

MENTAL HEALTH AND SUBSTANCE ABUSE BILL 2019

A BILL

FOR

AN ACT TO PROVIDE FOR THE ENHANCEMENT AND REGULATION OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES, PROTECT PERSONS WITH MENTAL HEALTH NEEDS AND ESTABLISHMENT OF NATIONAL COMMISSION FOR MENTAL AND SUBSTANCE ABUSE SERVICES, FOR THE EFFECTIVE MANAGEMENT OF MENTAL HEALTH IN NIGERIA AND FOR OTHER RELATED MATTERS

Sponsor: Sen. Oloriegbe, Yahaya Ibrahim (*Kwara Central*)

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows-

PART I OBJECTIVE AND APPLICATION

1. Objective

The Objectives of this Act are to -

- (a) provide direction for a coherent, rational and unified response to the challenges relating to the delivery of mental health and substance abuse services in Nigeria
- (b) protect the rights and freedoms of persons with mental ill- health and substance use related disorders;
- (c) ensure a better quality of life through access to an integrated, well-planned, effectively organised and efficiently delivered mental health care and substance abuse service in Nigeria
- (d) provide a legal framework for the regulation of mental health and substance abuse related service delivery in Nigeria; and
- (e) protect persons with mental and substance abuse disorders from discrimination, victimization and unfair treatment by employers, academic institutions and other agencies.

2. Application

The provisions of this Act shall apply to mental health and substance abuse practitioners, mental health service providers and mental health and substance abuse treatment facilities in Nigeria.

PART II
ESTABLISHMENT, FUNCTION AND POWERS OF THE NATIONAL
COUNCIL FOR MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

3. Establishment of the National Commission for Mental Health and Substance Abuse Services

- (1) There is established a Commission to be known as the National Commission for Mental health and Substance Abuse Services (in this Act referred to as “the Commission”).
- (2) The Commission-
 - (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) may sue and be sued in its corporate name; and
 - (c) may acquire, hold and dispose of any property for the purpose of carrying out any of its functions under this Act.

4. Object of the Commission

The object of the Commission is to

- (a) Propose mental health and substance abuse policies and facilitate their implementation;
- (b) Implement mental health and substance abuse policy
- (c) Promote mental health and facilitate the provision of humane care including treatment and rehabilitation in a least restrictive environment; and
- (d) Promote a culturally appropriate, affordable, and accessible and equitably distributed, integrated and specialised mental health care that will involve both the public and the private sectors.

5. Functions and powers of the Commission

The Commission shall -

- (a) Formulate, develop, implement and review policies and guidelines on mental health and substance abuse related issues in consultation with all relevant stakeholders;

- (b) develop a comprehensive and integrated national plan and program on mental health and substance abuse related issues;
- (c) conduct regular monitoring and evaluation in support of policy formulation and planning on mental health and substance abuse related issues;
- (d) promote and facilitate collaboration among agencies and disciplines for the implementation of policies, plans of mental health and substance abuse related programs;
- (e) provide overall technical supervision and ensure compliance with policies, programs and projects within the comprehensive framework of the National Mental Health Care Delivery System;
- (f) collaborate with health care system at the primary, secondary and tertiary levels and specialised services to provide mental health service as necessary;
- (g) protect the rights and responsibilities of persons with mental and substance use disorder
- (h) collaborate with relevant regulatory bodies to ensure compliance with accreditation and other standards of mental healthcare.
- (i) Collaborate with other healthcare service providers to ensure the best care for persons with mental and substance use disorders;
- (j) Ensure and guarantee the fundamental human rights and safety of persons with mental and substance use disorder against discrimination and stigmatization;
- (k) Ensure that in-patient mental health care services are of an equitable standard to physical in-patient care;

- (l) as much as possible facilitate access to educational, vocational leisure opportunities for patients receiving mental health and substance abuse disorder care;
- (m) create inter-agency committees, project task forces, and other groups as may be necessary for the implementation of policies and programs under this Act;
- (n) serve as a clearing house to the Ministry of Health, for the licensing, developing and implementation of minimum standards for the delivery of Mental health and Substance Abuse Services in health facilities providing Mental health or Substance Abuse Services in Nigeria;
- (o) have the power to impose administrative sanctions from time to time on defaulting facilities;
- (p) have the power to enter, search and seal any facility subject to the provisions of this Act;
- (q) have powers to enforce compliance with the provisions of this Act; and
- (r) perform such other duties or functions as may be necessary for the effective implementation of this Act.
- (s) shall take steps to enlighten and inform mental health and substance abuse service users of their rights
- (t) the commission in carrying out their duties shall ensure integrated multidisciplinary services.

6. Governing Board of the Commission

- (1) There is established for the Commission a Governing Board (in this Act referred to as "the Board").
- (2) The Board shall consist of the following-
 - (a) the chairperson shall be a retired mental health service provider with considerable experience in the field of mental health;
 - (b) the Chief Executive/ Executive Secretary of the Commission shall be a qualified and practicing Psychiatrist of not less than 10 years' experience as a Consultant Psychiatrist and not less than level 15;
 - (c) a representative of the public sector, who shall be a Medical Director of one of the Federal Neuropsychiatric Hospitals in Nigeria;

- (d) the President (or his representative) of the Association of Psychiatrists in Nigeria;
- (e) the President (or his representative) of the Association of Psychiatric Nurses of Nigeria;
- (f) the President (or his representative) of the National Association of Clinical Psychologists of Nigeria;
- (g) the chairman (or his representative) of the Association of medical Social Workers of Nigeria;
- (h) the President (or his representative) of the National Association of Occupational Therapists;
- (i) representative of the Human Rights Commission;
- (j) representative of the National Primary Health Care Development Agency not less than a Director; and
- (k) minister of health to appoint three other members (one service user and two non-governmental organisations), one of which shall be a woman; one of the NGOs shall represent those involved in advocacy, promotion and rehabilitation, while the other shall represent service user (clients') groups.

7. Tenure of office of members of the Board

- (1) The Executive secretary shall have a single term of five years; Other members of the board including the Chairman shall hold office-
 - (a) for a term of four years which may be renewed for a further term of four years and no more; and
 - (b) on such terms and conditions as may be specified in his letter of appointment.

- (2) Notwithstanding the provisions of sub-section (1) of this section, the office of a member of the Board shall become vacant, where-
 - (a) his term of office has expired;
 - (b) he develops any illness that makes him incapable of carrying out his duties
 - (c) he becomes bankrupt;
 - (d) he is convicted of a felony or of any offence involving dishonesty or corruption;
 - (e) he resigns his office by notice in writing under his hand addressed to the President;
 - (f) he ceases to hold the office on the basis of which he becomes a member of the Board;
 - (g) he dies; and,
 - (h) he possessed a professional qualification on the basis of which

he was a member and he is disqualified or suspended, other than at his own request, from practicing his profession in any part of Nigeria by the order of any competent authority made in respect of him personally.

- (i) He no longer holds the position on the basis of which he was appointed as a member as a result of resignation, completion of tenure, removal from office or for any reason.
- (3) Where a vacancy occurs in the Commission, the president shall appoint a successor who shall represent the same interest as that member whose exit created the vacancy.
- (4) The resignation mentioned under sub-section (2) (e) of this section shall be effective on the receipt of the letter by the President.

