

MENTAL HEALTH BILL, 2022

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MENTAL HEALTH BILL, 2022

A BILL FOR AN ACT TO REPEAL THE MENTAL HEALTH ACT (CH. 230) AND TO MAKE PROVISION FOR: THE PROMOTION, PROTECTION AND ENFORCEMENT OF THE RIGHTS OF PERSONS DIAGNOSED WITH, OR EXHIBITING SYMPTOMS OF MENTAL ILLNESS; THE CARE AND TREATMENT OF SUCH PERSONS; PROTECTION OF THE RIGHTS OF PERSONS WHO LACK CAPACITY DUE TO A MENTAL ILLNESS; THE ESTABLISHMENT OF A MENTAL HEALTH SERVICES BOARD, ITS COMPOSITION, FUNCTIONS, POWERS AND DUTIES; THE ESTABLISHMENT OF A MENTAL HEALTH REVIEW TRIBUNAL, ITS COMPOSITION, JURISDICTION, AND PROCEEDINGS; AND FOR CONNECTED PURPOSES

Enacted by the Parliament of The Bahamas

PART I – PRELIMINARY AND APPLICATION

1. Short title and commencement.

This Act shall be cited as the Mental Health Act, 2022 and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

2. Application of this Act.

The provisions of this Act shall have effect with respect to —

- (a) the diagnosis of persons exhibiting symptoms of a mental illness;
- (b) the admission of persons diagnosed with, or exhibiting symptoms of, a mental illness;
- (c) the care and treatment of persons diagnosed with, or exhibiting symptoms of, a mental illness;
- (d) the making of decisions for, and the management of the property of, persons with a mental illness who lack capacity;
- (e) the protection of the rights of persons with a mental illness, from discrimination; and
- (f) for other related purposes.

3. Interpretation.

In this Act, unless the context otherwise requires —

- “**advance directive**” means a directive made by a person setting out his will and preference relative to his future mental health care and treatment;
- “**Board**” means the Mental Health Services Board established under section 55;
- “**caregiver**” means any person who provides assistance, care, or support to a person who exhibits symptoms of, or who has been diagnosed with, a mental illness;
- “**child**” means a person under the age of sixteen years;
- “**conservator**” means a person appointed by the Supreme Court to manage the property and financial affairs of a person with a mental illness who lacks capacity;
- “**conservatorship**” is the legal status to which the Supreme Court appoints a person to manage the property and financial affairs of a person with mental illness who lacks capacity;
- “**Department**” means "The Bahamas Department of Correctional Services continued under section 6(2) of the Correctional Services Act, 2014 (No. 8 of 2014);
- “**facilitated admission**” means the admission to a health facility, or a mental health facility under section 21;
- “**guardian**” means a person appointed by the Supreme Court, to have legal responsibility for a child, or person with a mental illness who lacks capacity, to establish and monitor his physical and mental health care and treatment, and generally, to manage his personal affairs;
- “**Government**” means the Government of the Commonwealth of The Bahamas;
- “**health facility**” means any facility providing health care and treatment which is not designated as a mental health facility;
- “**medical practitioner**” means a person registered under the Medical Act 2014 (No. 29 of 2014);
- “**mental health care and treatment**” means any biological or psychological treatment, social care, support, rehabilitative or palliative services, to cure, prevent deterioration, relieve distress and promote the health and well-being of persons diagnosed with, or exhibiting symptoms of, a mental illness;
- “**mental health facility**” means a place in a public or private hospital or health facility, a community facility, or other place designated as a mental health facility which provides facilities for diagnosing mental illness and for the care and treatment of mental illness;
- “**mental health professional**” includes any health professional trained in diagnoses of mental illness and/or in mental health care and treatment, and registered with their respective health regulatory authority or health council;
- “**mental health services**” means services which promote mental health including services for the prevention, assessment, care, treatment, rehabilitation, palliation and any other related support services, programmes and interventions for mental illness;
- “**mental health service provider**” means any person, body, organization, institution or mental health facility providing mental health services to persons diagnosed with mental illness or exhibiting symptoms of a mental illness;
- “**mental illness**” means a diagnosis of mental illness made by a psychiatrist or medical practitioner in accordance with nationally or internationally accepted medical standards, including the latest edition of the International Classification of Diseases of the World Health Organisation, or as may be prescribed, but does not include intellectual disability of itself which is a condition of arrested or incomplete development of the mind characterised by sub-normality of intelligence;
- “**Minister**” means the Minister responsible for Health and Wellness;
- “**Ministry**” means the Ministry of Health and Wellness;

“next of kin” means the closest or nearest living relative through blood or legal relationships;

“nominated representative” means the person appointed or declared under section 8, to be the nominated representative of a child, or person diagnosed with, or exhibiting signs of, a mental illness, to make decisions for that person’s mental health care and treatment;

“person convicted interstate” means a person who –

- (a) is convicted of an offence in another state or territory outside The Bahamas, which is an offence in The Bahamas;
- (b) is given a custodial sentence in a prison or other facility in any state or territory other than The Bahamas in which that sentence is intended to be served; and
- (c) is required to receive compulsory treatment for mental illness in the state or territory in which his sentence is intended to be served;

“person in custody” means—

- (a) a person accused of an offence and detained at a police station or prison awaiting arraignment;
- (b) a person charged with an offence and detained at a prison awaiting trial;
- (c) a person convicted of an offence and detained at a prison awaiting sentence; or
- (d) a person convicted of an offence and serving a custodial sentence at a prison;

“physical restraint” means a form of physical or mechanical restraint that prevents a person having free movement of his limbs;

“psychiatrist” means a person registered as a specialist medical practitioner under the provisions of the Medical Act 2014 (No.29 of 2014);

“psychiatrist in charge” means the psychiatrist responsible for the diagnosis, care and treatment of mental illness in a health or mental health facility, and includes his designated representative, and in relation to the Family Islands, the medical practitioner responsible for the diagnosis, care and treatment of mental illness in his settlement or island;

“relevant state” in relation to a person convicted interstate means the State or Territory in which the person was convicted, and sentenced;

“responsible medical officer” means the medical officer, or that medical officer’s designated representative, having charge of the health facility and responsible for the diagnosis, care and treatment of persons in that health facility;

“seclusion” means the solitary confinement of a person in a room or other physical space where voluntary exit is prevented in order to control the person’s behaviour and to restrict that person’s freedom of movement;

“Tribunal” means the Mental Health Review Tribunal established under section 62;

“voluntary admission” means admission with the consent of the person diagnosed with, or exhibiting signs of, mental illness, into a health facility or mental health facility;

“young person” means a person who has attained the age of sixteen years and is under the age of eighteen years.

4. Objectives of the Act.

The objectives of this Act are —

- (a) to protect the human rights and dignity of each person diagnosed with, or exhibiting symptoms of, a mental illness (whether assessed for mental health care and treatment or not) in accordance with the purpose and principles of the UN Convention on the Rights of Persons with Disabilities;

- (b) to ensure that each person who is diagnosed with, or exhibiting signs of, a mental illness, or is assessed for care and treatment for mental illness, is informed of his rights under this Act;
- (c) to remove discrimination against each person diagnosed with, or exhibiting symptoms of, a mental illness;
- (d) to facilitate the provision of comprehensive mental health care and treatment in each community throughout The Bahamas;
- (e) to provide for the assessment, care and treatment of mental illness in the least restrictive way;
- (f) to enable and support each person diagnosed with, or exhibiting symptoms of, a mental illness —
 - (i) to make or participate in, decisions about his assessment, care and treatment, and recovery; and
 - (ii) to exercise his fundamental rights and freedoms;
- (g) to provide oversight and safeguards in the examination and assessment of each person diagnosed with, or exhibiting symptoms of, a mental illness, and the care and treatment of such person;
- (h) to promote the continuous improvement in, and provide a framework for —
 - (i) the quality of mental health services;
 - (ii) the delivery of mental health services;
 - (iii) the safety of the delivery of mental health services;
 - (iv) the facilities in which mental health services are delivered; and
 - (v) the application of all prescribed management protocols for persons exhibiting symptoms of, or diagnosed with a mental illness;
- (i) to promote the recovery of each person who has a mental illness;
- (j) to establish a Mental Health Review Tribunal;
- (k) to establish a Mental Health Care Board.

5. General principles for the administration of mental health services.

- (1) The diagnosis and the care and treatment of mental illness shall be made —
 - (a) in accordance with the objectives set forth in this Act, any prescribed diagnostic and treatment criteria, and all professional mental health standards;
 - (b) on the basis only of the present mental health status of a person after examination and assessment of that person's mental status;
 - (c) with the participation of the person being assessed.
- (2) Mental health care and treatment following a diagnosis of mental illness shall be —
 - (a) voluntary, whenever possible;
 - (b) person-centred and provided at a level equivalent to that of physical health services;
 - (c) integrated into general health care services at all levels of care, and in all health care programs run by the Minister;
 - (d) provided in a manner which promotes the physical and mental health, safety and welfare of persons diagnosed with, or exhibiting symptoms of mental illness;
 - (e) a seamless continuity between community and hospital-based care and treatment;

- (f) provided in a mental health, or medical facility only in exceptional circumstances, and shall be of as short a duration as possible;
- (g) provided with the aim of —
 - (i) bringing about the best possible therapeutic outcome of preserving life, promoting recovery and full participation in community life;
 - (ii) ensuring full participation of a person so diagnosed, in all decisions about his care and treatment, and recovery;
 - (iii) affording respect for that person's dignity and promoting his autonomy;
 - (iv) meeting the medical and other health needs including recognizing and treating, with the person's consent, any alcohol or other drug addiction;
 - (v) recognizing and responding to the person's individual needs (whether as to culture, language, ability to communicate, age, disability, religion, gender, sexuality, or other matters);
 - (vi) preventing the exploitation and abuse of every person diagnosed with, or exhibiting symptoms of, mental illness.
- (3) The best interest and welfare of children and young persons who are receiving mental health care and treatment shall be the primary consideration of all mental health service providers.
- (4) Mental health services shall be given to children and young persons separately from adults whenever possible and shall be administered safely and in an atmosphere which fosters well-being, caring and concern for their individual needs.
- (5) A caregiver for a person receiving mental health services shall always be recognised, respected, and supported for his role as caregiver, and shall be allowed to be involved, whenever possible, in making decisions about assessment, care, and treatment, and the recovery of a person in his care.
- (6) The principles in this section shall apply to every mental health service provider in the exercise of any function or power under this Act.

