mental patient need to make a decision;
- (b) ability to understand information and communicate decisions; and
- 10 (c) ability to reason and deliberate;

“involuntary admission” means the detention and provision of mental health services to a mental patient who—

- (a) is incapable of making an informed decision due to their mental health status; or
- 15 (b) unreasonably withholds or refuses to give informed consent but requires those services for that person’s own protection or for the protection of others;

20 “mental capacity” means the capability to make independent informed decisions and to act on that decision and understand the consequences of the decision made and action taken;

25 “mental disability” means longterm psycho-social impairment which may hinder a person’s full and effective participation in society on an equal basis with others;

“mental disorder” means diagnosis of a mental condition, impairment or disability in the absence of demonstrable organic etiological factor also referred to as functional neurosis or psychosis;

30 “mental health” means a state of well-being in which a person realises that person’s potential to cope with the normal stresses of life, can work productively and is able to make a contribution to the person’s community;

35 “mental health care” includes analysis and diagnosis of a person’s mental condition, and treatment, care, rehabilitation and palliation for a mental illness or suspected mental illness;

“mental health facility” means an establishment, or unit of an establishment which provides mental health care as its primary function;

“mental health intervention” means an action or service rendered to a—
(a) mental patient for treatment or rehabilitation; or
(b) community promoting mental health or preventing mental disorder; 5

“mental health practitioner” means a medical doctor, clinical psychologist, psychiatrist, nurse, social worker or other appropriately qualified person with relevant skills in mental health care and registered with a relevant regulatory authority; 10

“mental health services” means mental health promotion, and prevention, assessment, treatment, care, rehabilitation, palliation and any other related support services, programs and interventions for a mental disorder;

“mental health service resources” means the provision of 15 materials, finances, human resources and infrastructure for the provision of mental health services;

“mental health service user” means a person receiving treatment, care, rehabilitation or palliation services or using a health service at a health facility aimed at enhancing the 20 mental health status of a user;

“mental health specialist” means a person who has undertaken advanced training in mental health to work with people with mental illnesses and psycho-social issues and includes psychiatrists, clinical psychologists, psychiatric nurses, 25 psychiatric clinical officers, therapists including child, marriage and family counsellors, licensed or certified under the Health Professions Act, 2009, or the Nurses and Midwives Act, 1997, or other applicable legislation related to mental health services; 30

Act No. 24 of 2009
Act No. 31 of 1997

“mental illness” means a mental impairment or disability with evidence of an organic etiology;

“mental impairment” means a permanent outcome, effect, aftermath or after effect of a mental illness that affects a person’s ability to function normally in society; 35

“mental patient” means a person diagnosed by a mental health practitioner as having a mental illness, mental disorder, mental impairment or mental disability;

“officer-in-charge” means an officer with commensurate authority to superintend the management of a correctional 40 centre;

- “place of safety” means a designated health facility or other secure location taking into consideration the best interpretation of the will and preference of the mental patient;
- 5 “primary care giver” means a health care provider, spouse, relative, friend or community-based worker closest to the mental patient;
- “primary health care” means essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally accessible to individuals, families and communities at a cost that the community and the country can afford to maintain;
- 10 “psychiatrist” means a person registered as such under the Health Professions Act, 2009; Act No. 24 of 2009
- 15 “public mental health facility” means a government run site, health post, clinic, hospital, fixed or mobile, providing services for the promotion, prevention, diagnosis, treatment and rehabilitation of a mental patient;
- “reasonable accommodation” has the meaning assigned to the words in the Persons with Disabilities Act, 2012; Act No. 6 of 2012
- 20 “rehabilitation” has the meaning assigned to the word in the Persons with Disabilities Act, 2012; Act No. 6 of 2012
- “supporter” means a person who represents a mental health service user or mental patient’s rights or interests;
- 25 “treatment” means an intervention given to control, cure or provide relief from symptoms of a disorder, an illness, impairment or cognitive and psycho-social disability, approved by a relevant regulatory authority; and
- 30 “voluntary admission” means the provision of mental health interventions to a person who gives informed consent to the health interventions.
3. The following principles apply to the determination of a condition of a mental patient: General principles for determination of condition of mental patient
- 35 (a) the determination of whether a person is a mental patient shall be made in accordance with principles in this Act and the applicable diagnostic criteria and relevant professional standards;
- 40 (b) the determination of whether a person is a mental patient shall not be made on the basis of political, economic or social status or membership in a cultural, racial or religious group, or for any other reason not directly relevant to the mental health status of a person;

(c) a family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall not be a determining factor in the diagnosis of mental illness; and

(d) a background of past treatment or hospitalisation of a mental patient shall not be used as a basis to justify any present or future determination of mental illness.