8. Appointment and functions of the Chief Executive of the Mental Health and Substance Abuse Commission

- (1) There shall be a Chief Executive who shall be the Accounting Officer of the Mental Health and Substance Abuse Commission and the Secretary to the Board.
- (2) The Chief Executive shall be appointed by the President on the recommendation of the Minister
- (3) The Chief Executive shall hold office for a single term of five years and on the terms and conditions specified in the letter of appointment.
- (4) The Chief Executive is responsible for coordination of the planning, organization, administration, monitoring and evaluation of mental health and substance abuse services in the country.
- (5) The Chief Executive shall perform any other functions determined by the Board.
- (6) The Chief Executive may delegate a function to an officer of the Commission but shall not be relieved from the ultimate responsibility for the performance of the delegated function.
- (7) The Chief Executive shall provide the Minister through the Board with technical advice on mental health that may be required.
- (8) The Chief Executive shall have a secretariat with designated personnel to assist with the running of the Council

9. Meetings of the Board

- (1) The Board shall meet at least once every three months for the dispatch of business at the times and in the places determined by the chairperson.
- (2) The chairperson shall, at the request in writing of not less than one-third of the membership of the Board, convene an extraordinary meeting of the Board at the

place and time determined by the chairperson.

- (3) The quorum at a meeting of the Board is six members of the Board or a greater number determined by the Board in respect of an important matter.
- (4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.
- (5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.
- (6) The Board may co-opt a person to attend a meeting of the Board but that person shall not vote on a matter for decision at the meeting.
- (7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.
- (8) Subject to this section, the Board may determine the procedure for its meetings.

10. Establishment of committees

- (1) The Board may establish committees consisting of members of the Board or non-members or both to perform a function.

11. Allowances

- (1) Members of the Board and members of a committee of the Board shall be paid the allowances approved by the government

12. Establishment of an integrated Mental Health Service Delivery

- (1) The Commission shall
 - (a) utilise existing facilities at the primary, secondary, and tertiary levels of health care
 - (b) promote the principle of integrated multi-disciplinary services at the primary, secondary, and tertiary levels of health care, in communities, facilities, prisons, children's homes, educational establishments and other areas of need to
 - (i) promote mental health,
 - (ii) prevent and treat mental disorder,
 - (iii) rehabilitate and counsel persons with mental disorder,

13. Appointment of other staff of the Commission

- (1) The Commission may from time to time, appoint or second such number of staff for the efficient performance of its functions under this Act.
- (2) The staff of the Commission appointed under subsection (1) of this section, shall be appointed on such terms and conditions as the Commission may

determine in line with the guidelines for similar appointments in the public service of the Federation.

- (3) The Commission may make rules relating to the Conditions of service of staff of the Commission, including rules that may provide for-
- (a) appointment, promotion and disciplinary control of all staff of the Commission;
 - (b) appeals by staff against disciplinary measures; and
 - (c) such other matters that are necessary for the efficient performance of its functions under this Act.

14. Service in the Commission

- (1) Service in the Commission shall be Pensionable under the Pension Reforms Act, 2014 and accordingly staff of the Commission shall, in respect of their services, be entitled to such pension and retirement benefits as are prescribed for person with equivalent grades in the public service of the Federation.
- (2) Notwithstanding the provisions of subsection (1) of this section, the Commission may appoint a person to an office on such terms and conditions which preclude the grant of pension in respect to that office.

PART III

Mental Health Review Tribunal

15. Mental Health Review Tribunal

- (1) There is established by the Board a Mental Health Review Tribunal.
- (2) The Board shall, through the Mental and Substance Abuse Council, for the purpose of dealing with applications and reference by and in respect of patient under this Act constitute for each State or group of States, such number of Mental Health Review Tribunals, as it shall approve.

16. Composition of the Tribunal

- (1) The Board shall appoint members of the Tribunal.
- (2) The Tribunal at each sitting consist of
 - (a) a chairperson who is a legal practitioner of not less than ten years standing nominated by the Attorney General,

(b) a consultant psychiatrist,

- (c) Three other persons; a medical social worker, a clinical psychologist, psychiatric nurse practitioner, or an occupational therapist, at least one of whom is a woman; and
- (d) a service user.

17. Functions of the Tribunal

- (1) The Tribunal shall function in protecting the interests of patients who are subject to the provisions of this Act.
- (2) The Tribunal shall hear and investigate complaints in respect of persons detained under this Act.
- (3) The Tribunal shall review and monitor
 - (a) cases of involuntary admissions and treatment processes, and
 - (b) long-term stay voluntary admissions.
 - (c) treatments that require a second opinion
- (4) The Tribunal, after necessary consultation with experts, shall provide guidance on minimizing intrusive and irreversible treatments, seclusion or restraint; also to ensure that informed consent is obtained and approve requests for intrusive or irreversible treatments.
- (5) The Tribunal shall in the performance of its function determine its own procedures.
- (6) The Tribunal shall ensure that all its proceedings are properly recorded and documented.

18. Discharge by the Tribunal

- (1) The Tribunal may direct the discharge of a person detained under this Act despite a previous order of a court or Tribunal except in the case of a serious offence and may make the recommendations that it considers necessary to the head of the facility.
- (2) The Tribunal shall direct the discharge of a patient where it is satisfied
 - (a) that the patient is no longer suffering from mental disorder, or
 - (b) that it is not necessary in the interest of the health or safety of the patient or for the protection of other persons that the patient should continue to be detained, or

(c) that the patient if released is not likely to act in a manner dangerous to the patient or to others, and

(d) that admission is no longer the least restrictive form of treatment for the patient.

19. Review of orders

The Tribunal may review a previous decision made by it.

20. Application for review

(1) An application may be made to the Tribunal by or in respect of a person detained under this Act.

(2) The application may request

(a) a review of the conditions under which that person is detained,

(b) a discharge, or

(c) any other appropriate action to be taken with respect to the circumstances of the mental disorder of that person.

(3) The Tribunal shall review the case and respond to the applicant within twenty-one days except where the application is against a new admission, in which case the response shall be within three days.

(4) Where a person is not satisfied with the decision of the Tribunal, that person may seek redress in a court of appeal.

21. Meetings of the Tribunal

Section (9) shall apply to the Tribunal except that the chairperson, the psychiatrist and one other member constitute a quorum for the Tribunal and the Tribunal shall meet as required.

22. Annual report of Tribunal

The chairperson of the Tribunal shall submit an annual report of the Tribunal to the Minister through the Board

23. Allowances for Tribunal members

Members of the Tribunal shall be paid allowances approved by government

PART IV
RIGHTS OF PERSONS WITH MENTAL AND SUBSTANCE USE RELATED DISORDERS AND RESPONSIBILITIES OF GOVERNMENT REGARDING PROVISION OF EFFECTIVE MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

24. Rights of Persons in need of mental health and substance abuse

services Without prejudice to the provisions of this Act, persons in need of mental and substance abuse services, shall-

Non-discrimination

- (1) (a) exercise their civil, political, economic, social, religious, educational and cultural rights, without any discrimination on the ground of physical disability, age, gender, race, language, religion, ethnicity or nationality of the patient;
(b) be entitled to the fundamental human rights and freedoms as provided for in the Constitution.
- (2) irrespective of the cause, nature or degree of past or present mental disorder have the same fundamental rights as a fellow citizen.
- (3) as a tenant or employee who develops mental disorder, not be
 - (a) evicted from the place of residence of that person, or
 - (b) dismissed from the place of employment of that person on the basis of mental disorder.

Basic human Rights

- (4) A person with mental and substance use disorder has the right to enjoy a decent life as normal and as full as possible which includes, the right to education, vocational training, leisure, recreational activities, full employment and participation in civil, economic, social, cultural and political activities and any specific limitations on these rights shall be in accordance with an assessment of capacity.
- (5) A person with mental and substance use disorder is entitled to humane and dignified treatment at any time with respect to personal dignity and privacy.
- (6) A person with mental and substance use disorder in a treatment facility, has;
 - (a) the right to wear personal clothes while in a treatment facility and to maintain personal belongings subject to space, limitations, and appropriate treatment plan.
 - (b) the right to have access to and spend personal money for personal purchases unless the mental capacity of the person does not allow that.