PART II – PROMOTION OF MENTAL HEALTH

6. Provision of programs to promote mental health.

- (1) The Minister shall plan, design and implement programs, to —
 - (a) promote mental health and mental well-being;
 - (b) promote the rights of persons diagnosed with, or exhibiting signs of, mental illness;
 - (c) provide mental health and wellness education and awareness to mental health professionals and the community;
 - (d) provide for interventions to reduce the impact of mental illness and the stigma of discrimination associated with mental illness, on individuals, the family and the community;
 - (e) prevent suicide or attempted suicide;
 - (f) address specific mental health issues as required from time to time.
- (2) The Ministers of Education and Employment shall ensure that all plans, designs, and programs established by the Minister under subsection (1) are implemented in the education and the employment sector respectively.
- (3) The Minister shall take measures to —
 - (a) address the human resource requirements of mental health services;

- (b) collaborate with institutions of education and training in developing and implementing programs for increasing the available mental health professionals, and other human resources required;
- (c) deliver mental health interventions where necessary; and
- (d) improve the skills of mental health professionals to better address the needs of persons with mental illness.

PART III- MENTAL HEALTH CARE AND TREATMENT DECISIONS

7. Capacity to make decisions.

- (1) Every person, who is not a child as defined in this Act, is deemed to have capacity to make decisions unless it is established that he lacks such capacity.
- (2) A person is not to be treated as unable to make decisions unless all practicable steps to assist him in making decisions, have been taken without success.
- (3) A person is not to be treated as unable to make decisions merely because he makes an unwise decision.
- (4) An act or decision made under this section, for or on behalf of a person who lacks capacity to make decisions, must be done or made in that person's best interests and respecting his will and preference.
- (5) Before any action is taken on any decision made on behalf of a person who lacks capacity, regard must be had to whether the purpose for which the action is needed can be as effectively achieved in a way that is less restrictive of the person's rights.
- (6) For the purposes of this section, a person lacks capacity to make decisions if at the material time he is unable to make such decisions for himself because of an impairment of, or disturbance in the functioning of the mind or brain, whether the impairment or disturbance is permanent or temporary.
- (7) A person is unable to make decisions, if he is unable to —
 - (a) understand the necessary information conveyed to him for making such decisions;
 - (b) understand the necessary implications of deciding one way or the other;
 - (c) retain that information long enough to be able to make the decisions;
 - (d) use or weigh up that information to make the decisions;
 - (e) appreciate any reasonably foreseeable consequence of a decision or lack of decision; or
 - (f) communicate any such decisions by means of writing, speech, gesture, sign language, visual aids, or in any other manner.
- (8) A person is not to be regarded as unable to understand the information necessary for making decisions if he is able to understand the information given to him in a way that is appropriate to his circumstances, namely, by using simple spoken, or written language, visual aids, sign language or any other means necessary to enable the person to understand the information.
- (9) A person is not to be regarded as unable to make decisions simply because the decisions are perceived by others as inappropriate or unwise, and that person shall be deemed to have capacity to make such decisions, unless a court declares him to be without such capacity.
- (10) Where a person who has not made an advance directive appointing a nominated representative, lacks capacity to make decisions for his mental health care and treatment, his nominated representative

shall be determined in accordance with the provisions of section 8 to make such decisions on his behalf.

8. Nominated and other representatives.

- (1) A person who is not a child, but otherwise has legal capacity to make decisions regarding his mental health care and treatment, may appoint a representative to make such decisions on his behalf either at the time of receiving care and treatment, or by an advance directive.
- (2) A nominated representative appointed by a person at the time of receiving mental health care and treatment, or by an advance directive, shall have authority to make decisions regarding the mental health care and treatment of the person who appointed him, if that person subsequently loses his legal capacity as defined in section 7.
- (3) Where a person lacks legal capacity, but there is no nominated representative appointed pursuant to subsection (1), the following persons in the order of precedence indicated, shall for the purposes of this Act, be deemed to be that person's nominated representative—
 - (a) any person appointed as an attorney by an enduring power of attorney, which includes authority to make mental health care and treatment decisions on a person's behalf;
 - (b) any representative appointed for the protection of the person by the Supreme Court, which appointment includes authority to make mental health care and treatment decisions on his behalf;
 - (c) next of kin;
 - (d) caregiver;
 - (e) a suitable person appointed by the Tribunal under subsection (11);
 - (f) the Director of Social Services, where no other suitable person is available.
- (4) In the case of a child, his parent shall be his nominated representative for the purposes of this Act.
- (5) Where a child has no parent, then the following persons mentioned in the order of precedence indicated shall be deemed to be his nominated representative—
 - (a) his guardian;
 - (b) next of kin;
 - (c) caregiver; or
 - (d) the Director of Social Services, or another suitable person appointed by the Tribunal under subsection (13).
- (6) A person —
 - (a) nominated under subsection (1);
 - (b) deemed to be a nominated representative under subsection (3); or
 - (c) deemed to be a nominated representative of a child under subsection (4) or (5),
 shall be an adult, and shall, except for the persons mentioned in subsection (3)(a) and (b) and subsections (4) and (5)(d), consent in writing to act as a nominated representative.
- (7) A written consent required by subsection (6) shall be signed by –
 - (a) the person nominated;
 - (b) the person nominating; and
 - (c) two witnesses present —
 - (i) at the same time; and

- (ii) at the time the signatures of the nominated representative and the person making the nomination, are made.
- (8) A nominated representative shall competently discharge his duties, and perform the functions, assigned to him under this Act, and shall do so in the best interest, and in accordance with the will and preference (if known) of, the person whom he represents.
- (9) Without prejudice to the generality of subsection (8), a nominated representative of a person shall, on that person's behalf, have the authority to—
 - (a) provide support, and give consent, to mental health professionals making mental health care and treatment decisions;
 - (b) seek information from the mental health professionals concerning his diagnosis, care and treatment;
 - (c) make the application requesting discharge of that person, and be involved in planning his discharge from a health facility or mental health facility;
 - (d) apply for facilitated admission of the person to a health facility or mental health facility.
- (10) A nominated representative shall give his consent in writing to mental health care and treatment, in a non-emergency, to the responsible medical officer, psychiatrist in charge, or other mental health professional, or may do so orally in an emergency and confirm the same in writing thereafter.
- (11) The appointment of a nominated representative may be revoked or altered by the person making the appointment where that person has capacity to do so.
- (12) In the case of the appointment of a nominated representative or a person deemed to be the nominated representative under subsection (3)(c) or (d) of a person who is not a child, the responsible medical officer or psychiatrist in charge of the mental health care and treatment of that person, may apply to the Tribunal to revoke such an appointment, if either is of the opinion that to do so, is in the best interests of the person where his will and preference is not known, and the Tribunal shall appoint another person as nominated representative .
- (13) In the case of a child, where a responsible medical officer, psychiatrist in charge, or other mental health professional, acting in the best interests of the child, reports to the Tribunal that the child's parent, or nominated representative under subsection (5) is not acting in the best interests of the child, or is otherwise unfit to represent the child's interest, the Tribunal shall on evidence presented, appoint any suitable person willing to act as the child's nominated representative, and in the absence of any such person being available, may appoint the Director of Social Services as the nominated representative of the child.

9. Best interests of a child or other person without capacity

- (1) In deciding for the purposes of sections 7 and 8, what is in a person's best interests, a parent of a child, or the nominated representative making the decision for a child, or for an adult who lacks capacity, must consider all the relevant circumstances and, take the following steps —
 - (a) consider—
 - (i) whether it is likely that the person with mental illness will at some time have capacity in relation to the matter in question; and
 - (ii) if it appears likely that the person will, when that is likely to be;
 - (iii) so far as is reasonably ascertainable —
 - (aa) the person's past and present wishes and feelings (and in particular, any relevant written statement made by him when he had capacity);

- (bb) the beliefs and values likely to influence his decision if he had capacity; and
 - (cc) any other factors that person would be likely to consider if he were able to do so;
- (b) take into account, if it is practicable and appropriate to consult them, the views of—
 - (i) any person named by the person as someone to be consulted on the matter in question, or on matters of that kind;
 - (ii) anyone engaged in caring for the person or has an interest in his welfare;
 - (iii) any person mentioned in section 8, where appropriate.
- (2) A person who makes decisions on behalf of a person with a mental illness who lacks capacity, shall so far as it is reasonably practicable, encourage and permit the person to participate in any decision affecting him and to be made on his behalf, as fully as possible, and to the extent that he understands the nature of the decisions.
- (3) Where the decision relates to life-sustaining care and treatment, the person making the decision shall, in considering whether the care or treatment is in the best interest of the person, be motivated only by a desire to bring about improvement in that person's health.

10. Diagnosis of a mental illness.

- (1) Mental illness shall be diagnosed in accordance with nationally or internationally accepted medical standards, including the standards contained in the latest edition of the International Classification of Diseases of the World Health Organization, or in accordance with the other standards as may be prescribed.
- (2) A mental illness shall only be diagnosed by a psychiatrist or other medical practitioner.
- (3) Any past treatment or hospitalization in a mental health facility shall not in and of itself, justify a present or future diagnosis of mental illness.
- (4) The diagnosis of a mental illness under this Act, shall not be taken to mean that the person is suffering from insanity or from an abnormality of the mind for the purposes of section 92 or section 305 of the Penal Code (Ch.84), unless that finding is made by a court.

