

THE MENTAL HEALTH CARE ACT, 2002

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AREA 2

HISTORY OF THE MHCA

- Replaces the old Mental Health Act of 1973
- The old Act emphasised treatment and control
- The new Act emphasises care, treatment and rehabilitation and the rights of patients
- Process began during the mid-1990's
- MHCA passed into law in December 2004
- Regulations passed in December 2004

MHCA is not optional, it is the LAW!

* In Chapter 10, section 70, it states:

Any person who is found guilty of an offence under this Act is liable on conviction to:

- a fine
- imprisonment of up to 6 months
- both!

CHAPTERS

1. Introduction
2. Fundamental Provisions
3. Rights and duties relating to MHC users
4. Mental Health Review Boards
5. Voluntary, assisted and involuntary MH care
6. State Patients
7. Mentally ill prisoners
8. Care and administration of property
9. Regulations
10. General Provisions

DEFINITIONS

- **Assisted care, treatment and rehabilitation**
 - Means the provision of health interventions to people incapable of making informed decisions due to their mental health status and who do not refuse the health interventions.
- **assisted mental health care user**
 - Means a person receiving assisted care, treatment and rehabilitation.
- **associate**
 - Means a person with a substantial or material interest in the well-being of a MHCU or a person who is in substantial contact with the MHCU.
- **care and rehabilitation centres**
 - Means health establishments for the care, treatment and rehabilitation of people with intellectual disabilities.

DEFINITIONS

- *Health establishment* – any facility, including community clinics, etc.
- *Mental health care practitioner* – incl. doctors, nurses, OT's, psychologists, S/W's who have been trained to provide mental health care & rehab.
- *Mental health care user* – any patient (or NOK or administrator for minors and incapable patients)
- *Mental illness* – “a positive diagnosis of a mental health related illness in terms of accepted diagnostic criteria made by a MHC practitioner”

OBJECTIVES OF THE ACT

- Makes MH services available to users, equitably, efficiently and in the best interests of users within the limits of available resources
- Coordinates access to services
- Integrates MH services into general health services
- MH service to voluntary, assisted & involuntary users + state patients + mentally ill prisoners
- Clarify the rights and obligations of users
- Regulate protection of property of users

OBJECTIVES OF THE ACT (2)

- Mental health care, treatment and rehab at primary, secondary & tertiary level
- Community-based care, treatment & rehab
- Promotes rights & interests of users
- Promotes and improves the mental health status of the population

CHAPTER 3 – HUMAN RIGHTS

- Best interests of the MHC user
- Respect, human dignity and privacy
- Consent to care, treatment & rehabilitation
- No unfair discrimination due to mental illness
- Exploitation or abuse – report **MHCA 02**
- Determinations concerning mental health status
- Disclosure of information
- Limitations on intimate adult relationships
- Right to representation
- Discharge reports – form **MHCA 03**
- Knowledge of rights



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MHCA 02

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REPORT ON EXPLOITATION, PHYSICAL OR OTHER ABUSE, NEGLECT OR
DEGRADING TREATMENT OF A MENTAL HEALTH CARE USER

[Section 11(2) of the Act]

.....
(name)

..... (address)

hereby declare that I have witnessed exploitation, physical or other abuse, neglect or
degrading treatment of the following mental health care user:

(where known)

Surname of user

Date of birth or estimated age

Gender: Male Female

Occupation Marital status: S M D W

Residential address:
.....
.....
.....

Name of health establishment or other place where exploitation, physical or other abuse,
neglect or degrading treatment occurred

Address:
.....
.....
.....

CONSENT

Only provide care, treatment & rehab if:

- User has given consent OR
- Authorised by court or Review Board OR
- Due to mental illness, any delay may result in death or serious harm to the user or others, or serious damage/loss of property of user or others.

➔ *EMERGENCY ADMISSION (MHCA 01)*

Must report to Review Board within 24 hrs

CONFIDENTIALITY

- May not disclose any info unless failure to do so would seriously prejudice the health of user/others (must be Head of Establish)
- You may temporarily withhold info from the user (e.g. medical records) if disclosure is likely to seriously prejudice the user or cause him/her to act in a way that seriously prejudices him/her or the health of others.