- (c) the right to information provided by newspapers and other media provided it is not in conflict with appropriate treatment plan.
- (d) the right to be informed within twenty-four hours of admission to a facility of their rights in a form and language which the patient understands and how to exercise such rights, but where the patient is mentally incapacitated, the legal representative or the carer shall be entitled to such information;
- (e) the entitlement to a legal practitioner of his choice and where he cannot afford the services of a legal practitioner, the Legal Aid Council of Nigeria or National Human Right Commission shall provide legal assistance to the patient;

Standards of Treatment

A person with mental and substance use disorder shall

- (7) receive treatment of the same quality and standard in a safe and conducive environment as any other person with physical health conditions;
- (8) Receive the highest attainable standard of mental healthcare.
- (9) receive treatment, which addresses holistically their needs through a multidisciplinary care plan approach;
- (10) receive treatment in the least restrictive environment and restrictive manner;
- (11) be protected from torture, cruel, inhuman and degrading treatment;
- (12) receive aftercare programs and rehabilitation, where possible, in the community in order to facilitate their social inclusion;
- (13) shall have access to psychotropic drugs and any other biopsychosocial interventions at different levels of care as appropriate.
- (14) actively participate in the formulation of the multidisciplinary treatment plan;

Access to information

- (15) A patient shall be informed about their mental state of health and the multidisciplinary services available to cater for their needs, the treatment options available and their treatment plan;
- (16) Where the patient is incapable of understanding the treatment, the personal representative of that patient shall have access to this information.
- (17) Shall have access to the information collected about them unless, in the opinion of the mental health professional, revealing such information may cause harm to the person's health or put at risk the safety of others.
- (18) be entitled to contest any decision to withhold any information pursuant

to paragraph (20) of this sub-section, either personally or through a legal practitioner of his choice;

Privacy and autonomy

- (19) The rights of a person with mental disorder include freedom to receive in private, visits from a legal practitioner, relatives and any other visitors, unless the attending psychiatrist or head of the facility considers it unsafe.
- (20) give free and informed consent, where possible, before any treatment or care is provided and such consent shall be recorded in the patient's clinical record;
- (21) notwithstanding the provision of paragraph (23) of this section, the patient shall have the right to withdraw consent;
- (22) have the right to confidentiality of all information about themselves, illness and treatment in whatever form stored and such information shall not be disclosed to third parties without their consent unless-
 - (a) there is a life-threatening emergency when information is urgently required to save lives,
 - (b) it is in the interest of public safety,
 - (c) it is ordered by a court of competent jurisdiction, or
 - (d) the person requesting for such information is entitled by law to receive it;
- (23) be entitled to effective participation in the development of mental health legislation, including their carer and legal practitioner; and
- (24) not be subjected to solitary confinement.

Employment Rights

- (25) An employer shall not terminate the employment of a worker merely on the grounds of present or past mental disorder or while the worker is receiving treatment for mental disorder.
- (26) Where an employer has reasonable cause to believe that a worker is suffering from mental disorder severe enough to affect the work output of the worker, the employer may assist the worker to seek medical advice in accordance with the prescribed procedure.
- (27) The employer may engage the worker at a level where the worker can best perform for medical reasons but where the worker is found to be unfit for employment the employer may terminate the contract of employment of the worker in accordance with the prescribed procedure.
- (28) A worker aggrieved by a medical report provided in accordance with this Act may seek redress from the Mental Health review Tribunal.

25. Establishment of Mental Health and Substance abuse services

- (1)** Every public healthcare facility should have provision for integrated mental and substance use treatment at all levels for the purposes of effective implementation of the provisions of this Act.
- (2)** Such a facility should meet the minimum standard specified in the national mental and substance abuse guideline/policy
- (3)** Notwithstanding subsection (1) of this section, the Minister may designate any hospital with requisite facilities as mental health facilities.
- (4)** Notwithstanding subsection (1) of this section, the Minister shall ensure the implementation of section 12 subsection(1)a

PART V
TREATMENT, ADMISSION AND DISCHARGE OF PATIENTS

26. Programmes for Treatment

- (1) The Commission shall set minimum standards for programmes for the treatment of Mental and Substance Use related disorders
- (2) The Commission shall maintain and periodically publish list of licensed treatment centres in Nigeria.

27. Consent to Treatment and Treatment of children (minors)

- (1) This part applies to any patient referred to in any section of this Act.
- (2) The following forms of medical treatment for mental and substance abuse related disorders shall require consent:
 - (a) any surgical operation for destroying brain tissue or for destroying the function of the brain tissue; and
 - (b) such other forms of treatment requiring explanation of known risks to the patient to enable the patient to decide whether or not to accept such form of treatment.
- (3) A patient shall not be given any form of treatment unless:
 - (a) the responsible medical officer or a registered medical practitioner has certified in writing that the patient is capable of understanding the nature, purpose, any likely effects of the treatment and has consented to it; or
 - (b) the medical officer referred to in paragraph (a) of this subsection certifies in writing that the patient has not consented to the treatment for reason of incapacitation or other, but that having regard to the likelihood of its alleviating or preventing a deterioration of his condition, the treatment should be given.
- (4) A patient may, at any time before the completion of treatment for which he had previously given consent, withdraw such consent in writing if he so desires.

- (5) Subsections (2) (a) and (b) of this section shall not apply to any treatment:
- (a) which is immediately to save 'the patient's life or ensure their safety;
 - (b) which (not being irreversible) is immediately necessary to prevent a deterioration of his condition;
 - (c) which (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by, the patient; or
 - (d) which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from violence or being a danger to himself or to others.
- (6) In all circumstances the responsible medical officer shall consider the condition of the patient, the need to obtain consent from the nearest relative, periods of lucid intervals and his/her personal moral decision to obtain consent.
- (7) Mental health care of a child
- (a) A child receiving psychiatric treatment shall as much as possible, be treated in a least restrictive environment.
 - (b) In cases where they may require admission, children shall be admitted separately from adults, and their developmental needs shall be taken care of as necessary.
 - (c) Parents or guardians of children under the age of eighteen years undergoing psychiatric treatment shall represent them in matters

concerning the mental well-being of the children including consent to treatment. In event the parent's position is not in the best interest of the child, a temporary guardianship should be appointed. The guardianship may be related to the child or professionally assigned.

(d) Special provision will be made for the admission of children whose conduct may at any time be harmful to themselves or other patients.

(e) Irreversible treatments such as sterilisation or psychosurgery for mental disorders shall not be administered to any child with mental ill health or intellectual disability.

(f) The opinions of children shall be taken into consideration in issues of their care including treatment, depending on their age and their capacity.

(g) The rights of the minors receiving mental health care will be in line with their rights in the Child Rights Act and the health provisions of the African charter on the rights of a child to which Nigeria is a signatory.

(h) Discrimination against children with developmental disabilities will be deemed a criminal act and perpetrators will be punished.

(8) Care of Persons with intellectual disability

(a) A person shall not be admitted to a mental health facility merely for intellectual disability unless there is evidence of gross misbehaviour or perceptual disturbances.

(b) If a person with intellectual disability is admitted to a mental health facility for mental health care, the person shall have separate accommodation/section on the ward.

(c) Intrusive or irreversible treatment shall not be administered on a person with intellectual disability unless authorised by the mental health council.

