

REPUBLIC OF SOUTH AFRICA

MENTAL HEALTH CARE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 35871 of 12 November 2012)
(The English text is the official text of the Bill)*

(MINISTER OF HEALTH)

[B 39—2012]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Mental Health Care Act, 2002, so as to insert a new section; to provide for the delegation of powers by the head of the national department to officials in the national department; to repeal the Mental Health Act, 1973; and to provide for matters connected therewith.

Amendment of Act 17 of 2002

1. The Mental Health Care Act, 2002 (Act No. 17 of 2002), is hereby amended by the insertion after section 72 of the following section:

“Delegation of powers

72A. (1) The head of the national department may, in writing, delegate any power conferred upon him or her by this Act to any person in the employ of the national department, except the powers referred to in sections 5, 6(3), 13(2), 41 and 49.

(2) The head of the national department may, at any time—

(a) withdraw a delegation made under subsection (1); or

(b) withdraw or amend any decision made in the exercise of such delegated power.

(3) A decision made in the exercise of any delegated power, unless withdrawn or amended, is deemed to have been made by the head of the national department.

(4) Any right or privilege acquired or any obligation or liability incurred as a result of a decision made in terms of a delegated power referred to in subsection (1) cannot be affected by any subsequent withdrawal or amendment of that decision.”.

Repeal of law

2. The Mental Health Act, 1973 (Act No. 18 of 1973), is hereby repealed.

Short title and commencement

3. This Act is called the Mental Health Care Amendment Act, 2012, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON OBJECTS OF MENTAL HEALTH CARE AMENDMENT BILL, 2012

1. OBJECTS OF BILL

- 1.1 The main object of the Mental Health Care Amendment Bill, 2012 (“the Bill”), is to amend the Mental Health Care Act, 2002 (“the Act”), so as to provide for the delegation of powers by the head of the national department (“the Director-General”) to officials in the national department to improve the application and the effective implementation of the Act.

2. ANALYSIS OF BILL

- 2.1 The Bill seeks to amend the Act by providing for the delegation of powers by the Director-General to officials in the national department to promote the effective implementation of the Act. Once the Bill has been passed into law, the Director-General will be able to sub-delegate some of the powers so as to improve service delivery in the area of involuntary health care users.
- 2.2 The proposed insertion enables the Director-General to delegate powers—
- (a) to determine the transfers of state patients from detention centres to health establishments pursuant to court orders issued in terms of the Criminal Procedure Act, 1977;
 - (b) to determine the transfers of state patients between the designated health establishments upon an order issued by the Mental Health Review Board; and
 - (c) to review the mental health status of state patients.
- 2.3 The Bill also seeks to repeal the remaining Chapter 8 of the Mental Health Act, 1973 (Act No. 8 of 1973). This Chapter dealt with hospital boards and is no longer necessary since Chapter 6 of the National Health Act, 2003 (Act No. 61 of 2003), deals with that subject.

3. DEPARTMENTS/BODIES CONSULTED

The draft Bill has been forwarded to—

- (a) Justice and Constitutional Development;
- (b) Basic Education;
- (c) Correctional Services;
- (d) Defence;
- (e) Higher Education and Training;
- (f) Home Affairs;
- (g) Social Development;
- (h) South African Police Service; and
- (i) Provincial Departments of Health.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Health are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.