REVIEW BOARDS

- 3-5 members appointed by the Prov Gov
- 1 MHC practitioner; 1 lawyer; 1 community member
- Advertised, appointed, remunerated
- Designate a chairperson

In KZN, we have Review Boards in 4 Districts

[Ethekwini, uMgungundlovu, Amajuba, uThungulu]

POWERS & FUNCTIONS OF REVIEW BOARDS

- Consider appeals by users
- Make decisions regarding assisted or involuntary care, treatment and rehab.
- Consider reviews of assisted or involuntary
- Consider 72-hr assessments and decide about further care, ...
- Consider applications for transfer of user to Maximum Security facilities
- Consider periodic reports on mentally ill prisoners

CARE, TREATMENT & REHAB

GENERAL PRINCIPLES

- Always choose the minimum degree of restraint of liberty
i.e. voluntary > assisted > involuntary
- If an involuntary or assisted user regains ability to consent then convert to voluntary status

CARE, TREATMENT & REHAB GENERAL PRINCIPLES

VOLUNTARY Capable of giving consent

ASSISTED Incapable of giving informed consent, but doesn't refuse

INVOLUNTARY Without consent + refuses

EMERGENCY INVOLUNTARY ditto

VOLUNTARY

- Section 25 of the Act
- MHC user is capable of fully informed consent
- No MHCA forms
- Use Inpatient Admission Form

ASSISTED CARE, T & R

- Requires C, T or R for his/her health or safety or for that of others
- User is incapable of making an informed decision
- User does not resist
- Must be an application by family member or “associate”
- User is suffering from a mental illness (or severe/profound mental disability)

ASSISTED CARE, T & R (2)

- If user is under 18, parent or guardian must make application
- If family member or associate not available or unwilling, then HC provider makes application (must state efforts made to contact family/associate)
- Applicant must have seen the user within the last 7 days

ASSISTED CARE, T & R (3)

Application (MHCA 04) - **nb.** under oath



Examination by 2 MHC practitioners (1 doctor
or nurse)



(MHCA 05)

Head of health establishment (MHCA 07)

(copies to applicant, user and Review Board)



Admit user within 5 days

ASSISTED CARE, T & R (4)



Report to Review Board within 7 days



Review Board investigates within 30 days



Either confirm or discharge/convert to
voluntary (MHCA 14)



Review at 6 months and then 12 monthly



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MHCA 04

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APPLICATION FOR ASSISTED- OR INVOLUNTARY CARE, TREATMENT AND
REHABILITATION

[Section 27(1) or 33(1) of the Act]

I hereby apply for assisted care or involuntary care for:

Surname of user

First name(s) of user

Date of birth or estimated age

Gender: Male Female

Occupation Marital status: S M D W

Residential address:
.....
.....
.....
.....

Surname of applicant

First name(s) of applicant

Date of birth of applicant (must be over 18 years of age)

Residential address:
.....
.....
.....
.....

Relationship between applicant and mental health care user: (mark with a cross)

Spouse Next of kin Partner Associate

I last saw the user on at
(date) (time) (place)

(The applicant must have seen the user within seven days of making this application)

Where the applicant is the health care provider:

If the spouse, next of kin, partner, associate, parent or guardian is unwilling to make the application, state the reasons why:

.....
.....
.....
.....

If the spouse, next of kin, partner, associate, parent or guardian is incapable or not available to make the application, state the steps that have been taken to locate them:

.....
.....
.....
.....

I, the undersigned, am of the opinion that the above-mentioned person is suffering from a mental illness / intellectual disability for the following reasons:

.....
.....
.....
.....

and believe that assisted- or involuntary care, treatment and rehabilitation is needed because

.....
.....
.....

In the case of an application for involuntary care:

I further give reasons which show that the person is so ill that he / she will not accept treatment as a voluntary mental health care user or cannot be admitted as an assisted mental health care user

.....
.....
.....
.....
.....

I also attach the following information in support of my application (if available)

- Medical certificates
 - History of past mental illness / intellectual disability
 - Other:
-

Print initials and surname.....

Signature:

(Applicant)

Date:

Place:



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MHCA 05

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**EXAMINATION AND FINDINGS OF MENTAL HEALTH CARE PRACTITIONER
FOLLOWING AN APPLICATION FOR ASSISTED- OR INVOLUNTARY CARE,
TREATMENT AND REHABILITATION
[Sections 27(5) and 33(5) of the Act]**

Surname of user

First name(s) of user

Date of birth or estimated age

Gender: Male Female

Occupation Marital status: S M D W

Residential address:
.....
.....
.....
.....