28. Voluntary Admission

Any person who requires treatment for mental and substance use related disorders, may be admitted voluntarily into any hospital or other facility approved for that purpose pursuant to this Act.

29. Involuntary Admission of persons with mental disorders

- (1) A person meets the criteria for involuntary admission if there is reason to believe the person is suffering from mental disorder and because of such disorders—
 - (a) Has inflicted, or threatened or attempted to inflict, or unless admitted is likely to inflict physical harm on himself or another; or
 - (b) Is in need of treatment for mental disorder and by reason of the illness, his judgment has been impaired that the person is incapable of appreciating his need for such treatment and of making any rational decision in regard thereto.
- (2) The temporary treatment order will place the named person under the care, observation or treatment in a psychiatric hospital or any other facility which is approved under this Act for the care of involuntary patients, in as least restrictive an environment as is compatible with the health and safety of the person and society.
- (3) A person in need of mental health treatment shall be involuntarily admitted to a designated inpatient treatment programme upon a written request to the Medical Director of the treatment facility for involuntary treatment that provides a factual basis for the request by anyone with knowledge that an individual may be a person in need of treatment and the written certification by a mental health professional that the individual is a person in need of treatment as provided for in this Law.
- (4) The refusal to undergo treatment does not in itself constitute evidence of lack of judgment as to the need for treatment.

- (5) Any law enforcement officer or designated personnel may lawfully transport an individual whom they reasonably believe is a person in need of mental health treatment without the consent of said individual, to or from a designated treatment facility for the purpose of carrying out the provisions of this Law. Admission to treatment is however on the basis of the judgment of the medical practitioner and not the law enforcement officer
- (6) Upon admission of the person in need of mental health treatment, the facility shall evaluate and treat the individual as medically necessary and appropriate for the required time period not exceeding 28 days beginning from the day of admission. He may however be detained thereafter if he becomes liable for compulsory admission again by virtue of a subsequent application, order, or direction under any of the provisions of this act.
- (7) Admission of a Minor
- (a) A minor may be admitted to a mental health establishment only after following the procedure laid down in this section.
- (b) The nominated representative of the minor shall apply to the medical officer in charge of a mental health establishment for admission of the minor to the establishment.
- (c) Upon receipt of such an application, the medical officer or psychiatrist in charge of the mental health establishment may admit such a minor to the establishment, if he examines the minor on the day of admission or in the preceding seven days and he concludes based on the examination and, if appropriate, on information provided by others, that,
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- (i) the minor has a mental illness of a severity requiring admission to a mental health establishment;
- (ii) admission shall be in the best interests of the minor, with regard to his or her health, well-being or safety, taking into account the wishes of the minor if ascertainable and the reasons for reaching this decision;

(iii) the mental health care needs of the minor cannot be fulfilled unless he is admitted; and

(iv) all community-based alternatives to admission have been shown to have failed or are demonstrably unsuitable for the needs of the minor.

- (d) A minor so admitted shall be accommodated separately from adults, in an environment that takes into account his age and developmental needs and is at least of the same quality as is provided to other minors admitted to hospitals for other medical treatments.
- (e) A minor shall be given treatment with the informed consent of his nominated representative.
- (f) If the nominated representative no longer supports admission of the minor under this section or requests discharge of the minor from the mental health establishment, the minor shall be discharged by the mental health establishment only if such an action is in the best interest of the minor.
- (g) The Commission shall ensure that all programs must include child and adolescent mental health relevant strategies based on evidence and culturally appropriate strategies.

30. Recommendation to court for temporary involuntary treatment

- (1) A person may make an application to a court for the involuntary admission and treatment of a person believed to be suffering from severe mental disorder, where
 - (a) the person named is at personal risk or a risk to other people, or
 - (b) there is a substantial risk that the mental disorder will deteriorate seriously.
- (2) The temporary treatment order will place the named person under the care, observation or treatment in a psychiatric hospital or any other facility which is approved under this Act for the care of involuntary patients, in as least restrictive an environment as is compatible with the health and safety of the person and society.

- 3) The recommendation shall be given on oath to the court and shall be supported by two medical recommendations one from a medical practitioner and the other from a mental health practitioner.
- (4) The recommendation shall specify in full detail
 - (a) the reasons why it is considered that that person is a proper subject for care, observation or treatment,
 - (b) the facts on which the opinion has been formed, distinguishing facts observed personally from those observed by somebody else,
 - (c) that that person is suspected to lack capacity to make informed treatment decisions, and
 - (d) that the treatment is necessary to bring about an improvement in the person's condition, restore capacity to make treatment decisions, prevent serious deterioration or prevent injury or harm to self or others.
- (5) The judicial review thereof shall determine-
 - a) Whether the involuntary patient's confinement is based upon sufficient cause;
 - b) Whether the involuntary patient is a person in need of treatment; and
 - c) Whether a less restrictive placement such as out-patient treatment is more appropriate. Such hearings shall be preceded by adequate notice to the involuntary patient or his/her legal representation, and the involuntary patient or his/her legal representation shall be entitled to be present at all such hearings.
- (6) The court shall ensure on behalf of the patient
 - (a) representation by counsel at all judicial proceedings, such counsel to be court-appointed if the involuntary patient cannot afford to retain counsel;
 - (b) examination by an independent psychiatrist and have such persons testify as a witness on the patient's behalf, such witness to be court-appointed if the involuntary patient cannot afford to retain such witness.
 - (c) Reasonable discovery, the opportunity to summon and cross-examine witnesses, to present evidence on the

person's own behalf and to all other procedural rights afforded litigants in civil causes. The privilege against self-incrimination shall be applicable to all proceedings under this Law and the patient's testimony, if any, shall not otherwise be admissible in any criminal proceedings against the patient.

(d) To have a full record made of the proceedings, including findings adequate for review. All records and pleadings shall remain confidential unless the court for good cause orders otherwise

(7) Notwithstanding the pendency of the action or any order previously entered by the court, if at any time after the petition is filed the staff of the facility determines that the involuntary patient is no longer in need of involuntary treatment, the facility may so certify in writing and discharge the patient, and shall promptly notify the court of its discharge, and the court may dismiss the action.

(8) a. An involuntary patient is entitled to change his own status to that of a voluntary patient if a member of the staff of the facility certifies that:

i. The patient is reasonably capable of understanding the nature of the decision to change status; and

ii. Such a change is in the patient's best interest. If such a change in status is challenged within 2 days by the patient's next of kin or legal representative, the court will schedule a hearing to finally determine the matter.

b. The court may increase the time for performance for a reasonable period upon a showing of good cause.

c. The Magistrate Court judge shall declare a sitting of the court to be a sitting of the Mental Treatment Court for the purposes of this Law.

(9) No person shall be involuntarily admitted for substance abuse treatment except they have developed a disorder listed in section 30 subsection (1) (b) of this ACT. The condition referred to in section 30 subsection 4 of this ACT also applies.

31. Examination of facts by court

- (1) The court shall examine the facts or hold an enquiry within forty-eight hours to determine the state of mind of that person.
- (2) The court may summon witnesses or administer oaths.
- (3) Where the court is satisfied that that person is suffering from severe mental disorder and meets the requirements of section 31 subsection 5, the court may order placement of that person under care, observation or treatment in a psychiatric hospital for a period not exceeding one month as determined by the court.

32. Appeal

- (1) The patient, the family of the patient or the personal representative of the patient shall be informed of the reasons for the admission and their rights with respect to appeal to the Tribunal.
- (2) A patient or primary caregiver has the right to appeal against involuntary admission or treatment.
- (3) A patient has the right to seek an independent medical opinion.
- (4) A patient or primary caregiver has the right to seek counsel or be represented in an appeal or complaint procedure and has right of access to the medical record of the patient.
- (5) Access to the medical record of a patient by the primary caregiver is subject to the consent of the patient or the personal representative of the patient.