PART II

LEGAL CAPACITY AND RIGHTS OF MENTAL PATIENTS

Legal
capacity

4. (1) Subject to the other provisions of this Act, a mental patient shall enjoy legal capacity.

(2) Where the nature of the mental illness, mental disorder or mental disability results in the absence of mental capacity of that mental patient, the mental patient shall not enjoy legal capacity and is legally disqualified from performing a function that requires legal capacity.

(3) Where a mental patient lacks legal capacity, a court may appoint a supporter.

(4) A mental patient who has legal capacity under subsection (1), may appoint a supporter through advance instructions. 20

(5) Where a court declares that a mental patient does not have legal capacity, that person is legally disqualified under subsection (4) and any other written law.

Duty to
respect and
uphold
rights and
dignity of
mental
patients

5. A person, shall respect, safeguard the dignity, and uphold the rights of a mental patient. 25

Prohibition
of
discrimina-
tion,
degrading
treatment
and use of
derogatory
names

6. (1) A person shall not discriminate against a mental patient.

(2) A person shall not exploit or subject a mental patient to abusive, violent or degrading treatment including gender based aspects.

(3) A person shall not call a mental patient by a derogatory name on account of a disability of that mental patient. 30

Promotion
of mental
health and
preventive
programmes

7. (1) The Minister shall, in consultation with other relevant Ministries, take policy measures to promote mental health.

(2) Without prejudice to the generality of subsection (1), the Minister shall ensure that the policy measures are aimed at— 35

- (a) preventing or reducing the occurrence of mental illness;
(b) enhancing awareness about mental health;
(c) preventing or reducing stigma associated with mental illness;
5 (d) training and sensitisation of law enforcement officers and adjudicators on mental health issues;
(e) ensuring the provision of adequate mental health services by—
10 (i) training health care providers in public health facilities and correctional centres in basic and emergency mental health care;
(ii) necessary infrastructure provision and development; and
15 (iii) making available finances, medical and non-medical supplies.

PART III

THE NATIONAL MENTAL HEALTH COUNCIL

8. There is established the National Mental Health Council which is a body corporate with perpetual succession and a common
20 seal, capable of suing and being sued in its corporate name, and with power subject to the other provisions of this Act, to do all acts and things that a body corporate may by law do or perform.

Establishment
of National
Mental
Health
Council

9. (1) The seal of the Council shall be a device that may be determined by the Board and shall be kept by the Secretary.

Seal of
Council

25 (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or any other person authorised in that behalf by a resolution of the Board.

(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to
30 be under seal, may be entered into or executed without seal on behalf of the Council by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(4) A document purporting to be a document under seal of the Council or issued on behalf of the Council shall be received in
35 evidence and shall be deemed to be so executed or issued, without proof, unless the contrary is proved.

10. The functions of the Council are to—

Functions of
the Council

- (a) promote and protect the rights of a mental patient;
40 (b) facilitate the development of integrated, effective and efficient methods or systems of providing mental health services at all levels;

- (c) collaborate with local and international organisations for the promotion of mental health;
- (d) facilitate and promote communication about mental health issues, including the elimination of stigma and discrimination against a mental patient; 5
- (e) facilitate the mobilisation of resources for mental health services;
- (f) advise the Minister on all policy matters related to mental health;
- (g) liaise with the body responsible for the health profession on the professional conduct and inspections of mental health facilities and correctional centres in accordance with acceptable national and international standards; 10
- (h) liaise with Zambia Agency for Persons with Disabilities and relevant institutions on mental health related programmes; 15
- (i) develop guidelines for special and intrusive treatment of a mental patient;
- (j) facilitate research on any matter relevant to mental health issues; 20
- (k) develop systems and facilitate the monitoring and evaluation of mental health service delivery;
- (l) facilitate the development and provision of adequate and standard infrastructure for mental health services;
- (m) facilitate the development and implementation of 25 community-based mental health services; and
- (n) promote de-institutionalisation.