Date of examination: Place of examination:

Category of designated mental health care practitioner:

Physical health status (filled in only by mental health care practitioner qualified to conduct physical examination):

- (a) General physical health
.....
.....

Information on user received from other person(s) or family (state names and contact details)

.....
.....
.....

Facts concerning the mental condition of the user which were observed on previous occasions (State dates and places):

.....
.....
.....

Mental health status of the user at the time of the present examination:

.....
.....
.....

Type of illness (provisional diagnosis):

.....
.....
.....

In my opinion the above-mentioned user

Has homicidal tendencies

Yes

No

Has suicidal tendencies

Yes

No

Is dangerous

Yes

No

Recommendation to head of health establishment – application for assisted care

The user is capable of making an informed decision on the need to receive care, treatment and rehabilitation services: Yes No

The user is suffering from a mental illness / severe or profound intellectual disability, and as a consequence of this requires care, treatment and rehabilitation for their own health and safety or the health and safety of others Yes No

Give reasons:

.....
.....

Recommendation to head of health establishment – application for involuntary care

The user is capable of making an informed decision on the need to receive care, treatment and rehabilitation services: Yes No

The user is willing to receive care, treatment and rehabilitation services Yes No

In my view, the user is likely to inflict serious harm on him / herself or others Yes No

In my view, care, treatment and rehabilitation is necessary for the user's financial interests and reputation Yes No

The user should receive involuntary care, treatment and rehabilitation Yes No

If No, would you recommend that the user receive assisted care? Yes No

I (name of mental health care practitioner)
hereby declare that I have personally assessed
..... (name of mental health care user) at
.....(name of health establishment) on (date).

.....
Signature



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NOTICE BY HEAD OF HEALTH ESTABLISHMENT ON WHETHER TO PROVIDE ASSISTED- OR INVOLUNTARY INPATIENT CARE, TREATMENT AND REHABILITATION

[Sections 27(9), 28(1) and 33(8) of the Act]

I hereby consent / do not consent (name of head of health establishment)

to the inpatient assisted care, treatment and rehabilitation / involuntary care, treatment and rehabilitation* of

(name of user)

The findings of two mental health care practitioners concur that the user –

- (a) should / should not receive assisted care, treatment and rehabilitation services as an outpatient / inpatient; or (b) must / must not receive involuntary care, treatment and rehabilitation services

I am satisfied / not satisfied, that the restrictions and instructions on the mental health care user's right to movement, privacy and dignity are proportionate to the care, treatment and rehabilitative services contemplated.

The reasons for consenting / not consenting are as follows:

.....
.....
.....

Print initials and surname.....

Signature:

(head of health establishment)

Date:

Place:

* Delete what is not applicable

[Copy to applicant, mental health care user and Review Board]

INVOLUNTARY C, T & R

- User has a mental illness
- Likely to inflict serious harm to self/others
OR necessary to protect financial interests
or reputation of the user
- User is incapable of giving consent
- User is unwilling to receive C, T & R

INVOLUNTARY C, T & R (2)

- Emergency: (MHCA 01) to RB within 24hrs
- Application (MHCA 04) – same as assisted
- 2 MHC practitioners examine (MHCA 05)
- Head of establishment (MHCA 07)
- Admit user within 48 hrs



72-hr assessment

RATIONALE FOR 72-HR ASSESSMENT AT DISTRICT HOSPITALS

- User may recover quickly, especially in cases of substance abuse
- Exclusion of General Medical Condition (e.g. epilepsy, meningitis, head trauma, HIV disease, delirium, etc)
- Users treated closer to their homes
- Avoiding stigma of unnecessary psychiatric hospital admission
- Decentralisation and integration of MHC

72-HR ASSESSMENT

(In all District Hospitals)

- 1 doctor and 1 MHC practitioner must reassess the physical & mental status every 24 hrs for 72 hrs (total 6 reports)
(MHCA 06)
- Must investigate, make a diagnosis and start treatment
- May transfer user to a psychiatric unit if unable to cope due to risk of harm (MHCA 11)
- Head of establishment may discharge user during the 72 hr period if warranted



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72-HOUR ASSESSMENT AND FINDINGS OF MEDICAL PRACTITIONER OR MENTAL HEALTH CARE PRACTITIONER AFTER HEAD OF HEALTH ESTABLISHMENT HAS GRANTED APPLICATION FOR INVOLUNTARY CARE, TREATMENT AND REHABILITATION [Section 34(1) of the Act]

Surname of user

First name(s) of user

Date of birth or estimated age

Gender: Male Female

Occupation Marital status: S M D W

Residential address:

.....
.....
.....
.....

