

SPECIAL ISSUE

Kenya Gazette Supplement No. 136 (Senate Bills No. 32)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2018

NAIROBI, 1st November, 2018

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**THE MENTAL HEALTH (AMENDMENT) BILL,
2018**

A Bill for

AN ACT of Parliament to amend the Mental Health Act; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Mental Health (Amendment) Act, 2018.

Short title.

2. The Mental Health Act, hereinafter referred to as the principal Act, is amended in the long title by deleting the words “mental disorder or mental subnormality with mental disorder; for the custody of their persons and the management and control of mental hospitals” appearing immediately after the words “are suffering from” and substituting therefor the words “mental illness; for the custody of their persons and the management and control of mental health facilities.”

Amendment of the long title in Cap 248.

3. The principal Act is amended in section 2 by—

Amendment of section 2 of Cap 248.

(a) deleting the following—

“Director” means the Director of Medical Services;

“mental hospital” means a mental hospital established under section 9;

“person in charge”, in relation to a mental hospital, means the person for the time being authorized by the Director to be in medical charge of the mental hospital;

“Person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse;

(b) inserting the following definitions in their proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary for the time being in charge of matters relating to health;

“care treatment and rehabilitation” includes preventive and after care services such as counseling psychotherapy and vocational care;

“county executive committee member” means the county executive committee member for the time being in charge of matters relating to health;

“Director” means the Director-General for Health;

“health care provider” means a person who provides health care services and includes a mental health practitioner;

“mental health facility” means a mental health facility established under section 9;

“person in charge”, in relation to a mental health facility, means the person for the time being authorized by the Director to be in medical charge of the mental health facility;

“person suffering from mental illness” means a person who has been found to be so suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse;

“mental health practitioner” means a qualified and duly registered—

- (a) psychiatrist under the Medical Practitioners and Dentists Act; Cap 253
- (b) psychologist under the Counsellors and Psychologists Act; No. 14 of 2014
- (c) clinical officer under the Clinical Officers (Training, Registration and Licensing) Act; and Cap 260
- (d) counsellor under the Counsellors and Psychologists Act;

“representative” means the spouse, parent, guardian, next of kin, or court appointed representative of the person suffering from mental illness, having legal capacity to make decisions on behalf of the person with mental illness.

4. The principal Act is amended by inserting the following new sections immediately after section 2— Insertion of Section 2A in Cap 248.

Purpose of the Act.

2A. The purpose of this Act is to provide a framework to—

- (a) promote the mental health and well-being of all persons, including reducing the incidences of mental illness;
- (b) co-ordinate the prevention of mental illness, access to mental health care, treatment and rehabilitation services of persons with mental illness;
- (c) reduce the impact of mental illness, including the effects of stigma on individuals, family and the community;
- (d) promote recovery from mental illness and enhance rehabilitation and integration of person with mental illness into the community; and
- (e) ensure that the rights of a person with mental illness is protected and safeguarded.

Guiding principles

2B. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles —

- (a) the promotion and fulfilment of the right to the highest attainable standard of health as enshrined under Article 43 of the Constitution;
- (b) preservation of the freedom and dignity of every human being;
- (c) the fair and equitable treatment of persons with mental illness;
- (d) the protection of persons with mental illness from discrimination;

- (e) accountability of duty bearers and transparency in the implementation of this Act;
- (f) co-ordinated public participation in the formulation and implementation of policies and plans related to care and protection of persons with mental illness;
- (g) that interventions for the care and protection of persons with mental illness are based on objective information and methods and monitoring mechanisms and regular evaluations are established, thus ensuring transparency in the management of facilities and care of persons with mental illness.

5. The principal Act is amended by inserting the following new Part immediately after Part I—

Insertion of Part IA in Cap 248.

PART IA—OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS

Obligations of national government.

- 2C.** The National Government shall—
- (a) provide the necessary resources for the provision of mental health care and treatment at National referral health facilities;
 - (b) collaborate with the county governments in—
 - (i) the development of the necessary physical and technological infrastructure for the care, rehabilitation and provision of health services to persons with mental illness;
 - (ii) expanding and strengthening community and family-based care and support systems for persons with disability;

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- (c) put in place mechanisms to ensure the rights of persons with mental illness are realised;
 - (d) adopt a comprehensive national strategy and plan of action and policies to promote the realisation of the rights of persons with mental illness under Article 43 of the Constitution and put in place measures designed to improve the general welfare and treatment of persons with mental illness;
 - (e) develop standards to be maintained by mental health facilities including—
 - (i) the number of qualified health professionals required to serve a mental health facility and more specifically the number of psychiatrists, psychologists, psychiatric nurses, counsellors, and psychotherapists;
 - (ii) the type and quantity of diagnostic and therapeutic equipment required by a mental health facility; and
 - (iii) the medication and methods of care, rehabilitation and treatment to be administered to persons with mental illness.
 - (f) develop programmes for the rehabilitation of persons with mental illness;
 - (g) promote research, data collection, analysis and the sharing and dissemination of information on the welfare of persons with mental illness in the Republic; and
 - (h) carry out sensitization programmes on and promote access to

information on the care and management of persons with mental illness.

Obligation of the County governments.

2D. (1) The County governments shall—

- (a) provide mental health care, treatment and rehabilitation services within the county health facilities, in particular ensure that level 2, 3 and 4 county health facilities set aside dedicated clinics to offer outpatient services for persons with mental illness;
- (b) provide community based care and treatment for persons with mental illness including initiating and organizing community or family based programmes for the care of persons suffering from mental illness;
- (c) implement the national policy and strategies relating to persons with mental illness within the county;
- (d) allocate funds necessary for the provision of mental health care in the county budgets;
- (e) provide appropriate resources, facilities, services and personnel capable of dealing with mental illness at the community level;
- (f) formulate rehabilitation programmes suitable for persons with mental illness and provide access to after-care service by persons with mental illness after discharge from mental health facilities;
- (g) formulate and implement county specific programmes to deal with stigma associated with mental illness;

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- (h) ensure mental health interventions at county level—
- (i) are comprehensive and include prevention, early intervention, treatment, continuing care and prevention from relapse;
 - (ii) target persons at risk of developing mental illness including children, women, youth and elderly persons;
 - (iii) target persons affected by catastrophic incidences and emergencies; and
 - (iv) include education, awareness and training on mental health promotion and interventions; and
- (i) provide adequate resources to ensure a person with mental illness lives a dignified and life outside the mental health facility by financing efforts towards reintegrating the person in to the community.

(2) In ensuring that the county governments meet their obligations under subsection (1), the county executive committee member in each county shall—

- (a) advise the Governor on all matters relating to the status of mental health and mental illness in the county;
- (b) develop and implement county specific programmes that promote the rights of persons with mental illness in the county;
- (c) monitor and evaluate the progress by the county in ensuring that Article 43 (1) (a) of the Constitution is realized;

- (d) initiate and organise community or family based programmes for the care of persons suffering from mental illness;
- (e) co-ordinate the implementation of programmes relating to persons with mental illness in the county developed by National Government; and
- (f) prepare and publish reports containing statistical or other information relating to programmes and effect of the programmes carried out by the county in relation to persons with mental illness.

(3) The county executive committee member may delegate some or all the functions under this section, to a committee or an officer within the county public service.

6. The Principal Act is amended by deleting Part II and substituting therefor the following new Part—

Amendment of Part II of Cap 248.