PART IV – RIGHTS OF PERSONS WITH MENTAL ILLNESS

11. Rights of persons with a mental illness.

- (1) Every person diagnosed with, or exhibiting symptoms of, a mental illness has the same constitutionally protected fundamental rights and freedoms afforded to others and protected by the Constitution subject only to the exceptions and limitations in the Constitution.
- (2) In addition to his constitutional rights and freedoms, a person referred to in subsection (1), has the right to—
 - (a) equal enjoyment of the highest attainable standards of physical and mental health;
 - (b) his inherent dignity, worth and privacy;
 - (c) subject to sections 19 and 21, give or withhold consent to—
 - (i) admission to a facility or mental health facility;
 - (ii) mental health care and treatment;
 - (iii) other mental health services;
 - (d) participate in all decisions relating to his mental health care and treatment;

- (e) respect for his will and preferences;
- (f) respect for his individual social, economic and cultural background, family circumstances, language, ability to communicate, age, disability, religion or other matters pertaining thereto;
- (g) respect for his sexual orientation, gender, or gender identity;
- (h) participate in social life equally with others;
- (i) be consulted, contribute to, and participate in, the planning, design, implementation, monitoring and review of mental health policy and mental health services.

12. Right to access mental health and medical services.

- (1) Every person diagnosed with, or exhibiting symptoms of, a mental illness shall have the right to access the following mental health services run or funded by the Ministry —
 - (a) hospital and community based mental health services;
 - (b) mental health services provided in the home environment;
 - (c) comprehensive and appropriate medical services.
- (2) Mental health services shall be —
 - (a) affordable;
 - (b) of the standard prescribed by this Act;
 - (c) accessible by persons throughout The Bahamas;
 - (d) provided in a manner acceptable to a person seeking mental health services, his family, and caregivers; and
 - (e) of a standard which improves the capacity of a person diagnosed with, or exhibiting symptoms of, a mental illness to develop his full potential, and which facilitates his integration into community life.
- (3) Where no mental health services are available in a settlement or district, a person seeking mental health services shall be transported at the cost of the Ministry, to a settlement or district where such services are available.
- (4) Where no mental health services run or funded by the Ministry, are available in a settlement or district, the cost of private mental health services which are available in that settlement or district, shall be borne by the Ministry.

13. Right to live in community.

Subject to admission to a mental health facility by the order of a court in the interest of that person's health, or of the public's safety, or to a voluntary or facilitated admission to a mental health facility, no person diagnosed with, or exhibiting symptoms of, a mental illness, shall be denied the right to live in, and to be a part of, the community.

14. Right not to be discriminated against in accessing mental health services.

A person diagnosed with, or exhibiting symptoms of, a mental illness, shall not be discriminated against on the ground of his mental health status and shall be entitled to mental health care and treatment of a standard equivalent to the health care and treatment afforded to other health care users.

15. Right to information.

- (1) Subject to subsection (2), a mental health professional shall, before initiating or administering any mental health care or treatment, inform the person requiring mental health care and treatment of his rights in a language he is able to understand.

- (2) Where such a person does not understand the language of the mental health professional, the services of an interpreter shall be secured, provided that, it does not delay the initiation or administration of mental health treatment to the detriment of that person.
- (3) Where a person is admitted to a mental health facility and is judged by a mental health professional not to be able to understand the admission information in accordance with section 7, that person's nominated representative as determined in accordance with section 8, shall immediately be given the information and shall make decisions as to the person's admission, care and treatment, subject to the provisions of section 9.
- (4) The nominated representative shall be informed when the person for whom he acts has recovered sufficiently to understand the nature of his mental status and the mental health care and treatment administered, and that person shall from that point, be informed of the care and treatment prescribed for him, and his decisions and instructions relative thereto, shall be accepted for the further conduct of his mental health care and treatment.

16. Right to communication.

- (1) Subject to the exigencies of the health or mental health facility, a person admitted to a health or mental health facility shall have the right to have or receive communication with any person by visits, phone calls, or mail by electronic media, or post.
- (2) Subject to subsection (4), a person admitted may refuse communication with anyone.
- (3) Where any person admitted, informs the psychiatrist in charge, or other responsible medical officer, of his desire not to have contact, or receive communication, with any person, he shall, subject to subsection (4), restrict such contact or communication.
- (4) Nothing in subsection (2) or (3) shall apply, in any circumstances, to communication from—
 - (a) a judge or officer of a court;
 - (b) the Mental Health Services Board or Mental Health Review Tribunal;
 - (c) the nominated representative of the person admitted;
 - (d) the psychiatrist in charge, or other responsible medical officer in charge of that person's mental health care and treatment.

17. Right of access to health records.

- (1) A person who is diagnosed with a mental illness, shall have the right to access, examine, or obtain a copy of his mental health record, on payment of the prescribed fee.
- (2) The psychiatrist, the responsible medical officer, or the mental health professional in charge of a person's mental health record, may withhold the record, or any information in that record, if disclosure of the record or information, would result in —
 - (a) serious mental harm to the person;
 - (b) likelihood of such harm to others.
- (3) When any mental health record or any information contained therein, is withheld, the psychiatrist in charge, mental health professional, or responsible medical officer, shall inform the person of his right to make an application to the Mental Health Review Tribunal for release of the record, or of the requested information.

PART V – CARE AND TREATMENT OF MENTAL ILLNESS

18. Care and Treatment of a person diagnosed with, or exhibiting symptoms of, mental illness.

- (1) A person diagnosed with, or exhibiting symptoms of, a mental illness shall, as far as possible, be cared for and treated without admission to a health facility or a mental health facility, where mental health care and treatment in such facility is not indicated, and the person can be appropriately treated without being admitted.
- (2) Subject to subsection (3), where the condition of a person diagnosed with, or exhibiting symptoms of, a mental illness, requires admission for care and treatment in a health facility or mental health facility, his admission shall be voluntary.
- (3) Notwithstanding subsection (2), where a person's condition requires admission for mental health care and treatment and that person lacks capacity to make such decisions for himself, he shall be admitted and shall receive such care and treatment on a facilitated admission in a health facility or mental health facility.

19. Voluntary admission of a person diagnosed with, or suspected of having, a mental illness.

- (1) Every admission to a health facility, or a mental health facility, shall, as far as possible, be voluntary, except where conditions for a facilitated admission as specified in section 21 exist.
- (2) Any person, who is not a child, who —
 - (a) has been diagnosed with a mental illness; or
 - (b) exhibits symptoms of a mental illness,may make a request to be examined and assessed, or further examined or assessed by a psychiatrist or medical practitioner, and if, after assessment and examination, he needs further mental health care and treatment, or is diagnosed with a mental illness and requires mental health care and treatment, he may be cared for and treated at home, or in a health facility or mental health facility.
- (3) On an examination and assessment under subsection (2), a psychiatrist or medical practitioner shall make a report to the person responsible for admissions to the health facility, or the mental health facility.
- (4) The person responsible for admissions shall make a voluntary admission of a person to a health facility or mental health facility for mental health care and treatment, if he is satisfied that the person —
 - (a) has been diagnosed with a mental illness of a severity requiring such admission;
 - (b) is likely to benefit from that admission;
 - (c) has the capacity to understand the nature and purpose of the admission; and
 - (d) made the decision without support, or required minimal support from others, and has done so of his own free will.
- (5) A person who is voluntarily admitted under this section —
 - (a) shall be treated only with his informed consent; and
 - (b) has a right to discharge himself from the health facility or mental health facility, unless before discharge, the psychiatrist in charge, or the responsible medical officer, is of the opinion that the person meets the criteria for a facilitated admission under section 21.

- (6) Where the psychiatrist in charge, or the responsible medical officer, is of the opinion that the voluntarily admitted person meets the criteria for a facilitated admission under section 21, his self-discharge may be prevented for a period not exceeding 24 hours to allow for further examination and assessment as required under subsection (2).

20. Discharge report.

Where the person voluntarily admitted, does not self-discharge or meet the criteria for facilitated admission under section 21, the psychiatrist in charge of a mental health facility, or the responsible medical officer of a health facility, shall, in the prescribed form, issue a discharge report to the voluntarily admitted person with mental illness.

21. Facilitated admission of a person diagnosed with, or suspected of having, a mental illness.

- (1) Any person who is diagnosed with a mental illness, or exhibits symptoms of mental illness, who lacks capacity to make mental health care decisions for himself, may be admitted to a health facility, or to a mental health facility, as a facilitated admission.
- (2) A facilitated admission shall be made under subsection (1) —
- (a) on application by the person's nominated representative;
 - (b) on certification of a psychiatrist or medical practitioner and one other mental health professional after an independent examination and assessment, either on the day of admission or within seven days prior to admission, and on statements of relevant persons, that the person has recently —
 - (i) threatened or attempted to cause harm to himself;
 - (ii) behaved violently toward another person or has caused another person to fear physical harm from him; or
 - (iii) shown an inability to care for himself to a degree which places him at risk of harm to himself;
 - (c) on certification by a psychiatrist or other mental health professional after considering an advance directive, if any, that a facilitated admission in a health facility or a mental health facility is warranted by the severity of the illness and is the least restrictive option in the circumstances; and
 - (d) where the person is not eligible to receive care and treatment as a voluntarily admitted person under section 19.

22. Care and Treatment on facilitated admission.

- (1) Subject to the provisions of this section, the facilitated admission of a person under section 21, is limited to a period of fourteen days.
- (2) On a facilitated admission, the person admitted, shall receive such care and treatment as are prescribed by the mental health professional involved in his admission, and with the consent of the nominated representative, or in accordance with an advance directive, if any.
- (3) Where the responsible medical officer of the health facility, or the psychiatrist in charge of the mental health facility, concludes on or before the expiry of the fourteen day period referred to in subsection (1), and after consultation with the patient's mental health professionals, that the person admitted, no longer meets the criteria for such admission, he may discharge that person, or may continue his admission as a voluntary admission under section 19.

- (4) Where, on the expiry of the fourteen-day period specified in subsection (1), the psychiatrist in charge of the mental health facility is of the opinion that the criterion for facilitated admission continues, he shall apply to the Tribunal for the continuance of that person's facilitated admission.
- (5) The Tribunal shall, on an application under subsection (4) —
 - (a) hold a hearing;
 - (b) ensure that the person, or his nominated representative where he lacks capacity, or other representative, attends the hearing;
 - (c) hear evidence from the relevant mental health professionals; and
 - (d) make an order either to discharge the person, or to extend his facilitated admission.
- (6) Any order of the Tribunal extending facilitated admission shall be, in the first instance, for a period of ninety days and any subsequent extensions, shall be for a period of up to one hundred and twenty days on each extension.
- (7) The psychiatrist in charge, or a responsible medical officer, may, notwithstanding an extension by the Tribunal, discharge the person, if of the opinion that during the extended period, the person with a mental illness no longer meets the criteria for facilitated admission and shall inform the Tribunal accordingly.