Board of
Council

11. (1) There is constituted a Board of the Council which consists of the following part-time members appointed by the Minister: 30

- (a) one representative each of the ministries responsible for—
 - (i) correctional services;
 - (ii) social welfare;
 - (iii) health; 35
 - (iv) finance; and
 - (v) local government;
- (b) a representative of the Attorney-General;
- (c) a representative of the Administrator-General and Official Receiver; 40

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- (d) a representative of the Human Rights Commission;
- (e) a representative of the General Nursing Council of Zambia;
- (f) a representative of the Health Professions Council of Zambia;
- 5 (g) a representative of a relevant non-governmental organisation dealing with mental health issues;
- (h) a Psychiatrist; and
- (i) one other person from the community with experience and knowledge in mental health issues.
- 10 (2) The Minister shall appoint the Chairperson of the Board from among the members who are no public officers.
- (3) The Members shall elect the Vice-Chairperson of the Board from among themselves.
- (4) A person is not qualified to be appointed as a member if
- 15 that person—
- (a) is not a citizen of Zambia;
- (b) is an undischarged bankrupt;
- (c) is legally disqualified from performing the functions of a member;
- 20 (d) has been convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months without the option of a fine within a period of five years preceding the appointment;
- (e) has been found guilty of professional misconduct; or
- 25 (f) is an employee of the Council.
- (5) The provisions of the Schedule apply to the Board.
- 12.** Subject to this Act, the functions of the Board are to—
- (a) review the policy and strategic plan of the Council;
- (b) oversee the implementation and successful operation of
- 30 the policy and functions of the Council;
- (c) approve the annual budget and plans of the Council;
- (d) monitor and evaluate the performance of the Council against budgets and plans; and
- (e) establish and approve rules and procedures for the
- 35 appointment, discipline, termination and terms and conditions of service of the staff of the Council.

Functions of
Board

Delegation
of functions
of Board

13. The Board may, subject to this Act, by direction, in writing, and subject to any terms and conditions that it considers necessary, delegate to the Executive Director any of its functions under this Act.

Executive
Director and
other staff

14. (1) The Board shall appoint the Executive Director who shall be the chief executive officer of the Council on the terms and conditions that the Board may determine with the approval of the Emoluments Commission.

(2) The Executive Director shall, subject to the control of the Board, be responsible for the day-to-day administration of the Council.

(3) A person shall not be appointed as the Executive Director unless that person is a psychiatrist.

(4) The Executive Director shall attend meetings of the Board and any committee of the Board, and may address that meeting, but shall not vote on any matter.

(5) The Board may, appoint, on the terms and conditions that the Board may determine with the approval of the Emoluments Commission, other staff that the Board considers necessary for the performance of the functions of the Council. 20

PART IV

MENTAL HEALTH SERVICES

Access to
mental
health
services

15. (1) A mental health facility shall put in place appropriate measures to ensure—

(a) availability of mental health services at all levels of mental health care; 25

(b) adequate financial and geographical accessibility;

(c) provision of services that meet prescribed minimum standards; and

(d) access to neuroleptic medication. 30

(2) Mental health services shall be provided on an equal basis with physical health services where possible.

(3) Mental health services shall—

(a) be integrated within the general health services;

(b) be provided in specialised public and private health facilities; 35

(c) be provided in designated health facilities for forensic mental patients;

(d) promote inpatient and out-patient services at community level;

- (e) promote the rights and interests of mental patients;
- (f) promote and improve the mental health status of the population; and
- (g) provide primary health care.
- 5 (4) A health practitioner who is not a psychiatrist shall not cause a mental patient to receive prescribed psychiatric medication for more than six months without being authorised by a psychiatrist who is designated to provide medication and review psychiatric treatment.
- 10 (5) A health practitioner shall provide mental health services in a manner that facilitates the involvement of the community, family members and support persons.
- (6) A head of a mental health facility or institution or any other person delegated with the duties under this Part shall follow the
- 15 prescribed exemption criteria for categories of mental patients eligible for free health services at public health facilities.
- (7) In prescribing the exemption criteria referred to under subsection (6), regard shall be given to the—
- (a) range of free mental health services currently available;
- 20 (b) categories of mental patients already receiving free mental health services;
- (c) therapeutic impact to mental patients; and
- (d) needs of groups such as women, children, elderly persons, inmates, other persons with disabilities and persons
- 25 receiving compensation for compensable occupational diseases.