PART II—RIGHTS OF PERSONS WITH MENTAL ILLNESS

Rights of persons with mental illness.

3. Every person with mental illness has the right to—

- (a) fully participate in the affairs of the community and in any position suitable and based on the person's interests and capabilities;
- (b) access medical, social and legal services for the enhancement of the protection of the rights of the person under the Constitution to live in dignity and security;
- (c) protection from physical and mental abuse and any form of discrimination and to be free from exploitation;

- (d) take part in activities that promote the person's social, physical, mental and emotional well-being; and
- (e) receive reasonable care, assistance and protection from their family and the State.

Right to mental health services.

3A (1) Every person has a right to the highest attainable standard of mental health services.

(2) A person with mental illness has the right to appropriate, affordable, accessible—

- (a) physical and mental medical health care;
- (b) counselling;
- (c) rehabilitation; and
- (d) after-care support.

(3) In the provision of mental health care, priority shall be given to community health and primary mental health care and treatment as opposed to institutionalization of the person with mental illness.

(4) In determining the type of mental health care and treatment suitable under subsection (3), a mental health practitioner shall take in to account the mental health condition of the person with mental illness.

(5) A person in charge shall ensure mental health services are provided in a manner that—

- (a) upholds the dignity of the person with mental illness;
- (b) takes in to account and allows for treatment options which help a person with mental illness manage the illness and participate in political, social and economic aspects of the person's life; and
- (c) aims at reducing the impact of mental illness and improving the

quality of life of the person with mental illness through the provision of the relevant clinical and non-clinical care.

(6) Where a person with mental illness has been discharged from a mental health facility, the person in charge shall ensure that the person with mental illness has access to specialized and personalized after-care services necessary to enable the person live a decent and dignified life outside the mental health facility.

Consent to treatment.

3B. (1) Every health care provider shall, where a person with mental illness is capable of making an informed decision on the need for treatment—

- (a) inform the person with mental illness of the person's right to choose an appropriate form of treatment; and
- (b) obtain the written consent of such person before administering any treatment.

(2) Where a person with mental illness is incapable of making an informed decision on the need for treatment, such consent shall be sought and obtained from the representative of that person.

Right to participate in treatment planning.

3C. (1) A person with mental illness has a right to participate in the formulation of their treatment plans.

(2) Where a person with mental illness is incapable of exercising the right under subsection (1) due to the nature of the illness, the representative shall be entitled to participate in the formulation of the treatment plans.

Access to medical insurance.

3D. (1) A person with mental illness shall have the right of access to medical insurance for the treatment from public or private health insurance providers.

(2) The national and county governments shall provide health insurance for the care and treatment of persons with mental illness.

(3) An insurance company or person providing health insurance services shall not discriminate against a person with mental illness or subject a person with mental illness to unfair treatment in obtaining the necessary insurance cover.

(4) Any person or health insurance company that contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding three years, or to both.

Protection of persons with mental illness.

3E. (1) A person with mental illness has the right to protection from physical, economic, social, sexual and other forms of exploitation.

(2) A person with mental illness shall—

- (a) not be subjected to forced labour, whether within or outside a mental health facility;
- (b) have the right to receive remuneration for any work done, similar to that payable to a person without mental illness.

(3) A person who contravenes the provisions of this section commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding three years or a fine not exceeding one million shillings, or both.

(4) A person who witnesses any form of abuse against a person with mental illness shall report the incident immediately to the police, the Board or any other competent authority.

Application of the criminal procedure code.

3F. Subject to the Criminal Procedure Code, a person shall not be received or detained for treatment in a mental health facility unless the person is received and detained in accordance with this Act.

Rights to civil, political and economic rights.

3G. (1) Every person with mental illness shall have the right to exercise all civil, political, economic, social and cultural rights guaranteed under the Constitution and any other written law in force in Kenya.

(2) The exercise of the rights under subsection (1) shall only be limited to the extent and in the manner provided for under this Act.

Right to access to information.

3H. (1) Every person with mental illness, or the representative of such person is, pursuant to Article 35 of the Constitution, entitled to information regarding the person's—

- (a) mental and other health status;
- (b) clinical records and other related information maintained by mental health facilities; and
- (c) health service providers.

(2) Any representations made by a person with mental illness or the representative of such person shall, on request, form part of the records of the person with mental illness.

(3) The Cabinet Secretary shall make regulations generally on access to information under this section, and without prejudice to the generality of the foregoing, such regulations may provide for—

- (a) the procedure for making an application for access to information under this section;
- (b) the person entitled to make an application for access to the information under this section;

- (c) the procedure for the processing of an application and availing the information applied for;
- (d) duration within which the information requested under this section shall be made available;
- (e) exceptional circumstances where such information may be withheld.

Right to confidentiality.

3I (1) All information regarding the care and treatment of a person with mental illness is confidential.

(2) A person in charge or a mental health practitioner shall not disclose any confidential information, except where such disclosure—

- (a) is required by law;
- (b) ordered by a court;
- (c) is in the public interest;
- (d) is necessary to prevent the likelihood of serious harm to the person with mental illness or to others;
- (e) is necessary for purposes of treating the person with mental illness; or
- (f) is in the best interest of the person with mental illness.

Right to representation.

3J. (1) A person with mental illness is entitled to choose and appoint another person to represent them in any manner, including in any complaint procedure or appeal.

(2) Where a person with mental illness is unable to exercise the right under subsection (1) the representative of the person may appoint a person to represent the person with mental illness in any manner, including in any compliant procedure or appeal.

(3) A person with mental illness, the representative of the person or a person appointed under subsection (2) is entitled to, where necessary, the services of an interpreter who shall be made available free of charge.

(4) A person with mental illness, the representative of the person with mental illness or a person appointed under subsection (2) has the right to—

- (a) produce at any hearing independent medical reports and such other reports or evidence that is relevant to that person's mental health status and
- (b) attend, participate and be heard in any hearing.

Legal capacity

3K. (1) A person with mental illness has a right to recognition before the law and shall enjoy legal rights on an equal basis with other persons in all aspects of life.

(2) Upon application, the court may make a determination whether a person with mental illness has legal capacity.

(3) Where, under subsection (2), the court determines that a person lacks legal capacity, the court shall appoint a representative to manage that person's affairs in accordance with the provisions of this Act.

7. Section 4 of the principal Act is amended-

- (a) by deleting subsection (2) and substituting therefor the following new subsections—
 - (2) The Board shall consist of—
 - (a) the Director who shall be the chairperson;
 - (b) the following persons with knowledge and at least four years' experience in mental health care—
 - (i) a psychiatrist nominated by the Medical Practitioners and Dentists Board;

Amendment of section 4 Cap 248.

- (ii) a counsellor or psychologist nominated by the Counsellors and Psychologists Board ;
 - (iii) a nurse nominated by the Nursing Council of Kenya;
 - (iv) a clinical officer nominated by the Clinical Officers Council.
- (c) one person nominated by the Kenya National Commission on Human Rights with knowledge and experience in matters related to mental health;
 - (d) two persons nominated by the Council of County Governors with knowledge and experience in matters related to mental health;
 - (e) one county director of health nominated from amongst the forty-seven county directors of health by the Council of Governors;
 - (f) the Director of Mental Health, who shall be the secretary to the Board an *ex officio* member of the Board.