23. Advance directive.

- (1) For the purposes of section 21(2)(c), an advance directive is one which sets out a person's will and preference for his future mental health care and treatment.
- (2) The directive must have been made before the onset of the severe symptoms specified in section 21(2)(b), and must be —
 - (a) in writing;
 - (b) signed and dated by the person making the advance directive;
 - (c) witnessed by another person; and
 - (d) include a statement signed by the witness that he was present and observed the person making the advance directive, sign it on the date indicated.
- (3) An advance directive is —
 - (a) effective from the time it is made until it is revoked; and
 - (b) considered revoked if the person who made the advance directive —
 - (i) makes a new advance directive; or
 - (ii) revokes the advance directive in accordance with subsection (4).
- (4) A revocation of an advance directive under this section must —
 - (a) be in writing and state that the advance direction made under subsection (1) is revoked;
 - (b) be signed and dated by the person who revoked it;
 - (c) be witnessed by another person; and
 - (d) include a statement signed by the witness that he was present and observed the person revoking the advance directive sign the revocation.
- (5) An advance directive must not be amended after it is made.
- (6) A person who changes his mind about his will and preference expressed in an advance directive regarding his future care and treatment and who wishes to record his new will and preference, must make a new advance directive in accordance with this section.

24. Admission of a person with a mental illness under a court order.

- (1) A judge or magistrate may grant an order authorizing the admission of a person diagnosed with, or exhibiting symptoms of, mental illness into a health facility or mental health facility, and such order shall be sufficient authority for the lawful admission of the person for assessment, diagnosis and mental health care and treatment.
- (2) The admission of a person to a health facility or mental health facility under subsection (1), will be regarded as a facilitated admission, and the Director of Social Services, the person's guardian, attorney, or conservator shall act as guardian ad litem for the person in any proceedings before the court in connection with an order granted under this section.
- (3) Where any person is admitted pursuant to subsection (1), the responsible medical officer of the health facility, or the psychiatrist in charge of the mental health facility, shall, at a frequency decided by the appropriate court, but not less than once in every six months, make a report regarding the mental and physical condition of such person to the Director of Social Services, his guardian, attorney, conservator, nominated representative (if any), caregiver, next of kin, family member or other representative, and the Tribunal.
- (4) On receipt of a report referred to in subsection (3), the Tribunal shall hold a hearing at which the Director and the attorney, guardian, conservator, or other legal representative (if any) of the person admitted, shall attend, and at which the person admitted, his nominated representative, next of kin, or family member, may attend, and the Tribunal shall hear evidence from the mental health professionals concerning the mental condition and the prognosis of the condition of the person.
- (5) After the hearing referred to in subsection (4), the Tribunal shall make recommendations to the court which shall make a further order either continuing the inpatient mental health care and treatment or releasing the admitted person from the health facility or mental health facility.
- (6) The person admitted pursuant to an order under subsection (1), may not be discharged from the health or mental health facility except by order of the court.

25. Leave of absence to person admitted as facilitated admission.

The psychiatrist in charge of the mental health facility, or the responsible medical officer in charge of a health facility may —

- (a) grant to a person admitted as a facilitated admission, a leave of absence for a period not exceeding seven days at a time;
- (b) revoke a leave of absence granted under paragraph (a) if satisfied it is necessary for the improvement of, or to prevent deterioration in, the mental health of the person granted a leave of absence.

26. Absence without leave of person admitted as facilitated admission.

- (1) A person admitted as a facilitated admission under section 21, who —
 - (a) is allowed to leave the health facility or mental facility under a leave of absence granted in accordance with section 25, and fails to return; or
 - (b) leaves the health facility or mental health facility without leave and fails to return, shall be reported to the police and to the person who made the application for his admission to the facility.
- (2) The police shall have the authority to search for, detain and convey the person to the health facility or mental health facility from which he absented himself.

27. Admission of a child.

- (1) The admission of any child diagnosed with, or exhibiting symptoms of, a mental illness shall be made on application of his parent, or nominated representative as defined in section 8, to the psychiatrist in charge, or responsible medical officer.
- (2) The procedure for voluntary or facilitated admission under section 19 or 21 shall apply to the admission of a child.
- (3) A child admitted to a health facility or to a mental health facility, shall be accommodated separately from adults.
- (4) The child's parent or nominated representative shall stay with the child in the health facility, or mental health facility, where practicable, for the period of his mental health care and treatment therein.
- (5) Every child shall be treated only with the consent of his parent or nominated representative.

28. Care and Treatment at home of a person with a mental illness.

- (1) Where a child, or other person who lacks capacity, is at home and is diagnosed with, or exhibiting symptoms of a mental illness, of such severity that in the opinion of the nominated representative he requires care and treatment in a health facility or mental health facility, the nominated representative may make a request to the nearest health facility, mental health facility, or private mental health professional, for an assessment at home.
- (2) Where a person is at home and is diagnosed with, or exhibiting symptoms of, a mental illness, and that person has capacity to make such decisions for himself, but is not willing to make the decision, the person's nominated representative (if any), next of kin, or caregiver, may make a request to the nearest health facility, mental health facility, or private mental health professional, for an assessment at home.
- (3) Where a request is received under subsection (1) or (2), a mental health professional from a health facility or mental health facility, or a private mental health professional shall visit the home of the person so diagnosed or exhibiting symptoms of a mental illness and shall assess his condition.
- (4) If after the assessment, the mental health professional is of the opinion that the person has, or may have, a mental illness and is neglecting himself to such an extent as to put his life, or the lives of others, at risk, the mental health professional may request the assistance of the emergency services, or a police officer for assistance in moving the person to the nearest health facility or mental health facility.
- (5) The emergency services, or a police officer to whom a request is made under subsection (4), shall give all necessary assistance to the mental health professional for moving the person from his home to the nearest health facility or mental health facility.

29. Person with mental illness loitering in a public place.

A police officer shall—

- (a) on being informed by a member of the public that a person loitering in a public place appears to be exhibiting symptoms of a mental illness;
- (b) on observing that person loitering in a public place, is satisfied that the person appears to have a mental illness; and
- (c) convey such person to the nearest health facility or mental health facility for examination and assessment.

30. Emergency treatment.

- (1) Notwithstanding other provisions of this Act, care and treatment for mental illness may be provided by any medical practitioner or other mental health professional to a person either at a health facility, mental health facility, or in the community with or without the consent of the person if it is immediately necessary to prevent —
 - (a) death or irreversible harm to the person; or
 - (b) serious harm to himself or others.
- (2) Any emergency treatment given under subsection (1), includes transportation of the person with mental illness to a health facility, or mental health facility.
- (3) Any emergency treatment under this section shall be limited to seventy-two hours, after which the person must be reassessed.

31. Seclusion and Physical restraint.

- (1) A person diagnosed with, or exhibiting symptoms of, mental illness, shall not be subjected to seclusion or physical restraint, unless it is the only means available to prevent immediate or imminent harm to himself, or to others and only after all other less restrictive options have failed.
- (2) Any seclusion or physical restraint of a person diagnosed with, or exhibiting symptoms of, mental illness, shall, where there is no immediate or imminent harm to himself or others, be —
 - (a) carried out in a health facility, or mental health facility; and
 - (b) authorised by a psychiatrist, or other medical practitioner.
- (3) Whenever seclusion or physical restraint is used, it shall be —
 - (a) used sparingly and not as a means of punishment or for convenience; and
 - (b) recorded in a data base with the duration and reasons recorded therein and access to that record shall be made available to the Board on a regular basis.
- (4) Physical restraint shall be restricted, in each instance, to a maximum period of three hours, which may be renewed for a period not exceeding a further three hours, following an inspection by a mental health professional and an assessment of the health and safety of the person restrained.
- (5) Seclusion shall be restricted, in each instance, to a maximum period of three hours, which may be renewed for further periods of three hours in each instance, but not cumulatively exceeding, twelve hours and only on the advice of a mental health professional following an inspection and assessment of the health and safety of the person secluded.
- (7) The nominated representative of a person shall be immediately informed when that person is secluded or physically restrained.

PART VI – SPECIALIST AND EXPERIMENTAL CARE AND TREATMENT

32. Electro-convulsive therapy or psychosurgery.

Any specialist treatment such as electro-convulsive therapy or psychosurgery shall be —

- (a) provided only in accordance with written instructions by a psychiatrist;
- (b) administered, applied, or performed under the supervision of a psychiatrist; and
- (c) provided only with the consent of the person for whom such specialist treatment is directed in the written instructions of the psychiatrist, or if that person lacks capacity to consent, with the consent of his nominated representative.

33. Experimental drugs developed from clinical or experimental research.

Experimental drugs developed from clinical or experimental research conducted in accordance with the Medical Act, 2014 (No. 29 of 2014), may be administered as part of special treatments to a person under the supervision of a psychiatrist with the consent of that person, or if he lacks capacity, with the consent of his nominated representative.

PART VII - MENTAL HEALTH CARE AND TREATMENT OF PERSONS IN CUSTODY WITH MENTAL ILLNESS

34. A person in custody with a mental illness.

- (1) Where a person in custody who has been is diagnosed with, or is exhibiting symptoms of, a mental illness, the officer in charge of a prison or other place where he is detained, shall make an application within forty-eight hours of his becoming aware, to the psychiatrist in charge of a mental health facility, or to a responsible medical officer of a health facility, for his transfer to the facility for examination and assessment by a psychiatrist; or where a psychiatrist is not available, by a medical practitioner or other mental health professional.
- (2) On the directions of the psychiatrist in charge of a mental health facility, or a responsible medical officer of a health facility, a person transferred to the facility under subsection (1), shall be examined and assessed by a psychiatrist, medical practitioner, or other mental health professional, who may recommend —
 - (a) outpatient care and treatment and return of the person to prison or other place of detention; or
 - (b) admission to the mental health facility or health facility as a voluntary admission, or a facilitated admission, for care and treatment until his mental health is improved and return to prison or place of detention.
- (3) Where a person is admitted to a mental health facility or health facility under subsection (2), the time spent by him at the facility, shall be treated as time spent in prison or detention.
- (4) Where a person serving a custodial sentence is discharged after treatment in a mental health facility or health facility, he shall be sent back to prison for continuation of his sentence or for discharge if his sentence has been served.
- (5) Where a person in detention is discharged after treatment in a health facility or mental health facility, he shall be sent back to his place of detention for continuation of his detention, or for discharge if his period of detention has elapsed.