33. Order for prolonged treatment

- (1) A psychiatrist or head of a facility may recommend the placement of a person under a temporary treatment court order for a prolonged treatment in a psychiatric hospital if the psychiatrist or head of a facility is of the opinion that the severity of the condition warrants it.
- (2) This recommendation shall take into consideration the welfare of that person and the safety of the public.
- (3) A patient or caregiver has the right to attend and participate in

appeal and complaints procedures.

- (4) The recommendation shall be made before the expiry of the court order for temporary treatment or its extension and shall be made on oath to the Tribunal.
- (5) The recommendations shall
 - (a) specify in full detail the reasons why that person is considered a proper subject for prolonged treatment,
 - (b) specify the nature and severity of the diagnosed mental disorder, the likelihood of complete or partial recovery, and the period which, in the opinion of the psychiatrist or head of a facility, is reasonably required to effect a complete or partial recovery, and
 - (c) specify in full detail the facts on which the opinion is based, distinguishing facts observed personally from facts communicated by others.
- (6) The patient shall meet the criteria stated in section 42.
- (7) The Tribunal shall examine the person in a place considered convenient or hold an enquiry to determine the state of mind of that person, and for that purpose,
 - (a) the Tribunal may summon witnesses or administer oaths, and
 - (b) the Tribunal may order the placement of that person under prolonged treatment in a psychiatric hospital if from the examination or enquiry the person meets the criteria of section 31 and prolonged treatment is the least restrictive treatment available.

34. Length of prolonged treatment order

- (1) The period of the prolonged treatment order shall not exceed twelve months at a time.
- (2) An order for prolonged treatment of up to twelve months shall be reviewed at six months by the Tribunal.

35. Procedure for certificate of urgency

- (1) Despite section 31, in an emergency case where it is expedient either for the welfare of a person suspected to be suffering from mental disorder or for public safety because of the person suspected to be suffering from mental disorder, a police officer, a relative or any other person with or without the assistance of a police officer may take the person to a facility or mental health facility for a certificate of urgency to be issued under sub-section(2).
- (2) At the facility or mental health facility a registered medical practitioner shall examine the person and if the person meets the criteria for treatment as an emergency case, the medical practitioner shall issue a certificate of urgency and place the person under care, observation and treatment.
- (3) Where immediate admission to a facility or mental health facility is impracticable, the person shall be received and detained in any other place of safe custody for a period not exceeding forty-eight hours pending transfer to a mental health facility.

36. Duration of admission for urgent case

- (1) A person received into a mental health facility under a certificate of urgency may be detained in that mental health facility as an urgent case for a period not exceeding seventy-two hours.
- 2) Where the person detained is not discharged before seventy- two hours by the psychiatrist or head of the facility, information shall be given to the Tribunal in accordance with section 30 within that period unless the person opts to become a voluntary patient.
- (3) Where a court order for temporary treatment is not obtained within the seventy-two hours, the person detained shall be released at the expiry of that period or can opt to become a voluntary patient.

37. Removal of Patient to a place of safety

- (1) Where a Police Officer or a staff of Social Welfare Department of Government finds in a place to which the public has access, a person who appears to him to be suffering from mental disorder and to be in

immediate need of care or control, the police officer or social welfare worker, as the case may be, may if he thinks it necessary to do in the interest of that person or for the protection of other persons, remove that person to a place of safety with a view to making an application for his treatment and care under this Act.

(2) A person removed to a place of safety under this section may be detained there for period not exceeding 72 hours for the purpose of enabling him to be examined by a medical practitioner and of making any necessary arrangements for his treatment or care.

(3) A police officer or any other person required or authorised by this Act to take any person into custody or to convey or to detain any person shall for the purposes of taking him into custody or conveying or detaining him, have all the powers, authority, protection and privilege of a police officer in the ordinary course of his duties as such.

(4) If any person being in lawful custody by virtue of this section escapes, he may be retaken and returned to the hospital or place of safety:

(a) by the person who had his custody 'immediately before the escape; or

(b) by any officer or the staff of the hospital, his nearest relative or his guardian, or by a police officer if at the time of his escape he was liable to be detained in a hospital.

38. Grant of Leave From Hospital

(1) The responsible medical officer may grant to any patient who is for the time being liable to be detained in a hospital under this Act, leave to be absent from the hospital subject to such considerations necessary in the interest of the patient or for the protection of other persons.

- (2) Leave of absence may be granted under this Section either indefinitely or for a specified period; and where leave is granted for a specified period, that period may be further extended as the responsible medical officer may deem fit.
- (3) The responsible medical officer may by notice in writing¹ to the patient or to the person for the meantime in charge of the patient, revoke the Leave of absence for the recall of the patient to the hospital if it appears to him that it is necessary so to do in the interest of the patient's health and safety and the protection of others
- (4) A patient to whom a leave of absence is granted, under this section shall not be recalled under Subsection (3) of this Section after he has ceased to be liable to be detained under this Act.
- (5) In all cases of removal of patient to hospital for the first time or removal of a patient who breaches the condition of leave of absence, the police shall be available to render assistance

39. Order of Discharge of a Patient

- (1) An order for discharge in respect of a patient detained under any section of this part of this Act may be made:

- (a) by the responsible medical officer or by the medical director of the hospital, where the patient is detained pursuant to an application for admission of observation;or
- b) by the responsible medical officer, the medical director, or by the nearest relation, where the patient is detained pursuant to an application for admission for treatment. In other cases, the order shall be made pursuant to the responsible medical officer's report that the circumstances leading to his detention in the first place no longer exist

40. Order of Discharge of NearestRelative

- (1) Subject to the provisions of this section, the patient's nearest relative may at anytime apply for the discharge of a patient detained inhospital.
- (2) The nearest relative of the patient in making such an application shall give a notice in writing in that regard not less than 72 hours to the medical director. In the event that the responsible medical officer furnishes the medical director of the hospital a report within 72 hours that in his opinion the patient, if discharged, would be likely to act in a manner dangerous to himself and to otherpersons: in which case;
 - (a) the application by the relative will not begranted;
 - (b) no further application for discharge of that patient shall be entertained from that relative during a period of 3 months beginning with the date of the medical report;and
 - (c) the medical director of the hospital shall cause the nearest relative of the patient to be informed of his right to apply to a Mental Health Review Tribunal in respect of the patient within a period of 28 days beginning with the day on which he is so informed.

41. Non-accredited facilities and involuntarypatients

A facility which is not accredited by the Commission and licensed or recognised by the Minister shall not admit involuntary patients for treatment.

PART VI

ADMISSION OF PATIENTS CONCERNED WITHIN CRIMINAL PROCEEDINGS

42. Admission of a Criminalpatient

- (1) Where a person is convicted before a High Court of a criminal offence,or before a Magistrate's Court of an offence punishable on summary conviction with imprisonment, the court may by a hospital order authorize his admission for observation in a hospital if it has cause to

suspect that the person may be suffering from mental disorder

(2) Where the court is satisfied, on written evidence made within seven days of admission of two medical practitioners, one of whom is recognized to have special experience in the diagnosis and treatment of mental disorders, that:

- (a) the offender is suffering from mental disorder, severe mental impairment or dyssocial disorder;
 - (b) the mental disorder is of a severe nature or degree which warrants the detention of the patient in a hospital for medical treatment; and
 - (c) the offender is likely to benefit from such treatment with respect to future criminal tendency and behaviour.
- The court may decide that the most suitable method of disposing of the case is by means of an order under this section.