(2A) The Cabinet Secretary shall appoint the members of the Board nominated under subsection (2) (b), (c), (d), and (e) by notice in the *Gazette*.

(2B) A member of the Board under subsection (2) (b), (c), (d) and (e), shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

(2C) A person is not eligible for appointment as a member of the Board if such person—

- (a) has been convicted of an offence by a court of competent jurisdiction and sentenced to imprisonment for a term of six months or more;
- (b) is adjudged bankrupt or has entered into a composition, scheme or arrangement with the person's creditors;
- (c) has been removed from office for contravening the Constitution or any other law; or
- (d) has not met any statutory obligations in the conduct of their affairs; or

(e) is disqualified from being appointed under the provisions of any other written law.

(2D) While making the appointments under subsection (2A), the Cabinet Secretary shall take in to consideration—

- (a) the one third gender rule; and
- (b) diversity of qualifications of the persons being appointed.

(2E) The Secretary to the Board shall be the Chief executive officer of the Board.

(2F) The procedure for the conduct of business and affairs of the Board shall be as set out in the schedule.

- (a) by deleting subsection (3);
- (b) in subsection (5) by deleting the words “for any purpose or function” appearing immediately after the words “The Board may”; and
- (c) by deleting subsection (6) and substituting therefor the following new subsection –

(6) Subject to the Schedule, the Board may regulate the conduct of its business and affairs

8. The principal Act is amended by inserting the following new sections immediately after section 4—

Insertion of new sections after section 4 in Cap 248

Vacancy in the Board

4A. The office of a member of the Board shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Cabinet Secretary;
- (c) is adjudged bankrupt or enters into a composition scheme or arrangement with the person’s creditors;
- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months; or

(e) is removed from office under any of the circumstances specified in section 4B.

Removal of member of Board from Office

4B. The members of the Board may be removed for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;
- (c) incompetence or negligence of duty; or
- (d) any other ground that would justify removal from office under any written law.

Delegation by the Board

4C. The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board, the county mental health council, or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions or duties under this Act or under any other written law.

9. Section 5 of the principal Act is amended—

Amendment of section 5 of Cap 248

(a) by deleting the introductory clause of the section and substituting therefor—

5. The function of the Board shall be—

- (b) by deleting paragraph (a);
- (c) in paragraph (b) by deleting the word “government” appearing at the beginning of the paragraph and substituting therefor the words “national and county governments”;
- (d) by deleting paragraph (c) and substituting therefor the following new paragraph—
- (c) to set the standards for the establishment of mental health facilities and approve the establishment of national referral mental health facilities;

- (e) in paragraph (d) by deleting the word “hospital” appearing immediately after the words “to inspect mental” and substituting therefor the words “health facilities”;
- (f) in paragraph (e) by deleting the word “hospital” appearing immediately after the words “of any mental” and substituting therefor the words “health facilities”;
- (g) by deleting paragraph (f) and substituting therefor the following new paragraph—
 - (f) to investigate on its own initiative or upon receiving a complaint from any person regarding the treatment of a person with mental illness at a mental health facility and where necessary to advise the Cabinet Secretary or county executive committee member on appropriate remedial action;
- (h) by deleting paragraph (g) and substituting therefor the following new paragraph—
 - (g) to advise the national and county governments on the care of persons suffering from mental subnormality without mental illness;
- (i) by deleting paragraph (h) and substituting therefor the following new paragraphs—
 - (h) to develop guidelines on emergency treatment of persons with mental illness the procedures to be adhered to during emergency treatment ;
 - (ha) to collaborate with the Cabinet Secretary responsible for education in developing and integrating in the education syllabus instructions relating to mental health, including instructions on prevention, treatment, rehabilitation and general information on mental health related illness; and
 - (hb) to prepare reports on prevalence of mental illness in the country and in particular to articulate in the reports an analysis of the specific types of mental illness recorded in every county.

10. Section 6 of the principal Act is amended-

- (a) by deleting subsection (1) and substituting therefor the following new subsections—

(1) There is established the office of the Director of Mental Health which shall be an office in the Public Service.

(1A) The Director of Mental Health shall be competitively recruited and appointed by the Public Service Commission.

(1B) A person shall be eligible for appointment as the Director of Mental Health if that person—

- (a) holds a degree in medicine from a university recognized in Kenya;
- (b) is registered by the Medical Practitioners and Dentists Board as a mental health practitioner;
- (c) has at least ten years' experience in the practice of medicine, five of which shall be experience at senior management level; and
- (d) meets the requirements of Chapter Six of the Constitution.

(1C) The Director shall—

- (a) be the chief executive and accounting officer of the Board; and
- (b) be responsible to the Board for the day to day administration of the affairs of the Secretariat and implementation of the decisions arising from the Board;

(1D) Without prejudice to the generality of the provisions of subsection (1C), the Director shall be responsible for—

- (a) the implementation of decisions of the Board;
- (b) directing and supervising the acts of staff of the Board appointed under subsection (2);
- (c) the organization, control and management of the Board's secretariat;

- (d) maintaining accurate records on financial matters and resource use of the Board;
- (e) ensuring the preparation and approval of the budget for the required funding of the operational expenses of the Board and the Secretariat to the Board; and
- (f) performing any other duties as may be assigned by the Board.

7. **11.** The principal Act is amended by deleting section

Amendment of section 7 of Cap 248.

12. Section 8 of the principal Act is amended—

Amendment of section 8 of Cap 248.

- (a) in subsection (1) by deleting the words “and the district mental health councils” appearing immediately after the words “of the Board”;
- (b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The remuneration of the Board shall be determined by Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

13. The principal Act is amended by deleting the heading to Part IV and substituting therefor the following new heading “PART IV-MANAGEMENT OF MENTAL HEALTH FACILITIES, ADMISSION AND TREATMENT OF PERSONS WITH MENTAL ILLNESS”

Amendment of heading to Part IV of Cap 248

14. Section 9 of the Principal Act is amended—

Amendment of section 9 of Cap 248

- (a) by deleting the word “hospitals” appearing in the marginal note and substituting therefor the words “health facilities”;
- (b) by deleting subsection (2) and substituting therefor the following new subsections—

(2) The Board may, by notice in the *Gazette*, designate a national referral health facility or any other national government facility as a mental health facility.

(2A) A county executive committee member may, by notice in the *Gazette*,

designate a county health facility in the respective county as a mental health facility.

- (c) in subsection (3) by deleting the words “during their term of remand or imprisonment of remand prisoners and convicted criminal prisoners who are persons suffering from mental disorder” appearing immediately after the words “reception and treatment” at the end of that section and substituting therefor the words “of prisoners, either remanded or convicted, suffering from mental illness”;

- (d) by deleting subsection (4) and substituting therefor the following new subsections—

(4) A person who intends to establish a mental health facility or provide mental health services in an existing county health facility shall make an application for designation of the facility to the respective county executive committee member in the prescribed form.

(4A) An application under subsection (4) shall be submitted together with the prescribed fee and such other information as the county executive committee member shall require.

- (e) by deleting subsection (5) and substituting therefor the following new subsection—

(5) The Cabinet Secretary, in consultation with the Board and the Council of County Governors, shall make rules for the control and proper management of mental health facilities including setting the standards to be maintained for mental health facilities.