35. Designation of health facility for persons in custody with mental illness.

- (1) The Minister may, in consultation with the Minister responsible for Correctional Services, designate a health facility for admission of persons in custody with mental illness, or persons in custody exhibiting symptoms of mental illness, for examination, assessment, diagnosis, care and treatment, and for rehabilitation and palliation services.
- (2) Where a designation is made under subsection (1), all mental health services for such persons shall be provided in a designated mental health facility or health facility.

36. Admission to a mental health facility by Court order, of a person accused of a crime.

- (1) A judge or magistrate may issue an order for a person accused of a crime to be admitted to a mental health facility, or health facility for —
 - (a) a psychiatric examination and assessment of his mental state to determine his fitness to plead;

- (b) a psychiatric forensic examination or assessment of his mental state to determine his criminal accountability; or
 - (c) mental health care and treatment.
- (2) Where an order is made under subsection (1), the registrar or the clerk of the court shall send a copy of that order to the mental health facility or health facility, indicating the reason for the admission of the accused person.
 - (3) Where a psychiatric examination and assessment is ordered by the court pursuant to subsection (1) (a) or (b), a mental health facility or health facility shall examine the accused person and report its findings to the court within twenty-one days of the date of the order, and the court shall ensure that the parties to the criminal matter are given access to the report.
 - (4) Where the report recommends the admission of an accused person to a mental health facility or health facility for mental health care and treatment under subsection (1)(c), the court shall order his admission for that purpose, and the facility shall provide such care and treatment to him within forty-eight hours of his admission, and shall make a report to the court on his condition within three months after his admission and every three months thereafter until he is well enough to be discharged.
 - (5) Before the discharge of the accused person admitted to a mental health facility or health facility for care and treatment under subsection (4), the court shall decide whether the accused person should be discharged on bail or kept in detention pending his trial.

37. Report on Assessment of the mental health status of a person in custody.

Where a person in custody is transferred under section 34 for an assessment of his mental health status, the person conducting the examination and assessment, shall submit a written report to the officer-in-charge of the Department, within fourteen days of the examination and assessment, and the report shall specify —

- (a) the mental health status of the person; and
- (b) the plan that person’s care and treatment, support, rehabilitation, or palliation, if required.

38. Treatment in the Department, of a person in custody diagnosed with a mental illness.

Where a psychiatrist, medical practitioner or mental health care professional conducts an examination and assessment referred to in section 34, and reports to the officer in charge of the Department that the mental illness of the person is of a nature that may be appropriately cared for, treated, rehabilitated or palliated, in the Department, the officer-in-charge shall take the necessary steps to ensure that the required levels of care and treatment, rehabilitation and palliation are provided to that person.

39. Admission on referral of a person in custody with a mental illness to a mental health facility or health facility.

Where conducting the examination and assessment referred to in section 34, finds that the mental illness of a person in custody, is of a nature that requires him to be admitted for care and treatment in a mental health facility, or health facility and makes a report to that effect, the officer-in-charge of the Department shall, within forty-eight hours of receipt of the report, cause the person in custody to be transferred to a mental health facility or a health facility.

40. Review of the mental health status of a person in custody admitted for mental health treatment.

- (1) The medical officer in charge of a mental health facility or of a health facility in which a person in custody diagnosed with a mental illness is admitted, shall cause the mental health status of such

person to be reviewed, and shall prepare and submit a report to the officer-in-charge at the Department.

- (2) The report shall —
 - (a) specify the mental health status of the person in custody diagnosed with a mental illness;
 - (b) set out a plan for the person in custody, for—
 - (i) further care and treatment, and rehabilitation;
 - (ii) the provision of palliation services; and
 - (iii) the discharge from the mental health facility or health facility.
- (3) Where the person is serving a lengthy custodial sentence and is admitted for mental health care treatment long term, his review shall be conducted every six months by a psychiatrist and a report of his findings including the plan required by subsection (2)(b), submitted to the Minister responsible for Correctional Services.

41. Referral of mentally ill person in custody for specialist mental health care.

Where a mental health professional is of the opinion that it would be for the benefit of a person in custody with a mental illness admitted to a mental health facility or health facility, to obtain more specialist mental health care and treatment in another facility, he shall, with the consent of the officer in charge of the Department, transfer the person to that facility.

42. Discharge procedure of person in custody diagnosed with mental illness.

- (1) Where the psychiatrist in charge of a mental health facility, or the responsible medical officer of a health facility has established that the person in custody diagnosed with a mental illness and admitted to the facility has fully recovered such that he no longer requires mental health services, or if the person in custody is not fully recovered, that such services can be given at the Department, the psychiatrist or responsible medical officer, shall prepare and submit a discharge report for the person in custody to the officer-in-charge of the Department.
- (2) On receipt of the report specified in subsection (1), the officer-in-charge of the Department shall receive the person in custody into the Department, and if not fully recovered, provide mental health care and treatment, or other mental health services for that person.

43. Notification to authorities of mentally ill person in custody who absconds.

Where a person in custody with mental illness admitted to a mental health facility or health facility absconds from that facility, the psychiatrist in charge, or the responsible medical officer, shall immediately notify the police by telephone, followed by a written complaint.

PART VIII – PROTECTION OF PERSONS WITH MENTAL ILLNESS

44. Access to person diagnosed with, or exhibiting symptoms of, mental illness.

- (1) Where a person diagnosed with a mental illness or exhibiting symptoms of a mental illness is admitted to a health facility or mental health facility, his nominated representative, caregiver, next of kin, family member, attorney, guardian, or conservator, shall have the right to —
 - (a) visit him in a health facility or in a mental health facility;
 - (b) provide feedback to the facility on the standard of care and treatment given by them;

- (c) make complaints about any deficiencies in other mental health services delivered to the person;
 - (d) the support of the health facility or mental health facility to enable him to effectively perform his role as protector; and
 - (e) public social assistance from the Department of Social Services on an equal basis to that provided to the representatives of a person with a physical illness.
- (2) Every person referred to in subsection (1), should be involved in the mental health care and treatment of the person admitted, and should be encouraged to be a part of the process of setting goals for his care and treatment, and in the planning of his care and treatment after discharge from the health facility or mental health facility.
 - (3) The access and involvement of a person's nominated representative, caregiver, next of kin, or family member, in his mental health care and treatment shall, in the case of a voluntarily admitted person, be with his consent, and in the case of a person under facilitated admission, be with the consent of the person who made the application for admission under section 21(2).

45. Appointment of attorney by enduring power of attorney.

- (1) Where a person specifically gives to another person, an enduring power of attorney created and executed in accordance with the Powers of Attorney Act (Ch.81) to handle his property or personal affairs, such power of attorney shall be valid provided the person who gives the power, has mental capacity at the time.
- (2) A power of attorney granted under subsection (1), endures, and is not terminated by reason only of the subsequent mental incapacity of the person giving the power of attorney (donor), if the power of attorney —
 - (a) provides that the authority is to continue notwithstanding any mental incapacity of the donor of the power of attorney;
 - (b) is signed by the donor in the presence of a witness, other than the person being appointed, or his spouse.
- (3) An enduring power of attorney may, pursuant to section 4(2) of the Powers of Attorney Act, provide that the power takes effect on the occurrence of the donor's mental incapacity.

PART IX – POWERS OF COURT .

46. Jurisdiction of the Supreme Court over persons who lack mental capacity.

- (1) A judge of the Supreme Court shall have jurisdiction to make decisions for a person diagnosed with, or exhibiting symptoms of, a mental illness who, because of his condition, lacks mental capacity, whether due to temporary loss due to sudden illness, or due to onset of long term mental illness, to the extent that he cannot make any personal and medical decisions, decisions for managing or administering his property, or managing his personal financial affairs, even with the support and assistance of others.
- (2) An application under subsection (1), may be made by any person who is authorised to do so pursuant to section 47 or 48, or by any person authorised in that behalf by the Minister.
- (3) The court's jurisdiction shall be exercised in accordance with rules of court made pursuant to section 76 of the Supreme Court Act (Ch. 53).
- (4) Any order made pursuant to the jurisdiction of the court under this section shall continue unless or until revoked by a subsequent order of the court.

47. Guardianship of persons with mental illness.

- (1) A person referred to in section 46, may be received into guardianship by order of the Supreme Court, on application made by his nominated representative, caregiver, next of kin, family member, or another interested person.
- (2) An application under subsection (1), shall be supported by a written recommendation of each of a psychiatrist and one other medical practitioner, and shall include a statement in each case that in the opinion of the psychiatrist and medical practitioner, the person—
 - (a) is suffering from a mental illness of a nature or degree which renders him unable to make personal decisions for himself;
 - (b) cannot meet his own needs for medical care, food, clothing, shelter and safety; and
 - (c) warrants guardianship in the interests of his health and safety, or for the safety of other persons.
- (3) An order of guardianship made under this section shall —
 - (a) come into effect on the date of the order of the court;
 - (b) confer upon the person named therein as guardian-
 - (i) full physical custody of the person named in the order;
 - (ii) the power to make personal and medical decisions for that person;
 - (iii) all other powers of a father as would be exercisable by him if the person was a child, including everyday care and activities, providing shelter, nourishment, protection, and education (if possible);
 - (c) provide for the appointment of a medical practitioner to act as a medical attendant for the person received into guardianship;
 - (d) state whether guardianship is of limited or indefinite duration.