(3) Where an order is made under this section, the Court shall cause

the further detention of the criminal in the hospital where the initial assessment of his mental state was made for further treatment until the patient (criminal) is assessed as having made sufficient improvement to be discharged there from, and a report in that respect from the medical practitioners who made the initial assessment placed before the court

(4) On receiving such a report, the Court shall order the discharge of the patient from hospital within three days of receiving the report.

Where the patient has not made satisfactory progress with treatment pursuant to Subsection (3) of Section 20 within six months of the initial order, and a report in that respect from the medical practitioners referred to in Section 20 is placed before the court, the court shall, in the interest of public safety issue a compulsory order for the detention and treatment of the patient for another period of six months and for multiple periods of six months thereafter provided that:

(a) the patient shall be advised on his right to appeal to the Mental Health Review Tribunal; and

(b) a medical report on the desirability of subsequent detention and treatment of the patient in the interest of public safety is made on each occasion

43. Compulsory Order with Restriction

(1) Where the Court receives a report from the medical practitioners referred to in Section 20 to the effect that the mental disorder from

which the patient is suffering is of such severity as to warrant maximum restriction of that patient, the Court shall issue a compulsory order with restriction provided that the patient shall be advised on his right to appeal to the Mental Health Review Tribunal of his case.

- (2) A compulsory order with restriction shall not be issued by a Court unless the Court in its wisdom and having regard to all the circumstances including the nature, character and antecedents of the offender and to the other available options (including terms of imprisonment) of dealing with him that the most suitable method of disposing of the case taking into cognizance the issue of public safety is by means of an order under this section.

44. The Child Offender

- (1) If in the case of a child or young person brought before a juvenile or other court
- (a) the court is satisfied that the young person is in need of care or protection that his parent or guardian is unable to control him, as the case may be; and
 - (b) the conditions which under Section 20 of this Act are required to be satisfied for the making of a hospital order in respect of a person convicted as herein mentioned are so far as applicable, satisfied in the case of the child or young person; the court shall have the like power to make a hospital order or guardian as if the child or young person had been convicted by the court of an offence punishable

on summary conviction with imprisonment and provisions of the said Section 20 shall with the necessary modifications and substitutions apply accordingly.

45. Removal to Hospital of a Prisoner

- (1) If in the case of a person serving a sentence of imprisonment, the Minister or the Governor, as the case may be is satisfied by the report, of a medical practitioner who has special experience in the diagnosis and treatment of mental disorders:
 - (a) that the said person is suffering from a mental disorder, severe mental impairment or dissocial disorder; and
 - (b) that the mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment, the Minister or Governor may, if he is of opinion having regard to the public interest and all the circumstances that it is expedient to do so, direct by warrant, that the person be so removed and detained in such hospital as may be specified in the directive.
- (2) The transfer directive in the context of Subsection (1) of this section shall have the like force as a hospital order made in accordance with the provisions of Section 20 of this Act.
- (3) The foregoing provisions of this section shall apply for the purpose of the transfer of any person in custody pending trial as they apply for the purpose of any person serving a sentence of imprisonment.
- (4) For the purposes of this Section:

- (a) the Minister shall exercise the power to give a transfer directive in the case of a person convicted of an offence committed under any enactment made by the Government of the Federation; and
- (b) the Governor shall exercise the power to issue a directive in respect of a person convicted for an offence committed under an enactment made by the Government of a State.

PART VII

PROPERTY AND AFFAIRS OF PATIENTS

46. Application of Patient's Properties

The provisions of this part shall apply in respect of a person, who in the considered opinion of a High Court Judge based on competent medical evidence is incapable by reason of mental disorder of managing and administering his property and affairs; and a person whom the Judge is satisfied to refer to as a patient for purpose of this Part of this Act.

- (1) The judge may, with respect to the property and affairs of a patient, do or secure the doing of all such things as to him appear necessary or expedient in respect to property:
 - (a) for the maintenance or other benefit of the patient;
 - (b) for the maintenance or other benefit of members of the patient's family;

(c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally incapacitated ;or

(d) otherwise for administering the patient's affairs.

(2) (a) In the exercise of the powers conferred by this section, regard shall be had first of all to the requirements of the patient, and the rules of law which restrict the enforcement by a creditor of rights against property under the control of the Judge.

(b) Subject to the provisions of paragraph (a) in this subsection, the Judge shall, in administering a patient's affairs, have regard to the interests of creditors and also the desirability of making provisions for obligations of the patient notwithstanding that they may not be legally enforceable.

(3) Without prejudice to the provisions of Subsection (2) of this section; the Judge shall have power to make such orders and give such directions and authorities as he thinks fit, for the purposes of that section and in particular may make orders or give directives or authorities for:

a) the control (with or without the transfer or vesting of property or the payment into court of money or securities) and management of any property of the patients;

- (b) the settlement of any property of the patient or the gift of any property of the patient to any person;
- (c) the carrying on by any suitable person of any profession, trade or business of the patient;
- (d) the sale, exchange, charging or other disposition of any property of the patient;
- (e) the acquisition of any property in the name of the patient;
- (f) the dissolution of any property of which the patient is a member;
- (g) the carrying out of any property of which the patient is a member
- (h) the conduct of any legal proceedings in the name of the patient or on his behalf
- (i) the reimbursement out of the property of the patient, with or without interest, of money applied by any person for or for the benefit of the patient; or
- (j) the exercise of any power vested in the patient (including a power of consent) whether beneficially or as a guardian, trustee or otherwise however.

47. Power of The Judge in Emergency

(1) Where it is represented to the Judge and he has reason to believe that a person may be incapable by reason of mental disorder of managing or administering his property and affairs, and the Judge is of opinion that it is necessary to make immediately provision for any of the matters referred to in Section 47 of this Act, the Judge may exercise any of the powers conferred on him by the said Section 47, so far as is requisite for enabling that provision to be made, pending the question whether the said person is incapable as aforesaid.

PART VIII

FINANCIAL PROVISIONS FOR THE COMMISSION

48. Funds of the Commission

- (1) There shall be established for the Commission a Fund, into which shall be paid -
 - (a) budgetary allocation from the Federal Government;
 - (b) gifts and grants from International donor organisations, private organisations and individuals; and
 - (c) such other sums, as may accrue, from time to time, to the Commission.
- (2) The Commission shall, apply the Fund established pursuant to subsection (1) of this section-
 - (a) to defray the cost of administration of the Commission
 - (b) for the payment of salaries, fees or other remuneration or allowances, pensions, and gratuities payable to the officers and employees of the Council
 - (c) for payment or reimbursement of board members expenses or of any committee as may be set up by the Board in accordance with this Act on such rates as may be approved by the Federal Government of Nigeria; for the maintenance of any property acquired or vested in the Commission.

49. Accounts and Audit

- (1) The Commission shall, not later than **31st October** in **each year or such** time as may be prescribed by the Financial Regulations issued by the Federal Government of Nigeria, prepare and submit to the Minister an estimate of its income and expenditure for the next succeeding year.
- (2) The Commission shall keep proper accounts and records of its incomes and expenditure, assets and liabilities and shall prepare in respect of each year a statement of accounts in manual and electronic form and shall cause the accounts to be audited not later than six months after the end of the year to which such accounts relate, by auditors appointed by the Board from the list and in accordance with the guidelines issued by the Auditor-General for the Federation.
- (3) An Auditor appointed pursuant to subsection (2) of this section shall have access to all records relating to the accounts which are kept by the Commission or its **agents** and shall have power to require from any staff or agent of the Council such information and explanation as in the auditor's opinion are necessary for the purpose of the audit.