- (f) by subsection (6) and substituting therefor the following new subsections—

(6) A level 3, 4, 5 and 6 health facility which is designated as a mental health facility under this section shall provide for in-patient and out-patient treatment of persons suffering from mental illness.

(6A) Every private mental health facility established under subsection (7) (b) shall have facilities for inpatient and out-patient treatment of persons suffering from mental illness.

(g) by deleting subsection (7).

15. The Principal Act is amended by inserting the following new sections immediately after section 9—

Insertion of new sections after section 9 in Cap 248

Establishment of mental health facilities.

9A. There may be established—

- (a) a public mental health facility operated and managed by the national or a county government; and
- (b) a private mental health facility.

Private mental health facilities.

9B. (1) A person who intends to establish a mental health facility under section 9A shall submit an application to the Board member in the respective county in the prescribed form together with the prescribed fee.

(2) A premises shall not be used as a private mental health facility under section 9A unless authorized for such purpose by the Board.

(3) A person in charge of a private mental health facility shall be a mental health practitioner that is qualified and duly registered as a-

- (a) psychiatrist;
- (b) psychologist; or
- (c) clinical officer.

(4) A private mental health facility shall be subject to the standards and regulations affecting mental health facilities under this Act.

(5) A person aggrieved by a decision of the Board under this section may appeal to the High Court, and in any such appeal the High Court may annul or vary the decision of the Board as it considers fit.

Penalty for fraudulently procurement of

9C. (1) Where a person, procures or attempts to procure registration under

registration of private mental health facility.

section 9B by making, causing to be made, producing or causing to be produced any false or fraudulent representation or declaration either orally or in writing, that person commits an offence and shall be liable, upon conviction, if the person is a—

- (a) natural person, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years, or to both; or
- (b) body corporate, to a fine not exceeding ten million shillings.

(2) In addition to the penalty imposed under subsection (1), the Board may lodge a complaint with the relevant professional body, to which that person is a member, for the institution of disciplinary proceedings against that person.

Reports by mental health facilities.

9D. A person in charge of a mental health facility shall submit a monthly report to the Board and the county executive committee member on—

- (a) the number of voluntary or involuntary patients the mental health facility has received;
- (b) the number of voluntary or involuntary patients the mental health facility has discharged;
- (c) the number of voluntary patients or involuntary patients still under the care of the mental health facility; and
- (d) the number of voluntary or involuntary patients who have died in the course of treatment in the mental health facility.

Seclusion and restraint.

9E. (1) A person with mental illness shall not be physically restrained or secluded except in accordance with the provisions of this Act, the prescribed procedures and upon authorization by a mental health practitioner.

(2) Physical restraint or seclusion shall only be used where it is the only means available to prevent immediate or imminent harm to the person with mental illness or other people.

(3) Physical restraint or seclusion under subsection (2) shall not be prolonged beyond the period which is strictly necessary to—

- (a) administer treatment to the person with mental illness;
- (b) allow the person with mental illness to co-habit peacefully with other users within the mental health facility or the person's family, or with members of the community.

(4) The mental health facility shall ensure that all instances of physical restraint or seclusion, their reasons, nature and extent are recorded in the medical records of the person with the mental illness.

(5) A person with mental illness who is restrained or secluded shall be kept under humane conditions and shall be under the care and regular supervision of a mental health practitioner within the facility.

(6) The person in charge of a mental health facility shall, within twenty-four hours, give notice of the restraint or seclusion of the person with mental illness to the representative of the person with mental illness.

(7) The review of the mental health status of a person with mental illness under seclusion or restraint shall be carried out in accordance with Part X of this Act.

Informed consent.

9D. (1) The mental health practitioner shall not administer any mental health care, treatment or admit a person under this Part without the person's informed consent or that of the person's representative.

(2) A consent under subsection (1) shall be valid if—

- (a) the person with mental illness or the person's representative is competent to give the consent;
- (b) consent is given freely without threats or improper inducements;
- (c) there is appropriate and adequate disclosure of all relevant information relating to treatment, including information on the type, purpose, likely duration and expected benefits of the treatment;
- (d) choices, where available, are given to the person with mental illness in accordance with prescribed clinical practice; and
- (e) consent is written and documented in the person with mental illness' records.

16. The principal Act is amended by deleting the heading "PART V- VOLUNTARY PATIENTS".

Amendment of Part V Cap 248

17. The principal Act is amended by deleting section 10 and substituting therefor the following new section—

Amendment of section 10 Cap 248

Voluntary admission of a patient.

10. (1) A person who presents themselves voluntarily to a mental health facility for treatment or admission shall be entitled to—

- (a) receive appropriate care and treatment; or
- (b) be referred to an appropriate mental health facility.

(2) Where a person below the age of eighteen years requires admission to a mental health facility for treatment under subsection (1), the parent or guardian of that person shall submit a written application in the prescribed form to the person in charge of a mental health facility for the admission of the child.

(3) Upon receiving a person under this section, the person in charge of the mental

health facility shall, within seventy-two hours, review or cause the condition of the person to be reviewed.

(4) The Board shall in consultation with the Council of County Governors formulate guidelines on—

- (a) the conditions for admitting and retaining a voluntary patient, beyond forty- two days, after the patient becomes incapable of expressing themselves;
- (b) the procedure to be followed by the mental health facility while dealing with a patient admitted under subsection (2), where the parents or guardians of the patient die, become incapable of representing the patient or refuse or neglect to perform their duties under the Act;
- (c) the conditions and procedure for discharging a patient under this section; and
- (d) prescribe the form to be filled before voluntary admission.

- 11. **18.** The principal Act is amended by deleting section 11. Amendment of section 11 Cap 248
- 12. **19.** The principal Act is amended by deleting section 12. Amendment of section 12 Cap 248
- 13. **20.** The principal Act is amended by deleting section 13. Amendment of section 13 Cap 248
- 21.** The principal Act is amended by deleting the heading “PART VI- INVOLUNTARY PATIENTS”. Amendment of Part VI Cap 248
- 22.** Section 14 of the principal Act is amended— Amendment of section 14 of Cap 248.
 - (a) by deleting the marginal note and substituting therefor the words “Involuntary admission”;
 - (b) by deleting subsection (1) and substituting therefor the following new subsections—
 - (1) A person in charge may, upon application, admit a person with mental illness involuntarily or

detain involuntarily a person, having been admitted voluntarily, if a qualified mental health practitioner determines, in accordance with this Act, that the person has a mental illness and —

- (a) because of the mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or
- (b) in the case a person whose mental illness is severe and whose judgment is impaired, failure to admit or retain the person is likely to—
 - (i) lead to a serious deterioration in the condition of that person; or
 - (ii) hinder the provision of appropriate treatment that can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

(1A) An application under this section shall be made in the prescribed form to the person in charge of the mental health facility by a representative of the person with mental illness in the following order—

- (a) by the parent or guardian of the person, if not available or unwilling;
- (b) by the spouse of the person, if not available or unwilling;
- (c) by any other representative of the person; or
- (d) where persons in (a), (b) and (c) are not available or willing to make the application, by any other person.

(1B) A person who makes an application under subsection (1A)(d) shall submit together with the application, information regarding—

- (a) the reason why it is not made as provided under subsection (1A) (a), (b) or (c);
- (b) the connection of the applicant with the person to whom the application relates; and
- (c) the circumstances in which the application is made.