Date of beginning of 72-hour assessment:

Place of assessment:

Category of designated mental health care practitioner for example "nurse", "psychologist" or "medical practitioner":

Physical health status (filled in only by mental health care practitioner qualified to conduct physical examination):

(a) General physical health
.....
.....
.....

(a) Are there signs of injuries? Yes No
(b) Are there signs of communicable diseases? Yes No

If the answer to (b) or (c) is Yes, give further particulars:
.....

Facts concerning the mental condition of the user which were observed on previous occasions (State dates and places):

.....
.....
.....

Mental health status of the user at the time of the present assessment:

.....
.....
.....

Type of illness (provisional diagnosis):

.....
.....
.....

In my opinion the above-mentioned user

Has homicidal tendencies

Yes

| |
|--------------------------|
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

No

| |
|--------------------------|
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

Has suicidal tendencies

Yes

| |
|--------------------------|
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

No

| |
|--------------------------|
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

Is dangerous

Yes

| |
|--------------------------|
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

No

| |
|--------------------------|
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

"If 'No' to all the above-mentioned questions, the following recommendation and reason(s) therefore are as follows:"

Recommendation to head of health establishment – application for assisted care

The user is capable of making an informed decision on the need to receive care, treatment and rehabilitation services: Yes No

The user is suffering from a mental illness / severe or profound intellectual disability, and as a consequence of this requires care, treatment and rehabilitation for their own health and

safety or the health and safety of others

Yes

No

If Yes, this should be on an inpatient or outpatient basis:

Inpatient

Outpatient

Give reasons:

.....
.....

Recommendation to head of health establishment – application for involuntary care

The user is capable of making an informed decision on the need to receive care, treatment and rehabilitation services:

Yes

No

The user is willing to receive care, treatment and rehabilitation services

Yes

No

In my view, the user is likely to inflict serious harm on him / herself or others

Yes

No

In my view, care, treatment and rehabilitation is necessary for the user's financial interests and reputation

Yes

No

The user should receive involuntary care, treatment and rehabilitation

Yes

No

If Yes, should this use receive involuntary outpatient care, treatment and rehabilitation

Yes

No

If No, would you recommend that the user receive assisted care?

Yes

No

Print initials and surname.....

Signature:

(mental health care practitioner / medical practitioner)

Date:



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MHCA 11

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**TRANSFER OF INVOLUNTARY MENTAL HEALTH CARE USER ON
INPATIENT BASIS TO PSYCHIATRIC HOSPITAL
[Section 34(4), (5) or (6) of the Act]**

..... an involuntary
(name and surname of user)
mental health care user on an inpatient basis who was admitted to
..... (name of health establishment)
which is not a psychiatric hospital on (date) must be
transferred to (name of psychiatric hospital).

Print initials and surname
(head of health establishment)

Signature:
(head of health establishment)

Date:

Place:

[Copy to Review Board]

FOLLOWING 72-HR ASSESSMENT

Head of establishment either:

- Discharge the user (MHCA 03)
 - Convert to voluntary user – no form
 - Discharge user as an “involuntary outpatient” (MHCA 09; 10 & 12)
 - Apply to Review Board for further involuntary care, T & R as inpatient (MHCA 08)
- ➔ If the user requires further involuntary care beyond 72 hrs, transfer to a psychiatric hospital (MHCA 11)

CONTINUED INVOLUNTARY

- Review Board must make decision within 30 days on continued C,T & R (MHCA 14)
- Involuntary user or family member or associate may appeal at any point to the Review Board using (MHCA 15)
- Review Board must review at 6 months and then 12 monthly
- If user regains ability to give consent and agrees, then reclassify as voluntary user

MHCA 15



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APPEAL TO REVIEW BOARD AGAINST DECISION OF HEAD OF HEALTH
ESTABLISHMENT ON ASSISTED- OR INVOLUNTARY MENTAL HEALTH
CARE, TREATMENT AND REHABILITATION

[Sections 29(1) and 35(1) of the Act]

Details of user

Surname of user

First name(s) of user

Date of birth or estimated age

Gender: Male Female

Occupation: Marital status: S M D W

Residential address:
.....
.....
.....