- (4) A staff or agent of the Commission who fails, without reasonable cause to comply with a request or instruction of an auditor pursuant to subsection (3) of this section commits an offence and shall be liable on conviction to a fine of two hundred thousand Naira or six months imprisonment or both.

50. Annual Reports

The Commission shall prepare and submit to the Ministry of Health not later than 30th March of each year, a report in such form as the Minister may direct on the activities of the Commission during the previous year, and shall include in such report, a copy of the audited accounts of the Commission for that year and the Auditor-General's report.

PART IX

Establishment of Mental Health Fund

51. There is established by this Act a Mental Health Fund

52. Object of the Fund

- (1) The object of the Fund is to provide financial resources for the care and management of persons suffering from mental disorders.
- (2) To achieve its object, moneys of the Fund shall be applied for
- (a) the skills training of persons with mental disorders;
 - (b) any matter connected with the rescue, rehabilitation and reintegration of persons with mental disorders;
 - (c) the construction of facilities for persons with mental disorders; and
 - (d) training, capacity building and research.

53. Sources of money for the Fund

The moneys for the Fund include

- (a) voluntary contributions to the fund from individuals, organisations and the private sector;
- (b) moneys approved by National Assembly for payment into the Fund;
- (c) grants from bilateral and multilateral sources;
- (d) donations and gifts; and
- (e) moneys from any other source approved by the Minister responsible for Finance.
- (f) 10% of the national health fund should be set aside for mental health and substance abuse treatment.

54. Bank accounts for the Fund

The moneys for the Fund shall be paid into bank accounts opened for the Fund with the approval of the Accountant-General.

55. Management of the Fund

- (1) The Fund shall be managed by a Sub-Committee of the Board consisting of not more than five members of the Mental Health Commission which shall for this purpose include a representative of the Accountant-General.
- (2) The Sub-Committee shall appoint its own Chairperson.

56. Functions of the management committee of the Fund

The Sub-Committee of the Board shall

- (a) make recommendations to the Board on mental health matters;
- (b) pursue policies to ensure the achievement of the object of the Fund
- (c) liaise with Government agencies and organisations to promote the rehabilitation and reintegration of persons suffering from mental disorders;
- (d) prepare guidelines and procedures for the management and disbursements from the Fund;
- (e) conduct research on international and regional developments and standards on mental health matters; and
- (f) deal with any matter concerned with mental health.

57. Exemption

The Fund is exempt from the payment of tax.

58. Accounts and audit and annual reports of the Fund

The provisions on accounts and audit and submission of annual reports to Parliament in sections 50 and 51 of this Act apply to the Fund."

PART X

OFFENCES AND

PENALTIES

59. Operating a facility without a license

- (1) No **Private** Hospital or Facility responsible for the treatment or certification of persons dealing with mental illness and substance use disorders and mental disabilities shall operate without a valid license from the Council.

- (2) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction, in the case of a Private Hospital or Facility to a fine of not less than N100, 000.00 and the owner of the facility to a fine of not less than N50,000.00.

60. Violation of the right of persons under this Act

- (1) No person shall violate the right of persons as specified under this Act.
- (2) Without prejudice to the provisions of any other law, any person who contravenes the provisions of subsection (1) of this section, commits an offence and is liable on conviction to fine of not less than N200,000 or imprisonment of not less than six months
- (3) Any person that willingly causes or conspires with or assists another to cause-
- a. The unwarranted involuntary confinement of any person in a treatment facility under this Law; or
 - b. The denial to any person of any of the rights accorded to said person under this Law;

Shall be liable for punishment to a fine not less than N 200,000 or imprisonment not less than six months

The Facility Management should also be held liable

61. Refusal to supply information

A person who fails or refuses to supply any information required by the Council in exercise of its powers under this Act commits an offence and is liable on conviction, in the case of a body corporate to a fine of N100,000 and in the case of an individual to fine of N50,000 or imprisonment of not less than Six months or to both

62. Forgery or false entry of Statements

A person commits an offence under this Act is liable on conviction to a fine of N100, 000 or to imprisonment for not less than Six months or to both, where the person forges or makes false entry or statement -

- (a) on an application for admission under this Act;
- (b) any medical report or recommendation under this Act; or

(c) any other document required or authorized to be made under this Act.

63. Assisting Patient to Unlawful Leave of Absence

(1) Any person who induces or knowingly assist any other person:

(a) being liable to be detained in a hospital to absent himself without leave;

or

(b) being in legal custody by virtue of this Act to escape from such custody, shall be guilty of an offence.

(2) Any person who knowingly harbours a patient who is absent without leave of absence or is otherwise at large and liable to be retaken into custody; or gives him assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place or where he ought to be detained shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable on conviction to 6 months imprisonment or to a fine of N100,000, or both of them.

64. Sexual Relationship with a Patient

(1) It shall be an offence under this section for a man or a woman who is an officer or staff or is otherwise employed in or is one of the managers of

a Psychiatric hospital or treatment facility to have sexual relationship (intercourse) with a woman or a man as the case may be who is:

(a) for the time being receiving treatment for mental and substance use related disorder in that hospital;

(b) subject to his/her guardianship or otherwise in his/her custody or care under this Act in Psychiatric Hospital or other similar approved institution for the treatment of mental and substance use related disorder persons.

(c) for the time being receiving treatment as an out-patient.

(2) Any person guilty of an offence under this section shall be liable to prosecution, and on conviction, to imprisonment for a term not less than 1 year or to a fine of N200,000 or both of them. This shall not be prejudicial to any other sanctions and such a person may be liable to from bodies to which he may belong as a member.

(3) No proceedings shall be instituted for an offence under this section, except by or with the consent of the Attorney-General of the State concerned

65. General Penalty

- (1) A person who Contravenes the provisions of this Act of which no specific penalty is provided under this Act shall be liable on conviction to a fine N50,000 or imprisonment for a term of not less than Six months or both.
- (2) **Without prejudice to the generality of the provisions of this part the Court may impose any form non-custodial sentence on an individual.**

PART XI

IMMUNITY SAVINGS AND TRANSITIONAL PROVISIONS

66. Immunity from Legal Proceedings

- (1) No person shall be liable on any ground to civil or criminal proceedings to which he would have been liable apart from this section in respect of any act done pursuant to this Act or any regulations or rules made under or in respect of anything done in discharge of any functions conferred by this Act, unless such act was done in bad faith or without reasonable care.
- (2) No civil or criminal proceedings shall be brought without leave of the Attorney-General of the State concerned who shall not give such leave unless he is satisfied that there is substantial ground for the contention that the person to be prosecuted has acted in bad faith or without reasonable care.

67. Minister's Power to make Regulations

- (1) The Minister through the Commission may, with the approval of the President, Commander-in-Chief of the Armed Forces, make regulations, for prescribing anything which under this Act ought to be prescribed and such regulation or regulations shall be published in the Federal Government Gazette.
- (2) Without prejudice to the generality, of the provisions of Subsection (1) of this section the regulations made under that subsection may:
 - (a) specify the hospitals and other institutions with facilities for the time being for the reception, and treatment of patients requiring treatment and care for mental and substance related disorder;
 - (b) specify access to the public into Psychiatric Hospitals and similar other institutions, and their conduct while in such premises; and

(c) such other things as may appear to be lacking in this Act but necessary to achieve the aims and goals of the Act.

PART XII

MISCELLANEOUS

68. Directive of the Minister

The Minister may give to the Commission, general directives relating to the performance of its functions under this Act and the Council shall comply with such directives.