PART V

RIGHTS AND RESPONSIBILITIES OF MENTAL PATIENTS

16. A mental patient has the right to—
- 30 (a) effective, timely, safe, considerate and respectful care and support;
- (b) obtain from mental health practitioners appropriate, current and understandable information about diagnosis, treatment and prognosis;
- 35 (c) discuss and request information about the specific procedures or treatments, the risks involved, the possible length of recuperation and the medically reasonable alternatives and their risks and benefits;
- (d) know the identity of the mental health practitioner involved
- 40 in the care of the mental health services user;

Right of
mental
patient

- (e) make decisions about the plan of care before and during treatment;
- (f) refuse a recommended treatment or plan of care to the extent allowed by law and to be informed of the medical consequences of that refusal; 5
- (g) alternative appropriate care and services provided by the hospital or be transferred to another hospital in the case of a refusal of recommended treatment or plan of care;
- (h) be notified by the hospital of any policy that might affect choice of treatment and care within the institution; 10
- (i) supported decisionmaking regarding treatment;
- (j) privacy during case discussion, consultation, examination, and treatment;
- (k) access to personal records of treatment and an explanation or interpretation of information, where necessary; 15
- (l) consent or decline taking part in a research study or human experimentation affecting treatment and care or requiring direct mental patient involvement, and have those studies fully explained prior to consent as provided for in the National Health Research Act, 2013; 20
- (m) be informed of available alternative dispute resolution mechanisms; and
- (n) be protected from forced or inadequately remunerated labour within an institution, work place and the community. 25

Act No. 2
of 2013

Responsibilities
of
mental
patient

17. Subject to the other provisions of this Act, a mental patient shall—

- (a) provide information relating to mental illness including mental health interventions;
- (b) provide information relating to the next of kin where a mental patient will not be in a position to provide information; 30
- (c) participate effectively in decision making and request additional information or explanation about the health status or treatment when they do not fully understand information and instructions; and 35
- (d) provide information on mode of payment for mental health services.

18. (1) A mental health facility or correctional centre shall take steps to ensure that, the mental patient—
- 5 (a) is accorded privacy and confidentiality relating to information obtained in the therapeutic relationship, and that the information given shall only be used for the purpose of improving the mental patient's mental health;
- (b) is protected from exploitation, abuse or any cruel or degrading treatment;
- 10 (c) is informed when personal information is passed on to a third party; and
- (d) has unrestricted access to information concerning that mental patient's mental health care, treatment, rehabilitation and palliation.

Privacy,
dignity and
confidentiality

PART VI

STANDARDS OF CARE AND TREATMENT

- 15 19. (1) A mental patient or forensic mental patient shall receive mental health services which is appropriate for that patient's needs in accordance with relevant health service standards.
- (2) A mental patient or forensic mental patient shall be protected
- 20 from harm, inappropriate medication, or acts causing mental distress or physical discomfort and abuse by other mental patients, staff, family members or any other person.
- (3) A mental patient or forensic mental patient shall be treated
- 25 in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the mental patient's health needs and the need to protect the physical safety of the mental patient or any other person.
- (4) Despite subsection (3), a mental health facility may treat a
- 30 mental patient or forensic mental patient in a more restrictive environment for a period required to give effect to the appropriate, treatment, care, support, rehabilitation and palliation.
- (5) The treatment of a mental patient or forensic mental patient shall be directed towards restoring and enhancing personal autonomy.
- 35 20. (1) A health facility shall, on admission, inform a mental patient or forensic mental patient of the—
- (a) rights of that mental patient or forensic mental patient, in a form and language which a mental patient or forensic mental patient understands; and

Standards of
care and
treatment

Notice of
health care
standards
and rights

(b) health care standards which the mental patient or forensic mental patient is entitled to receive.

(2) Where a mental patient or forensic mental patient is unable to understand the information communicated under subsection (1), that information shall be communicated to a supporter. 5

Minimum standards for mental health facilities

21. A mental health facility shall meet the following minimum standards for the provision of the mental health services:

- (a) provide a qualified psychiatrist or a mental health practitioner and other appropriate professional staff;
- (b) have adequate space; 10
- (c) implement an appropriate and active therapy programme;
- (d) avail and maintain medical and non-medical equipment, diagnostic and therapeutic equipment, kitchen, laundry and mortuary;
- (e) provide information communication technology, security systems and equipment, and transport; 15
- (f) ensure adequate and consistent medical and nonmedical supplies.