Is the user the applicant? Yes No

If No to the above:

Surname of appellant:

First name(s) of appellant:

Residential address:
.....
.....
.....

Grounds for the appeal:

.....
.....
.....
.....
.....
.....

Facts on which the appeal is based:

.....
.....
.....
.....
.....
.....

Signature:

(appellant)

Date:

Place:

ROLE OF THE SAPS

- Section 40 of the Act
 - Apprehending and taking user to MHC establishment → SAPS fill in **MHCA 22**
 - Locating and returning a MHCU who has absconded → request with **MHCA 25**
(NB. **MHCA 26** is a notice of return)
 - Transferring user between MHC estab's
- ***** When requesting assistance from the SAPS, the MHC practitioner must be informed of the estimated level of dangerousness of the user

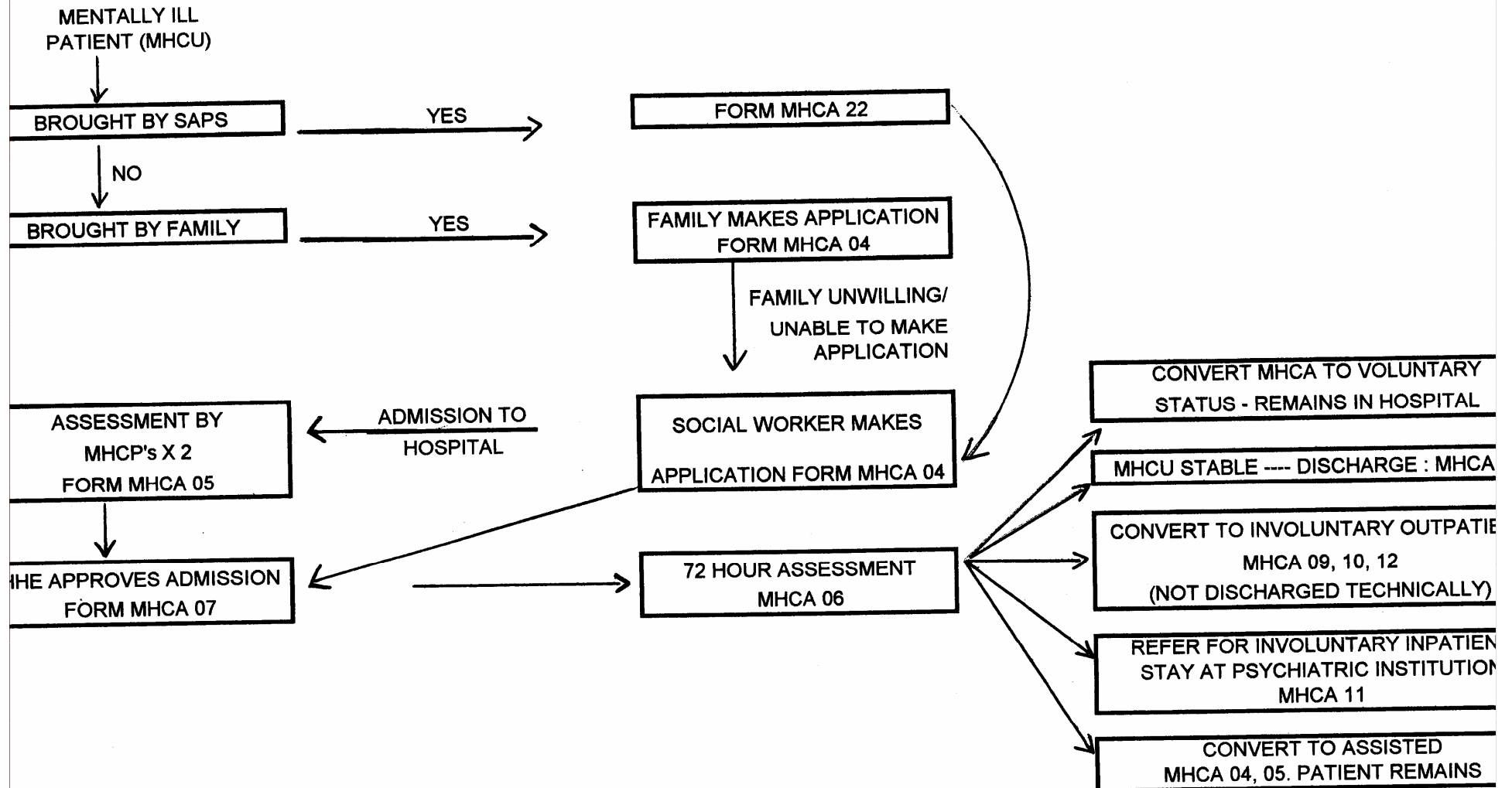
The Mental Health Care Act 2002

Training Guidelines for the South African Police Services

Prepared by the National Department of
Health.
Directorate Mental Health and Substance
Abuse.

February 2003

ALGORITHM FOR A PSYCHIATRIC ADMISSION TO A DISTRICT HOSPITAL



REGULATIONS – OTHER ISSUES

- *Psychosurgery* – only with informed consent, 2 psychiatrists' reports & neuroSx
- *ECT* – only by MP under anaesthetic; no more than alternate days; register kept
(MHCA 47)
- *Sleep therapy* – not permitted
- *Mechanical restraint* – only for short periods if chemical restraint inadequate
→ must observe every 30 minutes & record in register; report to Rev Board

SECLUSION

- Not as a form of punishment
- Only for severely disturbed behaviour
- Must observe every 30 mins, record in notes and in register
- Register goes to Review Board quarterly

ADMISSION PROCEDURES TO TOWN HILL HOSPITAL

- **Must be 18 years of age and older.**
- **Must make prior contact with either doctor in female or male admission unit during office hours; or doctor on call after hours, on weekends or public holidays.**
- **Must have adequate and legible referral letter detailing:**
 - **Results of investigations performed.**
 - **Medications administered.**
 - **Contact details of family members.**
 - **Printed legible name of referral person, who is contactable, if required.**
 - **Current comorbid medical conditions.**