(1C) In the case of involuntary admission under this section, the person in charge shall determine or cause to be determined-

- (a) whether the person admitted suffers from mental illness and the severity of the illness;
- (b) whether there is a likelihood of immediate or imminent harm to the person with mental illness or other persons, and the effect on the health of the person condition if such person is not admitted or treated; and
- (c) whether the treatment requires admission or whether it can be administered to the person as an out-patient.

(1D) The person in charge under subsection (1) shall only detain the person for the duration necessary to stabilize the person with mental illness and provide mental health care services to the person.

- (c) by deleting subsection (2);
- (d) by deleting subsection (5) and substituting therefor the following new subsection—

(5) A determination under subsection (1) shall cease to have effect on the expiration of fourteen days from the last date

on which the person to whom the determination relates was examined by a mental health practitioner.

(e) by deleting subsection (6) and substituting therefor the following new subsections-

(6) A mental health practitioner shall not recommend that a person received in to a mental health facility as an involuntary patient under subsection (1), be admitted for a period exceeding three months.

(6A) A person in charge may extend the period under subsection (6) for one further period not exceeding three months.

(6B) Despite the foregoing provisions, an involuntary patient under this section shall not be retained in a mental hospital for a continuous period exceeding six months.

(f) by deleting subsection (7).

23. The principal Act is amended by deleting section 15.

Amendment of section 15 Cap 248

24. The principal Act is amended by deleting the heading "Part VII- Emergency Admission"

Amendment of Part VII Cap 248.

25. The principal Act is amended by inserting the following new section immediately after section 15-

Insertion of section 15A in Cap 248

Conditions for emergency admission and treatment.

15A. (1) An emergency admission or treatment of a person with mental illness shall be administered on a person where—

(a) there is immediate and imminent danger to the health and safety of the person with mental illness or other people;

(b) the nature of danger under paragraph (a) is such that there needs to be urgent care and treatment to stabilize the person with mental illness; and

(c) the time required to comply with substantive procedures would cause delay and lead to harm to the person with mental illness or to other people.

(2) Where the requirements in subsection (1) have been satisfied, the person with mental illness may be—

(a) admitted to the health facility; or

(b) given the necessary treatment based on the assessment carried out by a qualified medical practitioner or other accredited mental health practitioner.

(3) Where emergency treatment is administered and a person is admitted under this section, the person in charge shall, within twenty- four hours of admission, inform the—

(a) spouse of the person;

(b) parent or guardian of the person; or

(c) any other representative of the person.

(4) Emergency admission or treatment under this section shall not be prolonged for a duration longer than—

(a) necessary to stabilize and treat the person with mental illness; or

(b) in any case for a period longer than seventy –two hours.

(5) Where a mental health practitioner determines that the person with mental illness requires care beyond the period under subsection (4), the following persons may, in writing, prolong the time for treatment—

- (a) spouse of the person;
- (b) parent or guardian of the person; or
- (c) any other representative of the person with mental illness.

(6) An appeal against emergency treatment and admission under this section may be lodged with the Board by—

- (a) spouse;
- (b) parent or guardian; or
- (c) any other representative of the person with mental illness.

26. Section 16 of the principal Act is amended-

Amendment of
section 16 of Cap
248.

- (a) in subsection (1) —
 - (i) by deleting the word “disorder” appearing immediately after the words “suffering from mental” in paragraph (a) and substituting therefor the word “illness”;
 - (ii) by deleting the word “disorder” appearing immediately after the words “because of the mental” in paragraph (b) and substituting therefor the word “illness”;
 - (iii) by deleting the word “disorder” appearing immediately after the words “suffering from mental” in paragraph (c) and substituting therefor the word “illness”;
- (b) by deleting subsection (2) and substituting therefor the following new subsection—
 - (2) A police officer shall deliver the person in the officer’s custody under subsection (1), to a mental health facility within twenty-four hours.
 - (2A) The police officer shall bear the burden of proof that the person was delivered to a mental health facility as required under subsection (2).
- (c) by deleting subsection (3) and substituting therefor the following new subsection—
 - (3) Upon delivery of a person to a mental health facility under subsection (2), the person in charge of the mental health facility shall, within seventy-hours—

- (a) examine or cause the person to be examined to determine whether the person should be—
 - (i) admitted as an involuntary patient under section 14; or
 - (ii) handed over to the care of a representative of that person;
- (b) make the necessary arrangements for the person’s treatment and care.
- (c) by deleting subsection (4).

27. The principal Act is amended in the heading of Part VIII by deleting the words “Armed Forces” and substituting therefor the words “Kenya Defence Forces”.

Amendment of Part VIII of Cap 248

28. Section 17 of the principal Act is amended—

Amendment of section 17 of Cap 248

- (a) in the marginal note by deleting the words “armed forces in to a mental hospital;” appearing immediately after the words “member of” and substituting therefor the words “the Kenya Defence Forces to a mental health facility”;
- (b) in subsection (1) by deleting the word—
 - (i) “hospital” appearing immediately after the words “admitted in to a mental” in the introductory clause and substituting therefor the words “health facility”; and
 - (ii) “hospital” appearing immediately after the words “admitted to a mental” in paragraph (b) and substituting therefor the words “health facility”;
- (c) in subsection (2) by deleting the word “hospital” appearing immediately after the words “admitted to a mental” and substituting therefor the words “health facility”;
- (d) in subsection (3) by deleting by deleting the words —
 - (i) “hospital under subsection (1) may be discharged from that hospital” appearing in immediately after the words “admitted to a mental” in the introductory clause and substituting therefor the words “health facility

subsection (1) may be discharged from that health facility”; and

(ii) “hospital and where the mental hospital” appearing in immediately after the words “discharged from the mental” in paragraph (b) and substituting therefor the words “health facility and where the mental health facility”

(e) by deleting subsection (4) and substituting therefor the following new subsection—

(4) Where any member of the armed forces suffers from mental illness while away from his armed forces unit, and is in any circumstances admitted into a mental health facility, the person in charge shall inform the nearest armed forces unit directly or through an administrative officer or gazetted police officer.

(f) by deleting subsection (5) and substituting therefor the following new subsection—

(5) If a member of the armed forces admitted to a mental health facility under this section ceases to be a member of the armed forces while admitted, the relevant authority in the armed forces shall inform the person in charge of that fact and the patient shall be deemed to be an involuntary patient under section 14 admitted from the date the information is received.

(g) by inserting the following new subsection immediately after subsection (5)—

(6) In this section reference to the armed forces shall be construed to mean Kenya Defence Forces.

29. Section 19 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsections—

(1) Where it is necessary to admit a person suffering from mental illness from any foreign country into any mental health facility in Kenya for observation or treatment, the Foreign Government or other relevant authority in that country shall apply in writing seeking the Board’s approval to admit the person.

Amendment of
section 19 of Cap
248

(1A) A mental health facility shall not receive a person suffering from mental illness from a foreign country without—

- (a) the Board’s written approval; and
- (b) a warrant and other documents duly authorising the person’s detention in and removal from the foreign country.

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The application under subsection (1) shall indicate that the person to who it relates—

- (a) has been legally detained under the laws of the foreign country relating to the detention and treatment of persons suffering from mental illness;
- (b) has been detained for a period not exceeding two months; and
- (c) that the admission in to a mental health facility in Kenya has been found to be necessary.

(c) by deleting subsection (3) and substituting therefor the following new subsections-

(3) Before admitting a person under this section, the person in charge of a mental health facility shall ensure that the requirements under subsection (1A) have been satisfied.