48. Appointment by court of Conservator for persons with mental illness.

- (1) Where a person has not made an enduring power of attorney and lacks mental capacity as defined in section 46, an application may be made to the Supreme Court by his nominated representative, caregiver, next of kin, other family member, friend or other interested party, for a Conservatorship Order (hereinafter referred to in this section as “the Order”) which may be granted to him as a conservator empowering him to manage and administer that person’s property and financial affairs in accordance with the provisions of section 50.
- (2) A conservator appointed under this section, shall be under the supervision of the Supreme Court and shall be required to—
 - (a) enter into a bond with the Registrar of the Supreme Court, in the amount prescribed for the faithful performance of his powers and duties pursuant to the Order;
 - (b) submit a report to the Supreme Court at such intervals as are directed by the judge, containing details of the exercise of his powers and duties in the administration of the person’s affairs under the Order.
- (3) A conservator who does not exercise his powers or perform his duties as required by the Order, shall be liable to the person for whom he is a conservator, or his estate, in the amount bonded for breach of his obligation to faithfully perform his power and duties under the Order.
- (4) A conservatorship granted under subsection (3), shall last for one year from the date of the Order, but a conservator may be reappointed, or a new conservator appointed, on a fresh application to the Supreme Court.

- (5) An application for conservatorship shall be heard on an urgent basis by the Supreme Court in accordance with the Rules of the Supreme Court.
- (6) A conservator appointed under this section, shall be discharged by order of a judge —
 - (a) on the judge being satisfied that —
 - (i) the person has recovered his capacity to manage and administer his property and financial affairs; and
 - (ii) if the judge considers it expedient to do so;
 - (b) on the death of the person.

49. Powers of guardian appointed under section 47.

A person appointed as guardian of a person lacking mental capacity under section 47 shall, in exercise of the powers granted by the Court thereunder, have power to secure the doing of all such things as appear necessary or expedient for —

- (a) the maintenance or other benefit of the person;
- (b) the maintenance or other benefit of members of the person's family;
- (c) making provision for other persons or purposes for whom or for which the person might be expected to provide if he was not lacking mental capacity; or
- (d) otherwise for administering and managing the person's personal and medical affairs.

50. Powers of conservator appointed under section 48.

A person appointed as conservator of a person lacking mental capacity under section 48, shall, in exercise of the power granted by the Court thereunder, have power to secure the doing of all such things as appear necessary or expedient for —

- (a) taking physical possession of the person's property both real and personal, and controlling and managing his property, including money in his bank accounts;
- (b) selling, exchanging, borrowing, charging or otherwise disposing of, or dealing with, his property for the purpose of handling his financial affairs;
- (c) the acquisition of any property in the name of, or on behalf of, the person;
- (d) the settlement of any property of the person;
- (e) the carrying on by a suitable person of any profession, trade or business of the person;
- (f) the dissolution of a partnership of which the person is a member;
- (g) the carrying out of any contract entered into by the person;
- (h) the conduct, subject to the supervision of an officer of the court, of legal proceedings in the name of the person, or on his behalf;
- (i) the reimbursement out of the property of the person, with or without interest, of money applied by any person either in payment of his debts or for the maintenance or other benefit of himself or members of his family; and
- (j) the exercise of any power vested in the person whether beneficial or otherwise for the above purposes, subject to the supervision of an officer of the court.

51. Sale of property of person with a mental illness to defray the cost of his maintenance.

Any movable property which is in the possession of a person who lacks mental capacity and who, after enquiry, is found to be without means of support and without any relative liable to contribute to his support, may be sold, and the proceeds thereof, or such part of the sum as may be necessary, applied

towards defraying the cost of lodging and maintenance of such person and of any other expenses incurred on his behalf.

52. Enforcement of costs of maintenance.

- (1) The Supreme Court, on the application of the Minister, and on being satisfied that any person admitted to a health or mental health facility, has real property which may be applied towards his maintenance, or has relatives or some other person legally bound to maintain him, may make an order for the recovery of the cost of the maintenance of that person, together with the costs of the application, out of the sale or rental of the property, or from the person legally bound to maintain him if that person has sufficient means to enable him to do so.
- (2) An order made under the provisions of this section shall be of the same force and effect and subject to such appeal as a judgement or order made by the Supreme Court in civil proceedings for recovery of a debt due.

PART X - PROCEDURES FOR PERSONS CONVICTED INTERSTATE

53. Arrest in The Bahamas of a person convicted interstate.

- (1) A person convicted interstate and found in The Bahamas, may be arrested on a warrant issued by a magistrate, and admitted by order of the magistrate, to a mental health facility as a facilitated admission, or to the Department, in accordance with the provisions of this Act, if the magistrate is satisfied that the person —
 - (a) has absconded from a mental health facility in the state or territory in which he is convicted;
 - (b) is liable to be apprehended in the relevant state or territory and returned to a mental health facility in that state; and
 - (c) is a danger to himself and others in The Bahamas.
- (2) Notwithstanding subsection (1), if the magistrate is satisfied that the person can be returned to the relevant state or territory, the magistrate shall order the person released into the custody of any person authorized to escort him to the state or territory from which he absconded.
- (3) Where there is no person to whom the person convicted interstate may be lawfully released under subsection (2), he shall be retained in a mental health facility or the Department, pending removal from The Bahamas under the Immigration Act (Ch. 191).
- (4) For the purposes of this section, a person is taken to have absconded or to be absent without lawful authority from a mental health facility in a relevant state or territory, if the person has left the facility without lawful authority to do so, or did not return to the facility after being granted permission to leave under a law of that state or territory.

54. Extradition of persons convicted interstate.

Where a person arrested pursuant to section 53(1) is a person convicted of a criminal offence which is an extraditable offence under a treaty between The Bahamas and the relevant State or territory, he shall be detained in a mental health facility or at the Department, pending extradition to that State or territory in accordance with the process prescribed by the Extradition Act (Ch. 96), unless he agrees to voluntarily return to the state or territory.

PART XI - ESTABLISHMENT OF THE MENTAL HEALTH CARE BOARD.

55. Establishment of the Mental Health Care Services Board.

There is hereby established, a Board to be known as the Mental Health Care Board.

56. Functions of the Board.

The functions of the Board are —

- (a) to oversee the planning and management of mental health care and treatment in The Bahamas;
- (b) to promote standards of best practice and efficiency of mental health services;
- (c) to set standards for accreditation of mental health facilities;
- (d) to set criteria and standards for specific mental health services, interventions, and care and treatments as necessary;
- (e) to inspect with sufficient frequency, every mental health facility to ensure that it complies with the provisions of this Act;
- (f) to review the use of seclusion and restraints in mental health facilities;
- (g) to review the use of experimental care and treatment in the care and treatment of mental illness; and
- (h) to advise and assist the Minister on other matters relating to the provision of mental health services in The Bahamas.

57. Membership of the Mental Health Care Board.

- (1) The Board shall consist of the following members —
 - (a) the Chief Medical Officer, Ministry of Health (ex-officio);
 - (b) a registered psychologist (ex-officio);
 - (c) a registered psychiatrist or other medical practitioner with training and experience in mental health (ex-officio);
 - (d) the Director or Deputy Director of the Department of Social Services (ex-officio);
 - (e) the Chairman of the National Commission for Persons With Disabilities (ex-officio);
 - (f) the Chief Nursing Officer (ex-officio);
 - (g) a registered occupational therapist (ex-officio);
 - (h) a person who has accessed mental health services;
 - (i) a next of kin, family member, or caregiver of a person with a mental illness; and
 - (j) two representatives from a registered non-profit organization or civil society, who has at least ten years' experience working in the field of mental health.
- (2) The Minister shall appoint the members of the Board on such terms and conditions and may grant such allowances and remuneration to members, as may be prescribed.
- (3) The Minister shall appoint one of the members of the Board as Chairperson of the Board.
- (4) The appointment of the Chairperson and members of the Board shall be published by notice in the Gazette.
- (5) The members of the Board who are not ex-officio members shall hold office for three years and are eligible for reappointment for a maximum of two consecutive terms.
- (6) A member, except an ex-officio member, may resign from office by letter addressed to the Minister for Health.

- (7) Where a person is appointed to replace another person under subsection (6), the person so appointed shall serve as a member of the Board for the remaining period of office of the person replaced and may be eligible for re-appointment.

58. Secretary to the Board.

- (1) There shall be a Secretary appointed by the Board.
- (2) The Secretary shall be responsible for the convening of all meetings of the Board, maintaining records of the Board, implementing the decisions of the Board, and doing all such things as the Board or the Chairperson may lawfully require the Secretary to do.

59. Meetings of the Board.

- (1) The Board shall meet at least six times a year, but may do so —
 - (a) as the Chairperson may direct; or
 - (b) as may be requested in writing to the Chairperson by not less than six members of the Board.
- (2) The time and place of a meeting of the Board shall be determined by the Chairperson.
- (3) For the purposes of this Part, seven members of the Board shall constitute a quorum for a meeting.
- (4) A meeting of the Board shall be presided over by the Chairperson but in the absence of the Chairperson the members present at the meeting shall elect a member to preside over the meeting and that member shall have all the powers of the Chairperson at the meeting.
- (5) Every matter for determination by the Board at a meeting shall be decided by a simple majority of votes of the members present and voting thereon.
- (6) Each member of the Board has one vote and in the event of an equality of votes, the Chairperson or other member presiding at the meeting shall have a casting vote.
- (7) A member of the Board who has any direct interest in a matter that falls to be decided at a meeting of the Board shall notify the of Chairperson or, if the member is the Chairperson, the Secretary, of his interest and shall not be present or vote at the meeting at which the matter is considered or decided, unless the Board authorises otherwise.
- (8) The Board shall, through the Chairperson, submit an annual report of its activities to the Minister and the Minister shall cause a report to be laid on the table of both Houses of Parliament.

60. Decision by circulation of paper.

Where a matter requires a decision of the Board and it is not convenient or possible for the Board to meet to determine the matter, the Secretary shall, on the instructions of the Chairperson, circulate papers regarding the matter to all members for consideration and decision, and if the members unanimously approve a decision or resolution by signing it, the decision or resolution shall have the same effect as a decision or resolution passed at a meeting of the Board.