Act No. 24 of 2009
Act No. 31 of 1997
Act No. 3 of 2013

(2) A mental health facility shall be inspected as provided for under the Health Professions Act, 2009, the Nurses and Midwives Act, 1997, and the Medicines and Allied Substances Act, 2013. 20

PART VII

CONSENT

Consent to admission, treatment, care, rehabilitation and palliation services and admission to health facility

22. (1) A mental health facility shall only provide treatment, care, support, rehabilitation and palliation services to, or admit a mental patient where—

- (a) the mental patient or a supporter has consented to the admission, treatment, care, rehabilitation or palliation;
- (b) the Board authorises the admission, treatment care, rehabilitation or palliation; 30
- (c) the admission, treatment, care, support, rehabilitation or palliation services if not done may result in—
 - (i) death or irreversible harm to a mental patient;
 - (ii) a mental patient inflicting serious harm to oneself or another person; or 35
 - (iii) a mental patient causing serious damage to, or loss of, property.

(2) A mental health facility that provides admission, treatment, care, support, rehabilitation or palliation services under subsection (1) (c)—

5 (a) shall render a report, in writing, to the Council in the prescribed manner; and

(b) may only provide the admission, treatment, care, support, rehabilitation or palliation services for a period of seventy-two hours unless an application is made to the Board within that period for the provision of services or admission for a longer period.

(3) A mental health practitioner shall minimise admission, treatment, care, support rehabilitation or palliation services without informed consent.

(4) Where a mental patient requires special treatment which cannot be administered routinely to the mental patient even with the mental patient's consent, three medical doctors, one of whom shall be a psychiatrist shall certify that the person concerned is capable of understanding the nature, purpose and likely effects of the treatment.

20 **23.** (1) Where a mental patient is unable to give consent to the treatment, the consent may be given by a supporter.

Proxy consent to treatment

(2) Where the mental patient is below the age of eighteen years the consent may be made by the mental patient's parent or guardian.

25 **24.** (1) A mental patient who understands the mental patients right to decide on an option of treatment shall state in advance the mental patient's choice of treatment.

Advance decision

(2) An advance decision may be in writing and signed by the mental patient, a recorded oral statement or a note of a particular discussion recorded on the mental patient's file, except that where a mental patient's advance decision relates to a refusal of lifeprolonging treatment, this shall be recorded in writing.

(3) An advance decision shall be either a—
35 (a) statement authorising or requesting specific procedures; or

(b) clear instruction refusing some or all medical procedures.

(4) An advance decision shall be legally binding where the mental patient is an adult and competent to make an informed decision.

(5) Where a mental patient subsequently grants a person a power of attorney to make a decision, an advance decision which was made by the mental patient ceases to have effect.

PART VIII

ADMISSION, TREATMENT, CARE, SUPPORT, REHABILITATION
OR PALLIATION 5

Admission,
treatment,
care,
support,
rehabilitation
or palliation

25. (1) A mental health facility shall where a person requires treatment at a mental health facility, endeavour to ensure that—

(a) there is voluntary admission;

(b) the procedure for admission to a mental health facility is consistent with a hospital treating physical health; and

(c) while admission or treatment on a voluntary basis shall be the preferred practice, involuntary admission or treatment, shall be provided where they are necessary for the health and safety of the mental patient. 15

(2) A person on voluntary admission, treatment, care, support, rehabilitation or palliation services may leave the mental health facility at any time in accordance with the prescribed regulations.

(3) An involuntary admission shall be carried out as prescribed.

Involuntary
admission
and
treatment in
emergency

26. A mental health practitioner shall conduct an involuntary admission in an emergency situation where it is not possible or reasonable to comply with a procedure for voluntary admission and treatment. 20

PART IX

SPECIAL TREATMENTS 25

Special
treatment

27. (1) A special treatment such as electro-convulsive therapy or psycho-surgery shall be—

(a) provided in accordance with written instructions by a psychiatrist; and

(b) applied under the authorisation and supervision of a consultant psychiatrist. 30

(2) Seclusion and restraint shall—

(a) be provided under an authorisation and supervision of a consultant psychiatrist;

(b) not exceed seventy-two hours unless an application is made to the Board within that period for the seclusion or restraint for a longer period; and

(c) be undertaken with intermittent reviews. 35

(3) A psychiatrist shall, after the period of seclusion and restraint referred to under subsection (2) (b), prepare a report to the Board on the mental health status of the mental patient and may recommend release from, or extension of, the seclusion or restraint.

- 5 **28.** A clinical or experimental research and development of drugs to be administered as part of special treatment shall be conducted in accordance with the National Health Research Act, 2013.