(3A) The requirements under subsection (1A) shall be sufficient authority for the conveyance to, admission and treatment of a person under this section.

(d) in subsection (4) by deleting the—

- (i) words “hospital under this section, not being a person transferred to the mental hospital under section 23,” appearing immediately after the words “under this section,” in the introductory clause and substituting therefor the words “health facility”;
- (ii) word “disorder” appearing immediately after the words “extent of mental” in paragraph (a) and substituting therefor the word “illness”;

(iii) words “his report on the findings” appearing immediately after the words “to the Board” in paragraph (b) and substituting therefor “the report on the examination under paragraph (a)”.

30. Section 20 of the principal Act is amended—

Amendment of section 20 of Cap 248

(a) in subsection (1) by deleting the words “The Minister may, after consultation with the Minister” and substituting therefor “The Cabinet Secretary may, after consultation with the Cabinet Secretary.”

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) A private mental health facility admitting a person under this Part may charge such fees and in such manner as the Cabinet Secretary for the time being responsible for finance in consultation with the Council of County Governors, may from time to time approve in writing.

31. The principal Act is amended in the heading to Part X by deleting the words “ Discharge and Transfer of Patients” and substituting therefor the words “Review, Discharge and Transfer of Persons with Mental Illness ”

Amendment of Part X of Cap. 248

32. The principal Act is amended by inserting the following new sections immediately after section 20—

Insertion of section 20A in Cap 248

Review of mental health status.

20A. (1) The mental health status of a person with mental illness shall be reviewed periodically by a mental health practitioner and such review shall include a review of—

- (a) the nature of the illness;
- (b) the need for care and treatment;
- (c) the type of care and treatment provided;
- (d) the need for referral, transfer or discharge; and
- (e) any other matters related to the mental health status of the person with mental illness.

(2) The review of the mental health status of a person with mental illness may be initiated by—

- (a) the person with mental illness;
- (b) the mental health care practitioner in charge of managing the person with mental illness;
- (c) a representative of the person with mental illness;
- (d) the person in charge of the facility;
- (e) any other person upon proof of the nature of their interest; or
- (f) the Board.

(3) The Board in consultation with the Cabinet Secretary and the Council of County Governors, shall prescribe in regulation the procedure for review under this Act.

Appeals.

20B. (1) Any decision made under review shall be subject to appeal—

- (a) in the first instance to the person in charge of the mental health facility;
- (b) a further appeal shall lie to the Board; and
- (c) if the person is dissatisfied with the decision of the Board, a further appeal in the third instance shall lie in the court.

33. The principal Act is amended by deleting section 21 and substituting with the following new section-

Amendment of section 21 of Cap 248

Discharge.

21 (1) The person in charge of a mental health facility may, by order in writing and upon the recommendation of the medical practitioner and mental health practitioner in charge of the person's treatment in the mental health facility, order the discharge of the person admitted to the mental health facility and that person shall thereupon be discharged as having recovered from mental illness.

(2) A person with mental illness shall be discharged from the mental health facility

under subsection (1) where the medical practitioner and the medical health practitioner in charge of managing the person make a decision that the person can no longer receive any other or further treatment from a mental health facility and appropriate efforts are being made towards re-integration of the person into the community, and for specialized and personalized after-care service.

(3) An order under this section shall not be made regarding a person who is detained under the Criminal Procedure Code.

34. Section 22 of the principal Act is amended—

Amendment of
section 22 of
Cap 248

(a) in subsection (1) by deleting the word “hospital” appearing immediately after the words “into any mental” and substituting therefor “health facility”;

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) While exercising the powers under subsection (1), the person in charge of the mental health facility shall, within forty-eight hours, consult the mental health practitioner in charge of the person’s treatment in the mental health facility.

(c) by deleting subsection (3) and substituting therefor the following new subsection—

(3) A relative or friend who takes a person from a mental health facility under this section but is subsequently unable or unwilling to continue to take care of the person, shall report the matter to the person in charge of the mental health facility from which the person was taken and the person in charge may admit the person back to the mental health facility under the terms and conditions the person with mental illness had been admitted before delivery to the relative or friend.

(d) in subsection (4) by deleting the word “district mental health council” appearing immediately after the words “or the relevant” and substituting

therefor the word “county executive committee member”;

- (e) by deleting subsection (5); and
- (f) by deleting subsection (6) and substituting therefor the following new subsection-

(6) The person in charge of a mental health facility from which a person has been taken into the custody and care of a relative under subsection (1) may at any time during such custody and upon the recommendations of the medical practitioner and the mental health practitioner in charge of the person’s treatment in the mental health facility order that the person be discharged as having recovered from mental illness.

35. Section 23 of the principal Act is amended—

Amendment of
section 23 Cap
248

- (a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) A person may, by order of the Director or the relevant county executive committee member, as the case shall be, be transferred from one national referral mental health facility to another national referral mental health facility or from one county mental health facility to another county health mental facility as the case may be.

- (b) by inserting the following new subsection immediately after subsection (1) —

(1A) The Director or the county executive committee member, as the case shall be, shall, before making the order to transfer a person with mental illness under subsection (1), determine whether the transfer—

- (a) is for the benefit of the person with mental illness; or
- (b) is necessary for the purpose of obtaining specialized treatment for such person.

(1B) Before transferring a person under subsection (1), the person in charge of a mental health facility, shall obtain consent from-

- (a) the person with mental illness; or

- (b) the representative of the person with mental illness.
- (c) in subsection (2) by deleting the words “hospital to which the transfer is made a certified copy of the order of the Director” appearing immediately after the words “charge of the mental” and substituting therefor the words “health facility to which the transfer is made a certified copy of the order of the Director or the relevant county executive committee member as the case may be”.

36. Section 24 (1) of the principal Act is amended by deleting the word “disorder and who desires that the person, whether admitted into a mental hospital” appearing immediately after the words “suffering from mental” and substituting therefor “illness and who desires that the person, whether admitted into a mental health facility”.

Amendment of section 24 of Cap 248.

37. The principal Act is amended by deleting PART XII and substituting therefor the following new part-

Amendment of Part XII of Cap 248

**PART XII—CARE AND
ADMINISTRATION OF PROPERTY
OF PERSONS WITH MENTAL
ILLNESS**

Application for administration.

26. (1) An application for an order for the management and administration of the estate of a person with mental illness may be made, in the following order of priority, to the court by—

- (a) a parent, or if unable or unwilling;
- (b) a spouse, or if unable or unwilling;
- (c) the child of that person, where such child has attained the age of eighteen years, or if unable or unwilling;
- (d) a relative of the person, or if unable or unwilling; or
- (e) a person under whose care or charge the person with mental illness is.

(2) An application under subsection (1) shall be submitted together with an affidavit setting out—

- (a) the grounds upon which the application is made;
- (b) the full particulars as to the property and relatives of the person to whom it relates;
- (c) a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness; and
- (d) in the case where the application is made by a person under subsection (1) (b), (c) (d) or (e), an affidavit duly executed by the person waiving their right of make an application in accordance with the provisions of subsection (1).

(3) A notice of the application under subsection (1) shall, in such manner as the court may direct, be served upon the—

- (a) person in respect of whom the application is made; or
- (b) representative of the person with mental illness.