69. Power to make Regulations

The Commission may with the approval of the Minister, make Regulations as are necessary or expedient for giving full effect to the provisions of this Act.

70. Power to obtain information

(1) For the purpose of carrying out the functions conferred on the Commission under this Act, the Executive Secretary or any other officer of the Council authorised in that behalf –

(a) shall have the right of access to all the records of any institution or authority to which this Act applies; and

(b) may, by notice in writing served on any person in charge of any institution or authority responsible for the treatment or certification of persons dealing with mental ill-health, , and substance use disorders and mental disabilities require that person to furnish or cause to be furnished, information on such matter as may be specified in the notice.

(2) It shall be the duty of any person required to furnish information pursuant to subsection (1) of this section to comply with the notice within 21 days of the receipt of the notice.

71. Limitation of suit against the Commission

- (1) Subject to the provisions of any other law, no suit shall be commenced against the Commission or its authorised officers before the expiration of a period of 30 days after written notice of intention to commence the suit shall have been served on the Council by intending plaintiff or his agent, and the notice shall clearly state the-
 - (a) cause of action;
 - (b) particulars of the claim;
 - (c) name and place of abode of the intending plaintiff; and
 - (d) relief sought.
- (2) The notice referred to in subsection (1) of this section and any summons, or other documents required or authorised to be served on the Commission under this Act or any other enactment or law, may be served by -
 - (a) delivering it to the Executive Secretary; or
 - (b) sending it by registered mail to the postal address of the Council.

72. Restriction on execution against property of the Commission

In any action or suit against the Commission, no execution shall be levied or attachment process issued against the Council unless not less than three months' notice of the intention to execute or attach has been given to the Commission.

73. Interpretation

In this Act -

“Allied Mental Health Professionals” means any formally educated and trained non-medical health professionals such as (but not limited to) Clinical Psychologists, social workers, Psychiatric Nurses, **occupational therapists, recreational therapists Mental Health and Addiction Counsellors.**

“certification” means the process of qualifying medical specialists through requirements and examinations set by the Board of the particular medical specialty so appointed or elected for that specific purpose by the registered members of the medical specialty association;

“Carer ” means a person who maintains a close personal relationship with the patient and manifests concern for his welfare;

“Child” according to the United Nations Convention on the Rights of the Child -defines child as "a human being below the age of 18 years.

“Court” means the Federal High Court;

“Least restrictive alternative” or **“least restrictive environment”** or **“less restrictive option”** means offering an option for treatment or a setting for treatment which-- (i) meets the person’s treatment needs; And (ii) imposes the least restriction on the person’s rights

“Legal representative” means a substitute decision-maker charged by law with the duty of representing a patient in any specified undertaking or of exercising specified rights on the patient's behalf or a person appointed in writing by the patient to act on his or her behalf, provided that where the patient lacks mental capacity, or otherwise fails to appoint a legal representative in writing, the legal representative shall be taken to be in the following order -

- (a) the spouse, if any, unless permanently separated from the patient or has deserted or has been deserted by the patient,
- (b) sons and daughters over the age of eighteen years,
- (c) either parent by mutual consent; and
- (d) a person appointed by an of a Court to represent the patient;

“Mental disability” means impairments, activity limitations, and individual and participatory restrictions denoting dysfunctional aspects of interaction between an individual and his environment;

“Mental health” means a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life,

can work productively and fruitfully, and is able to contribute to his or her community;

“Mental health professionals” means persons trained and Board certified to practice psychiatry

“Mental health workers” means trained volunteers and advocates engaged in mental health promotion and services under the supervision of the **mental health professionals**

“Mental ill-health” means **mental or psychiatric** disorder characterized by the existence of recognizable changes in the thoughts, feelings and general behavior of an individual brought about by neurobiological or psychosocial factors causing psychological, intellectual or social dysfunction;

“Mental or psychological incapacity” means the inability to -

- (a) understand the information given concerning the nature of the disorder;
- (b) understand the consequences that his or her decisions and actions have for his or her own life or health and for the life and health of others, which may be serious and irreversible;
- (c) understand that treatment might mitigate or remedy the condition and that lack of treatment might aggravate it;
- (d) understand the information about the nature of treatment proposed, including the means of treatment, its direct effects and its possible side effects; and
- (e) effectively communicate with others regarding his or her condition and his or her consent to treatment or hospitalization;

“Minister” means the Minister responsible for matters relating to health;

“Minor” means a person who has not completed the age of eighteen years.

“Patient” refers to a person receiving or utilizing mental health care and treatment from a mental health care facility or clinic;

“Psychiatric emergencies” means conditions which may present a serious threat to a person's wellbeing or that of others requiring immediate psychiatric interventions such as in cases of attempted suicide, acute intoxication, severe depression, acute psychosis, or violent behavior; and

“Psychosocial problem” means a condition that indicates the existence of disturbances in the individual's behavior; thoughts and feelings brought about by sudden, extreme or prolonged stressors in the physical or social environment.

74. Shorttitle

This Act may be cited as the National Mental Health Bill, 2018.

Define

Substance Use Disorder Treatment, Counselling, and Treatment Facilities.

SCHEDULE

[Section 4 (5)]

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD.

Proceedings of the Board

1. Subject to this Act and section 27 of the Interpretation Act (which provides for decisions of a statutory body to be taken by a majority of its members and for the Chairman to have a second or casting vote), the Board may make standing orders regulating the proceedings of the Board and any Committee thereof.
2. The Board shall meet not less than four times in each year and, subject thereto, the Board shall meet whenever it is summoned by the Chairman, and if the Chairman is required to do so by notice given to him by not less than seven other members, he shall summon a meeting of the Board to be held within fourteen days from the date on which the notice was given.

3. Every meeting of the Board shall be presided over by the Chairman or if the Chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their members to preside at the meeting.
4. The quorum at a meeting of the Board shall consist of the Chairman (or, in an appropriate case, the person presiding at the meeting pursuant to paragraph 3 of this Schedule) and six other members.
5. The quorum of the Board shall consist of one-third and the quorum of any committee of the Board shall be as determined by the Board.
6. Where upon any special occasion, the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him as a member for such period as it thinks fit; provided that a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

Committee

7. (1) Subject to its standing orders, the Board may appoint such number of standing ad-hoc committees, as it thinks fit to consider and report on any matter which the Board is concerned.

(3) Every committee appointed under the provisions of sub-paragraph (1) of this paragraph, shall be presided over by a member of the Board and shall be made up of such number of persons, not necessarily members of the Board, as the Board may determine in each case.

- (3) The decision of a Committee shall be of no effect, until it is confirmed by the Board.

Miscellaneous

8. The fixing of the seal of the Commission shall be authenticated by the signature of the Chairman, the Executive Secretary and of the any other member authorised generally or specially by the Board to act for that purpose.
9. Any contract or instrument which, if made by a person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the Council by the Executive Secretary or any person authorized generally or specially by the Board to act for that purpose
10. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Commission shall be received in evidence and, unless the contrary is proved be presumed without further proof, to have been properly signed or sealed.

11. Members of the Board who are not public officers shall be paid out of monies at the disposal of the Commission such remuneration, fee or allowances in accordance with such scales as may be approved, from time to time, by the Minister.
12. The validity of any proceedings of the Board or of a committee shall not be affected by -
 - (a) a vacancy in the membership of the Board; or
any defect in the appointment of a member of the Board or Committee; or
 - (b) reason that a person not entitled to do so, took part in the proceedings.
13. Any member of the Board or of a committee thereof, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or the committee shall forthwith disclose his interest to the Board or committee, shall forthwith disclose his interest to the Board or committee and shall not vote on any question relating to the contract or arrangement.