61. Members to continue until new members are appointed.

Notwithstanding section 57(5), where at the end of the period specified in that section, all the members of the Board vacate office and the new members of the Board have not been appointed, the persons vacating as members shall continue until the appointment of the new members of the Board or for a further period of three months, whichever occurs first.

PART XII – MENTAL HEALTH REVIEW TRIBUNAL

62. Establishment of the Mental Health Review Tribunal.

There shall be a Mental Health Review Tribunal which shall consist of five members appointed by the Governor-General.

63. Membership of the Tribunal.

- (1) The Governor-General shall, on the recommendation of the Minister, by instrument in writing, appoint the members of the Tribunal one of whom shall be appointed as the Chairperson.
- (2) The members of the Tribunal shall consist of the following —
 - (a) a psychiatrist of ten years' practical experience;
 - (b) a mental health professional, of ten years' experience in the field of mental health;
 - (c) a Counsel and Attorney-at-Law;
 - (d) a person who —
 - (i) has experience in the administration or social services or such other experience as the Minister considers suitable; or
 - (ii) any well-known member of any community who is domiciled in any Island of The Bahamas who has —
 - (iii) a special interest or experience in mental illness; or
 - (iv) the knowledge and experience relevant to performing the role of as member of the Tribunal.
- (3) The names of the members of the Tribunal shall be published in the Gazette.
- (4) A member shall hold office for a term of three years and may be reappointed for one further term: Provided that in the event of a vacancy occurring in the membership of the Tribunal, any person appointed to fill such vacancy shall hold office for the remainder of the period for which the previous member was appointed.
- (5) A member of the Tribunal shall not take part in any hearing in relation to a matter in which the member has a direct interest.
- (6) A member of the Tribunal or any other person acting under the direction of the Tribunal shall not be subject to any civil or criminal liability in respect of anything done or purported to be done in good faith in pursuance of their functions under this Act.

64. Jurisdiction of the Tribunal.

- (1) The Tribunal shall have exclusive jurisdiction to hear and determine mental health matters as authorized by the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the Tribunal shall have power to —
 - (a) make care and treatment orders;
 - (b) revoke care and treatment orders;
 - (c) hear applications for transfer from one mental health facility to another;
 - (d) review cases of the facilitated admission of persons under the Act, and to direct the discharge of such persons for whom the statutory criteria for discharge have been satisfied;
 - (e) hear and determine matters arising from care and treatment orders;
 - (f) hear applications for electro convulsive treatment and other special treatments;

- (g) hear applications for approval for the imposition of seclusion and restraint;
 - (h) hear appeals against transfers;
 - (i) to vary a court assessment and treatment order only in relation to the location at which such orders are carried out;
 - (j) hear appeals against facilitated admission;
 - (k) hear appeals on renewal or extension of facilitated admission;
 - (l) hear complaints regarding violation of rights of persons with mental illness in mental health care facilities;
 - (m) hear applications under section 65.
- (3) In exercising its functions under the Act, the Tribunal shall have power to —
- (a) summon any person to appear before it;
 - (b) examine on oath, affirmation or otherwise a witness or any person appearing before it; and
 - (c) require any person to produce any document which the Tribunal considers relevant.
- (4) A person summoned to attend or appear before the Tribunal as a witness has the same protection and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.
- (5) Where application is made to the Tribunal under the provisions of subsection (2)(d), and the Tribunal is satisfied that —
- (a) the person is not at the date of the hearing suffering from mental illness; or
 - (b) it is not necessary in the interest of the person's health or safety, or for the protection of other persons that the person should continue as a patient person on a facilitated admission in the mental health facility, or to remain under guardianship or conservatorship as the case may be,
- the Tribunal shall recommend to the Minister that the person should be discharged, and the Minister shall act in accordance with that recommendation and make application to the court for the revocation of guardianship or conservatorship.

65. Applications to the Tribunal.

Pursuant to the powers of the Tribunal under section 64(2)(m), an application may be made to the Tribunal by, or on behalf of, a person for continuation in facilitated admission at a mental health facility, or for continuation of an order of guardianship or conservatorship made by the Supreme Court, in any of the following cases —

- (a) where that person was admitted to the facility pursuant to an application for admission for mental health care and treatment, within the period of six months from the date of such application or from the day on which he attained the age of sixteen years, whichever is later;
- (b) where that person was received into guardianship or conservatorship pursuant to an order, within the period of six months beginning on the date of such application or on the day on which he attained the age of sixteen years whichever is the later;
- (c) where a report in respect of the person has been furnished to the Minister within the period of twenty-eight days from the making of that report, unless the Minister has directed that such report shall not take effect; and
- (d) where the authority for continuation of facilitated admission, guardianship or conservatorship of the patient has been renewed by the Minister, within the period of six months from the date of such renewal.

66. Proceedings before the Tribunal.

- (1) The Tribunal shall sit as and when there is a matter for the Tribunal to adjudicate upon and laws of evidence shall apply to any hearings relating to evidence shall be applicable to witnesses or persons appearing before the Tribunal.
- (2) Three members of the Tribunal, of whom one must be the Chairperson, shall constitute a quorum.
- (3) Each member of the Tribunal shall have an equal vote and decisions shall be reached by a majority vote and in the event of equality of votes the Chairperson shall have a casting vote.
- (4) A decision of the Tribunal shall have the same force and shall be enforced executed in the same manner as a judgement or order of the Supreme Court.
- (5) Any person who appears before the Tribunal, may be represented by his attorney, legal representative, guardian, conservator, family member or any other person he chooses to represent him.
- (6) The Tribunal shall—
 - (a) afford the parties the opportunity to be heard; and
 - (b) observe the rules of natural justice.
- (7) Notwithstanding the foregoing, the Tribunal shall have power to conduct proceedings in whatever manner it considers most appropriate.

67. Reasons for decisions of the Tribunal.

Within five days of the conclusion of the proceedings, the Tribunal shall prepare and deliver its decision together with the reasons for the decision.

68. Secretary to the Tribunal.

The Minister shall appoint a Secretary to the Tribunal who shall be responsible for —

- (a) ensuring the overall smooth running of the Tribunal;
- (b) convening the sittings of the Tribunal after consultation with the Chairperson and members;
- (c) issuing summonses and notices on behalf of the Tribunal;
- (d) implementing decisions of the Tribunal;
- (e) taking appropriate steps to enable the Tribunal to enforce its orders; and
- (f) ensuring all orders or directions of the Tribunal are complied with.

69. Rules of procedure and appeals.

- (1) The Minister may make rules with respect to the practice and procedure of the proceedings of the Tribunal and may further provide for the remuneration and allowances to be paid to the members of the Tribunal.
- (2) Any person aggrieved by any decision of the Tribunal may appeal to the Supreme Court within such time and in such manner as may be prescribed by rules made under section 76 of the Supreme Court Act (Ch. 53).

PART XIII – GENERAL PROVISIONS

70. Offences against persons diagnosed with, or exhibiting symptoms of, mental illness.

- (1) Any person in charge of a health facility, or mental health facility, medical practitioner or other mental health professional, attendant, nurse, or other person employed in a health facility, or mental health facility who wilfully mistreats or wilfully neglects any person in that health or mental health facility, commits an offence and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for two years or to both such fine and imprisonment.
- (2) Any person who wilfully permits or assists or connives in the escape or attempted escape of any such person, commits an offence and is liable, on summary conviction to a fine of six hundred dollars or to imprisonment for one year or to both such fine and imprisonment.

71. Penalty for improper detention of a person diagnosed with, or exhibiting symptoms of a mental illness.

- (1) Any person who —
 - (a) wilfully detains in a health facility, or mental health facility, any person who is diagnosed with, or is exhibiting symptoms of, a mental illness otherwise than in accordance with this Act; or
 - (b) unlawfully detains in any place not being a health facility, or mental health facility, any person diagnosed with, or exhibiting symptoms of, mental illness for gain commits an offence and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for two years or to both such fine and imprisonment.
- (2) No prosecution under this section shall be commenced except by or with the consent of the Director of Public Prosecutions.

72. Protection of persons administering this Act.

- (1) No person who has done anything or given any advice in a professional capacity in pursuance of this Act, shall be liable to civil or criminal proceedings in any court in respect thereof whether on the ground of want of jurisdiction or otherwise, unless he has acted in bad faith or without reasonable care.
- (2) No proceedings under subsection (1) shall be brought against any person in any court without the leave of the court, and leave shall not be granted unless the court is satisfied that there is substantial ground for believing that the person against whom it is sought to bring the proceedings, has acted in bad faith or without reasonable care.

73. General penalty.

Any person who contravenes any provision of this Act commits an offence and is liable on summary conviction, where no other punishment is prescribed by this Act, to a fine not exceeding five hundred dollars.

74. Regulations.

The Minister may make regulations —

- (a) to provide for any matter deemed necessary or advisable for carrying out the purposes of this Act; and
- (b) for the better carrying into effect of all or any provisions of this Act,

provide for —

- (i) powers and duties of psychiatrists, other medical practitioners, other mental health professionals, and others employed in mental health facilities in caring for, treating, and generally attending to persons with mental illness;
- (ii) powers and duties of others employed in health facilities in which mental health services are provided;
- (iii) ongoing training in mental health care and treatment, of personnel in health and mental health facilities;
- (iv) the forms required for giving effect to the provisions of this Act;
- (v) the books and records to be kept in health and mental health facilities for the purposes of this Act;
- (vi) the conditions and circumstances under which seclusion, and physical restraint or seclusion may be used under this Act;
- (vii) the amounts which may be charged for the care, treatment and maintenance of persons diagnosed with mental illness;
- (viii) standards for the diagnosis of mental illness;
- (ix) manner of making an advance directive; and
- (x) manner of revoking, amending, or cancelling an advance directive; and
- (xi) the fees to be charged under this Act.

75. Repeal.

The Mental Health Act (Ch. 230) is hereby repealed.