(4) Despite the provisions of subsection (3) the court may make an order for the service upon any other person to whom, in the opinion of the court, notice of the application should be given.

(5) The court may waive the requirement for service under subsection (3)(a) if the court considers service impracticable, inexpedient or would be ineffectual.

(6) The court may, in order to have a report of the mental capacity and condition

of such person in relation to whom the application is made, require the person to present themselves at a place and time appointed by the court, for the—

- (a) court to examine the person; or
- (b) person to be examined by a qualified registered mental health practitioner.

Orders of the Court.

27. (1) The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including—

- (a) an order making provision for the maintenance of the person;
- (b) an order making provision for the maintenance of members of the person's immediate family who are dependent upon the person; and
- (c) an order making provision for the payment of the person's debts.

(2) The court may appoint a manager of the estate of a person with mental illness for the purposes of safeguarding the property of that person.

(3) The court shall, by notice in the *Gazette*, inform the public of the appointment of a person as the manager of the estate of a person who is suffering from mental illness.

(4) Within fourteen days of the *Gazette* Notice under subsection (3), any person may lodge an objection to the person appointed as manager.

Duties of a manager.

29. (1) Where a manager is appointed under this Part, the court may, upon considering the nature of the property whether movable or immovable, and subject to subsection (2), make such orders as the court may consider necessary for the management of the estate by the manager.

(2) The manager shall not, without the approval of the court—

- (a) mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;
- (b) lease any such property for a term exceeding five years; or
- (c) invest in any securities other than those authorized under the Trustee Act.

Cap. 167.

(3) A manager shall not invest any funds or property belonging to the estate managed under this section—

- (a) in any company or undertaking in which the manager has an interest; or
- (b) in the purchase of immovable property under the authority of section 4 (1) (d) of the Trustee Act without prior consent of the court.

(4) A manager shall perform the manager's duty under this Act responsibly taking into account the best interests of the estate of the person who is suffering from mental illness.

(5) Every conveyance or other instrument made pursuant to an order of the court under this Part shall be valid.

Inventory of property.

30. (1) A person appointed to be a manager of the estate of a person with mental illness under this Part shall, in the prescribed form, within six months of the date of appointment, deliver to the court and to the Public Trustee an inventory of—

- (a) the property belonging to the person in respect of whose estate the manager has been appointed;
- (b) all sums of money, goods and effects the manager receives on account of the estate; and

(c) a statement of debts owed by or due to such person with mental illness.

(2) Upon payment of such fee as may be prescribed, the representative of a person with mental illness or any interested person may inspect and obtain a copy of any inventory, statement or account delivered to the court and to the Public Trustee pursuant to subsection (1).

(3) The Public Trustee shall report annually to the Cabinet Secretary and the Board on all accounts under subsection (1).

(4) Where a person, by petition to the court, disputes the accuracy of any inventory or statement of any annual account made under this section, the court may summon the manager, inquire summarily into the matter and make such orders as it considers appropriate.

Penalty.

31. (1) A manager who contravenes the provisions of this Part commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding three years or a fine not exceeding two million shillings, or to both.

(2) Any property of a person who is mentally ill which is lost due to maladministration of the person's estate shall be a civil debt recoverable summarily from the manager's estate.

Removal of manager.

32. (1) The court may, on its own motion or upon application, for sufficient cause—

- (a) remove any manager appointed under this Part; and
- (b) may appoint any other person as manager.

(2) In exercising its power under subsection (1), the court may make such order as it considers necessary to ensure that the person removed as manager—

- (a) transfers the property under the person's care, and of which the person was a manager, to the new manager; and
- (b) accounts to the new manager for all money received or disbursed by the person in connection with the property.

38. Section 40 of the principal Act is amended by deleting—

Amendment of section 40 of Cap 248.

- (a) subsection (1) and substituting therefor the following new subsection—

(1) The person in charge of a mental health facility or a mental health practitioner in charge of any patient in the mental health facility shall forward all letters written by the patient and addressed to the Board or relevant county executive committee member, or to any member of the Board as soon as practicable after such letters come to the notice of the person in charge.

- (b) subsection (3) and substituting therefor following new subsection—

(3) A person in charge of a mental health facility and a mental health practitioner in charge of any patient in a mental health facility shall be entitled to examine and at the discretion of the person, retain any letters addressed to person with mental illness other than to those mentioned in subsection (1).

39. Section 41 of the principal Act is amended by deleting the words “hospital may refuse to receive any person into the hospital” appearing immediately after the words “charge of a mental” and substituting therefor the following words “health facility may refuse to receive any person into the health facility”.

Amendment of section 41 of Cap 248.

40. Section 42 of the principal Act is amended by deleting subsection (5) and substituting therefor the following new subsection—

Amendment of section 42 of Cap 248.

- (5) The Director of Public Prosecution shall be notified, within thirty days, of instituting criminal

proceedings under this Act in accordance with the provisions of the Office of the Director of Public Prosecution Act.

No. 2 of 2013

41. The principal Act is amended by deleting section 43 and substituting therefor the following new section—

Amendment of section 43 of Cap 248.

Issuance of recommendation or medical certificate.

43. No medical recommendation for admission of a person to a mental health facility and no medical certificate for the purposes of sections 10, 14 and 15 shall be signed by any person owning a financial interest in such mental health facility unless the person in respect of whom the recommendation or certificate is signed, is at the time of signing, admitted to the mental health facility or is lawfully detained in some other suitable place for observation as to his mental condition, by the person who signs the certificate.

42. The principal Act is amended by deleting section 44 and substituting therefor the following new section—

Amendment of section 44 of Cap 248.

Correction of admission procedure.

44. Where, after a person has been admitted into a mental health facility, the person in charge discovers any defect in the admission procedure or the medical recommendation upon which the person was admitted, the person in charge may require the defect to be corrected at any time within fourteen days after the person is admitted into the mental health facility.

43. The principal Act is amended by deleting section 45 and substituting therefor the following new section—

Amendment of section 45 of Cap 248

Escape from mental health facility.

45. (1) Every person admitted into a mental health facility under this Act shall remain admitted until the person leaves, is removed or discharged in accordance with this Act.

(2) Where a person who is admitted into a mental health facility escapes, a police officer, person employed in such mental health facility or any other person authorized by the person in charge of the mental health

facility may, upon finding such person, convey that person into the mental health facility.

44. The principal Act is amended by deleting section 46.

Amendment of section 46 of Cap 248.

45. The principal Act is amended by deleting section 49 and substituting therefor the following new section—

Amendment of section 49 of Cap 248.

Aiding the escape of person suffering from mental illness.

49. Any person who wilfully assists the escape of any person suffering from mental illness being conveyed to or from, or while under care and treatment in, a mental health facility, or who harbours any person suffering from mental illness whom the person knows has escaped from a mental health facility, commits an offence.

46. The principal Act is amended by deleting section 50 and substituting therefor the following new section—

Amendment of section 50 of Cap 248.

Permitting patient to quit mental health facility unlawfully.

50. Any person in charge of, or any person employed at a mental health facility who through wilful neglect or connivance permits any patient in a mental health facility to leave such mental health facility other than under this Act or any other law for the time being in force commits an offence.

47. Section 51 of the principal Act is amended—

Amendment of section 51 of Cap 248.

Ill-treatment of person in mental health facility.