Clinical or experimental research and development of drugs Act No.2 of 2013

PART X

10 CRIMINAL PROCEDURES FOR FORENSIC MENTAL PATIENTS

29. The Minister shall, in consultation with the Minister responsible for correctional services, designate a health facility which may admit, treat, care, provide a rehabilitation and palliation service to a forensic mental patient.

Designation of health facility for forensic mental patients

- 15 **30.** (1) Where a court issues an order for a forensic mental patient to be admitted for mental health services, the Registrar or the Clerk of the court shall send a copy of that order to a designated health facility.

Admission of forensic mental patient to designated health facility

- 20 (2) A designated health facility shall examine the forensic mental patient within fourteen days of the date of the court order.

- 31.** (1) Where a mental health practitioner is of the opinion that it would be for the benefit of a forensic mental patient admitted in a designated health facility, or that it is necessary for the purpose of obtaining special treatment for the forensic mental patient, 25 transfer the forensic mental patient to another designated health facility after obtaining consent from the designated health facility where the forensic patient is being transferred to.

Referral of forensic mental patient between designated health facilities

- 30 (2) In the case of a forensic patient under a correctional centre, consent shall be obtained from the Commissioner-General of Zambia Correctional Service.

32. Where a forensic mental patient has absconded or is considered by the in-charge of a designated health facility to have absconded, the incharge of that designated health facility shall immediately notify the police in writing.

Forensic patient who absconds

- 35 **33.** (1) The incharge of a designated health facility shall ensure that the forensic mental patient is reviewed every six months by a psychiatrist, and submit a report to the Minister responsible for correctional services, in the prescribed manner and form.

Periodic review of mental health status of forensic mental patients

- 40 (2) The review under subsection (1), shall include recommendations on—

- (a) a plan for further treatment, care, support, rehabilitation or palliation service of a forensic mental patient; or
 (b) the discharge of a forensic mental patient from a designated health facility.

PART XI

5

MENTALLY ILL INMATES AND UNCONVICTED INMATES

Assessment
of mental
health
status of
inmate

34. (1) Where an officer-in-charge of a correctional centre observes or receives information that an inmate may be mentally ill, the officer-in charge of the correctional centre shall cause the mental health status of the inmate to be examined within forty-eight hours—

- (a) by a psychiatrist; or
 (b) where a psychiatrist is not readily available, by—
 (i) a medical practitioner; or
 (ii) a mental health care practitioner.

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(2) The person conducting the assessment under subsection (1) shall submit a written report to the officer-in-charge of the correctional centre, within fourteen days of the assessment and shall specify in the report—

- (a) the mental health status of the inmate; and
 (b) a plan for the treatment, care, support, rehabilitation or palliation of that inmate.

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Treatment,
care
rehabilitation
and
palliation of
inmates with
mental
illness

35. Where a mental health practitioner conducting the assessment referred to in section 34, finds that the mental illness of the inmate is of a nature that the inmate concerned may appropriately be treated, cared for rehabilitated or palliated, in the correctional centre, the officer-in-charge of a correctional centre shall take the necessary steps to ensure that the required levels of treatment, care, support, rehabilitation and palliation services are provided to that inmate.

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Referral of
forensic
mentally ill
inmate or
unconvicted
inmate to
designated
health
facility

36. (1) Where a mental health practitioner conducting the assessment referred to in section 34, finds that the mental illness of an inmate is of a nature that requires the inmate to be treated and cared for in a designated health facility referred to in section 22, the officer-in-charge of the correctional centre shall, within forty-eight hours, cause the inmate to be transferred to a mental health facility.

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(2) Despite subsection (1), where the mental health practitioner recommends that an inmate or unconvicted inmate may be treated, cared for, supported, rehabilitated or palliated at a designated health

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facility, the mental health practitioner shall recommend to the officer-in-charge of the correctional centre the transfer of that inmate or unconvicted inmate to the designated health facility.

5 **37.** (1) The head of a mental health facility in which a mentally ill inmate is admitted shall cause the mental health status of the mentally ill inmate to be reviewed, and prepare and submit a report to the officer-in-charge of the relevant correctional centre.

Review of
mental
health status
of mentally
ill inmate

(2) The review shall—

- 10 (a) specify the mental health status of the mentally ill inmate;
and
(b) set out recommendations regarding a plan for further treatment, care and rehabilitation services for the mentally ill inmate.