- **Must have appropriate documents, correctly dated:**
 - **Involuntary users: MHCA 01; 04; 2 X 05; 06; 07 & 11.**
 - **Assisted users: MHCA 04; 2 x 05; 07; 11.**
- **Voluntary users:**
 - **Admission to be pre-arranged with ward doctor.**
 - **Admission before 1200 hrs midday on weekdays only.**
- **EMRS staff to ensure user has appropriate documents; and that the receiving doctor has been notified.**
- **OPD Clinic on daily basis available for referral.**
- **Consultation-liaison service with Grey's Hospital available for non-ambulant patients.**

- **Must be accompanied by one month supply of Antiretroviral medication.**
- **Must be accompanied by green TB card and National TB transfer form.**
- **Comorbid General Medical Conditions are to be reasonably well-stabilised.**
- **No detoxification and rehabilitation facilities for substance use disorders are available.**

ADVANTAGES OF THE MHCA

- **Integration of psychiatry into all levels of health care.**
- **MHCU's treated nearer home in a least restrictive environment.**
- **As MHCU's are nearer home, there is easier contact with family which aids with collateral information gathering, psychoeducation and mental health promotion.**
- **No overcrowding in psychiatric institutions.**
- **No premature discharges leading to decreased readmission rates and disappearance of the "revolving door syndrome."**
- **More quality time spent with inpatients promoting psychoeducation and opportunistic health promotion.**
- **Destigmatisation and demarginalisation.**

PROBLEMS ENCOUNTERED WITH THE ACT

- **Abundance of paperwork.**
- **Resistance to change, especially with respect to the 72-Hour assessments in district hospitals.**
- **Resistance shown in various ways:**
 - **No facilities.**
 - **No drugs.**
 - **No experience with psychiatry.**
- **Improper patient care.**

SOLUTIONS

- **Continuous support of district hospitals by psychiatric institutions in terms of regular update meetings.**
- **Ongoing communication between district hospitals and psychiatric institutions.**
- **Creating posts for psychiatry in strategic district hospitals.**
- **Creating an integrative community psychiatric network.**