76. Savings and transitional provisions.

On the commencement of this Act —

- (a) an order made under the repealed Act and in force, shall continue as if made under this Act;
- (b) any estate or property of a person 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 person under an order of detention pending removal shall be deemed to be lawfully detained under this Act;
- (d) an institution established for the reception, treatment or detention of a person with mental illness shall continue to exist as if established under this Act;
- (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 person diagnosed with mental illness or similar terms, within the meaning of this Act;
- (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 who lacks mental capacity for the purposes of this Act.
- (g) any reference in any written law to a hospital which provides mental health care and treatment shall be construed within the meaning of this Act, as a reference to a health facility or mental health facility where persons diagnosed with mental illness are provided mental health services, or where persons exhibiting symptoms of mental illness, are examined, assessed and diagnosed.

OBJECTS AND REASONS

This Bill seeks to make provision for the promotion, protection and enforcement of the rights of persons diagnosed with, or exhibiting symptoms of, mental illness; the admission, diagnosis, care and treatment of such persons; the protection of the rights of persons who lack capacity due to mental illness; the establishment of a Mental Health Services Board, its composition, functions, powers and duties; the establishment of a Mental Health Review Tribunal to which persons diagnosed with, or exhibiting symptoms of, mental illness may appeal decisions of mental health professionals, its composition, jurisdiction and proceedings; and for connected purposes.

Part I of the Bill encompasses clauses 1 to 5 inclusive, and provides for preliminary matters including Interpretation, the application of the Bill, the objectives of the Bill, and general principles for the administration of mental health services.

Part II of the Bill includes only clause 6 which makes provisions generally for the promotion of mental health. Clause 6 specifically charges the Minister with the responsibility of promoting mental health programs for the care and treatment of persons with mental illness and for the mental well-being of the people of The Bahamas.

Part III of the Bill includes Clauses 7 through 10 and covers Mental Health Care and Treatment decisions. Clause 7 sets out the parameters for determining when a child, or other person diagnosed with, or exhibiting signs of, mental illness lacks capacity to make health care and treatment decisions for himself. Clause 8 makes provision for the appointment of, or declaration of, nominated and other representatives to make decisions for persons without mental capacity. Clause 9 provides that a person representing and making decisions for a child or other person with, or exhibiting signs of, mental illness shall act in that person's best interests. Clause 10 provides for the standards to be observed when diagnosing mental illness.

Part IV of the Bill provides for the Rights of Persons with Mental Illness and contains Clauses 11 to 17. Clause 11 prescribes generally, the rights of persons with mental illness which are additional to their constitutionally protected rights and freedoms. Clause 12 specifically provides for the right of persons diagnosed with, or exhibiting symptoms of, mental illness, to access mental health and medical services. Clause 13 declares a right of such persons to live at home and to be a part of their community except where they are admitted to a mental health facility by the order of a court in the interest of their health, or of the public's safety, or except where such persons are voluntarily admitted or are admitted by their nominated or other representative in circumstances in which they lack capacity (facilitated admission). Clause 14 specifically declares the right of persons diagnosed with, or exhibiting symptoms of, mental illness, not to be discriminated against in accessing mental health services. Clause 15, Clause 16 and Clause 17 respectively, declares the right of persons to information about their mental health care and treatment, their right to communicate with their families, friends and caregivers, and their right to access their health records.

Part V of the Bill makes provision in Clauses 18 to 31, for the care and treatment of Mental Illness. Specifically, Clauses 18 to 21, provide for the voluntary or facilitated admission to a health facility or a mental health facility of persons diagnosed with, or exhibiting symptoms of, mental illness. Clause 22 sets the conditions under which a person may make an advance directive, setting out his will and preference for his future mental health care and treatment; and further provides for the conditions which allow that person to revoke the advance directive made by him. Clause 23 authorizes a judge or magistrate to make an order for the facilitated admission of a person diagnosed with, or exhibiting symptoms of, a mental illness to a health or mental health facility for mental health care and treatment. That clause allows the court to order a medical report on the condition of the person admitted, at a frequency determined by the court, but not less than once every six months. A person so admitted may only be discharged by order of the court which admitted him.

Clauses 24, 25 and 26 contain provisions relating to the limitation of the length of a facilitated admission; the grant of a leave of absence to a person on a facilitated admission; and the arrest of such a person who leaves a facility without leave. Clause 27 provides for the admission, care, and treatment of a child with a mental illness. Clause 28 provides for the care and treatment at home of a person with a mental illness unless the severity of the mental illness requires treatment in a health facility or a mental health facility. Clause 29 authorizes police officers, to convey a person loitering in a public place who is diagnosed with, or exhibiting symptoms of, mental illness, to a facility, or a mental health facility for treatment. Clause 30 provides for emergency treatment of a person diagnosed with, or exhibiting symptoms of, mental illness with that person's consent, or without his consent if such treatment is necessary to prevent death or irreversible harm to himself, or serious harm to himself or others. Clause 31 allows persons diagnosed with, or exhibiting symptoms of, mental illness to be subjected to physical restraint or seclusion where it is the only means available to prevent immediate or imminent harm to himself or to others. Such treatment must be carried out in a health facility or mental health facility, and must be authorized by a psychiatrist, or other medical practitioner, unless there is danger of immediate or imminent harm to himself or to others. The Clause further places limitations on the use of physical restraint or seclusion for the treatment of persons with mental illness.

Part VI details in Clause 32, the circumstances in which specialist and experimental care and treatment, such as electro-convulsive or psycho-surgery, may be administered to persons with mental illness. Clause 33 allows for the use of experimental drugs developed in clinical or experimental research to treat the symptoms of mental illness, but only under the supervision of a psychiatrist.

Part VII provides for the mental health care and treatment of persons in custody whether arrested and detained pending investigation of a suspected offence, or charged and awaiting trial, or convicted and awaiting sentencing, or serving a custodial sentence after sentencing. These provisions are contained in Clauses 34 to 43.

Part VIII contains provisions in Clauses 44 and 45 which seek to protect persons with mental illness. Clause 44 mandates that the nominated representative, caregiver, next of kin, family member, attorney, guardian, or conservator of a person diagnosed with, or exhibiting symptoms of, a mental illness who is admitted to a health facility or mental health facility, has, inter alia, the right of access to him, the right to participate in his care and treatment, and to access on his behalf, public social assistance equal to that of the representatives of a person admitted to a hospital with a physical illness. Clause 45 provides for the representation by an attorney appointed under an enduring power of attorney, of a person who subsequently becomes mentally incapacitated to handle his property and personal affairs.

Part IX contains provisions granting powers to the Supreme Court to protect persons who lack mental capacity to make decisions for themselves relative to the management or administration of their property and the management of their personal affairs. Clause 47 empowers the Supreme Court to appoint a guardian on the recommendation of a person's psychiatrist and one other medical practitioner that the person to be received into guardianship is suffering from mental illness of a nature or degree which renders him unable to make personal decisions for himself; cannot meet his own needs for medical care, food, clothing, shelter or safety; and warrants the appointment of a guardian for his health and safety. An order of guardianship confers upon the guardian, full custody of the person, the power to make personal decisions including medical decisions for that person, and all other powers of a father as regards his maintenance and well-being as would be exercisable by him if the person were a child for the period specified in the order. A person appointed as guardian may also do all that is necessary or expedient, not only for the maintenance of the person who lacks mental capacity, but also for the maintenance and benefit of members of his family for whom that person may be expected to provide

Clause 48 further empowers the Supreme Court to grant an order of conservatorship and appoint a conservator for a person who lacks mental capacity, for the purpose of managing that person's property and financial affairs until that person has recovered his capacity to manage and administer his own affairs.

Clauses 49 and 50 specifically set out powers which may be exercised by a guardian or conservator appointed under sections 47 and 48 consequential to the powers given by the court.

Clauses 51 and 52 allow for the sale of the property of a person who lacks mental capacity, for the purpose of defraying the cost of lodging and maintenance; and further empower the Minister to recover the costs of the maintenance of such a person admitted to a facility or mental health facility, from any property owned by that person.

Part X provides for the arrest, incarceration and extradition of a person convicted interstate who absconded from a mental health facility in such state and is found in The Bahamas.

Part XI establishes the Mental Health Care Board and provides for the composition of the Board, its proceedings, and its functions. The Board's functions include overseeing the planning and management of mental health care and treatment in The Bahamas, promoting standards of best practice for mental health care and treatment, setting standards of accreditation, advising and assisting the Minister on matters relating to mental health care and treatment, reviewing the use of experimental care and treatment of persons with mental illness, reviewing the use of seclusion and restraints in caring for, and treating, mental illness and inspecting with sufficient frequency, all health facilities which treat persons with mental illness. .

Part XII establishes the Mental Health Review Tribunal, and makes provision for its composition, jurisdiction and its proceedings. This Tribunal has powers of review relative, inter alia, to care and treatment orders, the transfer of persons from one mental health facility to another, cases of facilitated admissions, applications for approval of electro convulsive treatment, the imposition of seclusion and restraint, power to hear appeals against the renewal or extension of facilitated admissions. Decisions of the Tribunal are to be enforced in the same manner as an order of the Supreme Court.

Part XIII are general provisions and include the creation of offences against persons diagnosed with, or exhibiting symptoms of, mental illness during their admission. These offences include the mistreatment and wilful neglect of any such person by any mental health professional, attendant, nurse or other person employed at a health facility or mental health facility, wilfully permitting, assisting or conniving in the escape or attempted escape of such persons from a health facility or mental health facility, wilfully detaining a person diagnosed with, or exhibiting symptoms of, mental illness in a health facility or mental health facility, unlawfully detains such a person in any other place.

Clause 72 protects persons charged with the responsibility of administering the Act if they did anything in bad faith or without reasonable care. Clause 74 empowers the Minister to make Regulations for a myriad of purposes, including for the better carrying out of this Act. Clause 75 repeals the Mental Health Act. Clause 76 puts in place savings and transitional provisions which include the continuation of orders made under the repealed Act, the continuation of any order providing for the administration of the property of any person covered by this Act, the continuation in existence of any institution which before the repeal, received, diagnosed, cared for, treated, and detained persons with mental illness. The clause provides for references to a 'lunatic' or 'lunacy' to be read and construed as a person diagnosed with a mental illness under this Act, provides for all references to mental disability or legal disqualification in the repealed Act to be construed as a reference to a person who lacks mental capacity under this Act.