15 **38.** Where the in-charge of a designated health facility has established that the mentally ill inmate has recovered from a mental illness such that the inmate no longer requires treatment, care, support, rehabilitation or palliation or that the required treatment, care, support, rehabilitation or palliation can be given in a correctional centre, the in-charge of a designated health facility shall prepare
20 and submit a discharge report to the officer-incharge of the correctional centre.

Discharge
procedure of
mentally ill
inmate

PART XII

GENERAL PROVISIONS

25 **39.** (1) The Minister may, by statutory instrument in consultation with the Council, make regulations to give effect to the purposes and provisions of this Act.

Regulations

(2) Without limiting the generality of subsection (1), the Minister may make regulations for the—

- 30 (a) forms and certificates to be used for the purposes of the Act;
(b) guidelines for the establishment, development, maintenance and management of mental health facilities;
(c) exemption criteria for categories of
35 mental patients eligible for free health services at public facilities;
(d) procedure and form for foreign mental health service users or mental patients coming to Zambia and mental health service users seeking treatment abroad including
40 foreigners who are either onshort or long stay, the transfer of mental patients between designated health facilities;

	(e) after care services, support, rehabilitation and palliation programmes for mental health service users and mental patients;	
	(f) establishment of transit homes and boarding home care services;	5
	(g) de-institutionalisation of mental patients; and	
	(h) administration of special treatments.	
General penalty	40. A person who commits an offence under this Act for which a specific penalty is not provided is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.	10
Repeal of Mental Disorders Act, No. 21 of 1949	41. The Mental Disorders Act, 1949, is repealed.	
Savings and transitional provisions	42. On the commencement of this Act—	
	(a) an order made under the repealed Act that is still in force shall continue as if made under this Act;	15
	(b) an estate and property of a mental patient that was being administered under the repealed Act shall continue to be administered as if the order for the administration of the estate or property was made under this Act;	
	(c) a mental patient under an order of detention pending removal shall be deemed to be lawfully detained under this Act;	20
	(d) an institution established for the reception, treatment or detention of a mental patient shall continue to exist as if established under this Act;	25
	(e) wherever in any written law a reference to a lunatic or to lunacy, to an asylum or similar terms are contained, that reference shall be read and construed as a reference to a mental patient or similar terms, within the meaning of this Act; and	30
	(f) wherever in any written law a reference to mental disability or legal disqualification, or similar terms are contained, that reference shall be read and construed as a reference to a person being legally disqualified from performing a function under that Act for the purposes section 4.	35

SCHEDULE
(Section 11 (5))

ADMINISTRATION OF COUNCIL

PART I

5 THE BOARD OF COUNCIL

1. (1) A member shall hold office for a term of three years and may be re-appointed for one further term of three years.

Tenure of
office of
member and
vacancy

(2) A member shall, on the expiration of the period for which the member is appointed, continue to hold office until a successor is appointed, but in no case shall the further period exceed four
10 months.

(3) A member may resign on giving one month's notice, in writing, to the Minister.

(4) The office of a member becomes vacant if the member—

(a) dies;

15 (b) is absent, without reasonable excuse, from three consecutive meetings of the Board of which the member had notice;

(c) is adjudged bankrupt;

20 (d) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a period exceeding six within a period of five years preceding months without the option of a fine within a period of five years preceding the appointment;

25 (e) is removed by the Minister for good cause on the following grounds:

(i) the member acts dishonourably, improperly, fraudulently, dishonestly or disorderly; or

30 (ii) the institution which the member represents withdraws its support of the member as its representative and informs the Minister accordingly; or

(f) becomes legally disqualified from performing the functions of a member.

(5) The Minister shall, wherever the office of a member
35 becomes vacant before the expiry of the term of office, appoint another person in place of that member but that person shall hold office as a member only for the unexpired part of the term of the Board.

Proceedings
of Board

2. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the transaction of business at least once in every three months at a place and time that Board may determine. 5

(3) The Chairperson may call a meeting of the Board on giving notice of not less than fourteen days, and shall be called if one-third of the members so request, in writing, except that if the urgency of a particular matter does not permit the giving of that notice, a special meeting may be called on giving a shorter notice. 10

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

(5) There shall preside at a meeting of the Board—

(a) the Chairperson;

(b) in the absence of the Chairperson, the vice-Chairperson; 15
or

(c) in the absence of the Chairperson and Vice-Chairperson, another member that the members present may elect for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority 20 of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have, in addition to a deliberate vote, a casting vote.

(7) The Board may invite a person whose presence is in its opinion, desirable to attend and participate in the deliberations of a 25 meeting of the Board, but that person shall have no vote.

(8) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings. 30

(9) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and any committee established by the Board.

Allowances

3. A member of the Board or a committee of the Board shall be paid allowances that the Minister may determine with the 35 approval of the Emoluments Commission.

4. (1) The Board may, for purposes of performing its functions, establish committees that it considers necessary and delegate to any of those committees any of its functions or the functions of the Council. Committees of the Board

5 (2) The Board may appoint as members of a committee persons who are not members of the Board, except that at least one member of the Board shall be a member of a committee.

(3) Despite the generality of subparagraphs (1) and (2), the Board may appoint special committees, composed of some 10 members of the Board and persons representing relevant regulatory agencies, to carry out functions under this Act or perform such other regulatory functions that require collaborative effort with other regulatory agencies.

(4) A person serving as a member of a committee shall hold 15 office for a period that the Board may determine.

(5) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

5. (1) A person who is present at a meeting of the Board or a committee of the Board at which any matter is the subject of 20 consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the meeting, declare that interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration 25 or discussion of, or vote on, any question relating to, that matter. Disclosure of interest

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subparagraph (1) commits an offence and is liable, on conviction, to a fine not exceeding two 30 hundred thousand penalty units or imprisonment for a term not exceeding two years, or to both.

(4) For the purposes of this paragraph—

“associate” has the meaning assigned to the word in the Anti-Corruption Act, 2012; and

35 “relative” has the meaning assigned to the word in the Anti-Corruption Commission Act, 2012.

Act No. 3 of 2012

Act No. 3 of 2012

- Prohibition of publication or disclosure of information to unauthorised persons
- 6.** (1) A person shall not, without the consent, in writing, given by or on behalf of the Council, publish or disclose to an unauthorised person, otherwise than in the course of that person's duties, the contents of a document, communication or information which relates to, or which has come to the knowledge of that person in the course of that person's duties under this Act. 5
- (2) A person who contravenes subparagraph (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both. 10
- (3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subparagraph (1), unlawfully publishes or communicates the information to another person commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both. 15
- Immunity
- 7.** An action or other proceeding shall not lie or be instituted against a member of the Board, committee of the Board or a member of staff of the Council for, or in respect of, an act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers conferred under this Act. 20

PART II

FINANCIAL PROVISIONS

- Financial Provisions
- 8.** (1) The funds of the Council consist of moneys that may— 25
- (a) be appropriated to the Council by Parliament for the purposes of the Council;
- (b) be paid to the Council by way of fees, charges, grants or donations; and
- (c) otherwise vest in or accrue to the Council. 30
- (2) The Council may—
- (a) accept moneys by way of grants, gifts, bequests or donations from any source in the Republic and subject to the prior approval of the Minister, in writing, from any source outside the Republic; 35
- (b) subject to the approval of the Minister, raise by way of loans or otherwise, moneys that it may require for the performance of its functions; and
- (c) in accordance with the Regulations made under this Act, charge fees for services provided by the Council. 40

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- (3) There shall be paid from the funds of the Council—
- (a) salaries, allowances, loans, gratuities and pensions of staff of the Council, and other payments for the recruitment and retention of staff;
- 5 (b) reasonable travelling and subsistence allowances for members, of the commissions or any committee of the Council, when engaged on the business of the Council at such rates that the Emoluments Commission may determine; and
- 10 (c) any other expenses incurred by the Council in the performance of its functions.
- (4) The Council may, after the approval of the Minister, invest in a manner that the Council thinks fit funds that it does not immediately require for the performance of its functions.
- 15 **9.** The financial year of the Council shall be a period of twelve months ending on 31st December of each year. Financial Year
- 10.** (1) The Council shall cause to be kept proper books of accounts and other records relating to its accounts. Accounts
- (2) The accounts of the Council shall be audited annually by 20 an external auditor appointed by the Auditor-General.
- (3) The external auditor's fees shall be paid by the Council.
- 11.** (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Council shall submit to the President a report concerning its activities during the financial year. Annual report
- 25 (2) The report referred to in subsection (1) shall include information on the financial affairs of the Council and there shall be appended to the report—
- (a) an audited statement of financial position;
- (b) an audited statement of comprehensive income; and
- 30 (c) such other information as the President may require.
- (3) The Minister responsible for finance shall cause to be prepared an annual statement of the income and expenditure of the Council to be laid before the National Assembly.
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