51. Any person in charge of, or any person employed at, a mental health facility who strikes, ill-treats, abuses or wilfully neglects any patient in the mental health facility shall be guilty of an offence; but nothing in this section shall be deemed to make it an offence for the person in charge of, or any person employed at, a mental health facility to take steps he considers necessary in the interests of a patient to prevent the patient from causing physical injury to himself or to others.

48. Section 52 of the principal Act is amended by deleting the words “hospital, whether inside or outside the grounds of the mental hospital” appearing immediately after the words “patient in a mental” and substituting therefor the words “health facility, whether inside or outside the grounds of the mental health facility”

Amendment of section 52 of Cap 248.

49. Section 53 of the principal Act is amended by deleting the words “ten thousand shillings” appearing immediately after the words “fine not exceeding” and substituting therefor “five hundred thousand shillings.”

Amendment of section 53 of Cap 248.

50. Section 54 of the principal Act is amended by deleting the introductory clause and substituting therefor the following clause-

Amendment of section 54 of Cap 248.

54. The Cabinet Secretary shall, in consultation with the Board and the Council of County Governors, make regulations regarding-

51. Any licences or orders made by the Board prior to commencement of this Act, shall be deemed to have been issued under this Act.

Transition.

52. Section 19 of the Health Act is amended in subsection (5) paragraph (c) by inserting the words “including mental health services” immediately after the words “all health services”.

Amendment to Act No. 21 of 2017

SCHEDULE. (section 4)

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. (1) The Board shall meet at least once in every month to conduct the business of the Board.

Meetings of the Board.

(2) The Chairperson shall convene the ordinary meetings of the Board at the premises of the Board.

(3) Despite the provisions of sub-paragraph (1), the Chairperson shall, upon a written request by at least five members of the Board, convene a special meeting of the Board at any time where he considers it expedient for the transaction of the business of the Board.

(4) Unless three quarters of the total number of the members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board by the Secretary.

(5) The quorum for the conduct of the business of the Board shall be five members.

(6) The Chairperson shall preside at every meeting of the Board at which the Chairperson is present and in the absence of the Chairperson, the members of the Board present shall elect one person from their number to preside over the meeting of the Board and he shall have all the powers of the Chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or person presiding over the meeting shall have a casting vote.

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.

(9) Subject to provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings thereof.

(10) The Board shall determine the procedure for the county mental health councils and for attendance of other persons at the councils' meeting.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the

Disclosure of interest.

Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose his interest in the matter and shall not take part in the deliberations over, or vote on, the matter.

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

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed on behalf of the Authority by any person generally or specially authorized by the Board for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

Article 43 (1) (a) of the Constitution guarantees every person the right to the highest attainable standard of health which includes the right to health care services. The Constitution further establishes two levels of government, the national government and the county governments. These two levels of government have an obligation to ensure that every person has access to health care services within their jurisdiction. Further, Part 2 of the Fourth Schedule requires county governments to provide county health services including, promote primary health care. To buttress this Constitutional requirement, section 73 of the Health Act, 2017 states that Parliament should enact legislation to ensure *inter alia* that the rights of an individual suffering from any mental disorder or condition are protected and mental hospitals with sufficient capacity are established at the national and county levels. It is in this context that this Bill proposes to impose obligations on each level of government to address the issue of accessibility to mental health services including care, treatment and rehabilitation of persons with mental illness.

The Bill proposes to incorporate within the membership of Kenya Mental Health Board representation of the county governments. The Bill further reviews the membership of the Kenya Mental Health Board from the current fourteen executive members to nine in order to make the workings of the Council more efficient and representative.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill outlines the obligations of the county government in regard to securing the rights of persons with mental illness.

The Bill is therefore a Bill concerning county governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

The Bill does not impose any taxes, impose any charges on a public fund, appropriate any public funds or propose any other thing contained in Article 114 (3).

This Bill is therefore, not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 8th August, 2018.

SYLVIA KASANGA,
Senator.

The long title of Cap 248 of which it is proposed to amend

An Act of Parliament to amend and consolidate the law relating to the care of persons who are suffering from mental disorder or mental subnormality with mental disorder; for the custody of their persons and the management of their estates; for the management and control of mental hospitals; and for connected purposes

Section 2 of Cap 248 of which it is proposed to amend

2. Interpretation

In this Act, unless the context otherwise requires—

“Board” means the Kenya Board of Mental Health established under section 4;

“court” means the High Court;

“Director” means the Director of Medical Services;

“magistrate” means a magistrate holding a subordinate court of the first class;

“manager” means any person appointed under Part XII;

“medical practitioner” has the meaning assigned to that term in sections 2 and 3 of the Medical Practitioners and Dentists Act (Cap. 253);

“mental hospital” means a mental hospital established under section 9;

“person in charge”, in relation to a mental hospital, means the person for the time being authorized by the Director to be in medical charge of the mental hospital;

“person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse;

“substance abuse” means the maladaptive pattern of use as indicated by either recurrent or continued use of any psychoactive substances (such as alcohol, amphetamine, cannabis sativa, cocaine, hallucinogens, inhalants, opioids, sedatives, hypnotics, or anxiolytics) where such use causes or exacerbates persistent or recurrent social, occupational, psychological or physical problems;

“treatment” includes medical treatment, nursing and care and training under medical supervision.

Part II of Cap 248 of which it is proposed to amend

PART II – RECEPTION OF PERSONS IN MENTAL HOSPITALS

3. Reception into mental hospital

Subject to the Criminal Procedure Code (Cap. 75), no person shall be received or detained for treatment in a mental hospital unless he is received and detained under this Act.

Section 4 of Cap 248 of which it is proposed to amend

4. Establishment of the Board

(1) There shall be established a Board to be known as the Kenya Board of Mental Health for the purposes of this Act.

(2) The Board shall consist of—

- (a) a chairman, who shall be the Director of Medical Services or a Deputy Director of Medical Services appointed by the Minister;
- (b) one medical practitioner with specialization and experience in mental health care appointed by the Minister;
- (c) one clinical officer with training and experience in mental health care appointed by the Minister;
- (d) one nurse with training and experience in mental health care appointed by the Minister;
- (e) the Commissioner for Social Services or, where the Commissioner cannot serve, his nominee appointed by the Minister;
- (f) the Director of Education or, where the Director cannot serve, his nominee appointed by the Minister;
- (g) a representative of each of the provinces of Kenya being persons resident in the provinces, appointed by the Minister;
- (h) the Deputy Director of Mental Health;
- (i) the Chief Nursing Officer.

(3) The members of the Board appointed by the Minister shall serve at the Minister's pleasure for a period not exceeding three years and shall be eligible for re-appointment.

(4) The Board may co-opt any person whose skills, knowledge or experience may be useful to the Board or to any committee of the Board.

(5) The Board may for any purpose or function establish committees of the Board.

(6) Subject to this section, the Board shall regulate its own procedure and the procedure of any committee established by it.

[Act No. 11 of 1993, Sch.]

Section 5 of Cap 248 of which it is proposed to amend

5. Functions of the Board

The functions of the Board shall, under the control of and direction of the Minister, be—

- (a) to co-ordinate the mental health care activities in Kenya;
- (b) to advise the Government on the state of mental health and mental health care facilities in Kenya;
- (c) to approve the establishment of mental hospitals;
- (d) to inspect mental hospitals to ensure that they meet the prescribed standards;
- (e) to assist, whenever necessary, in the administration of any mental hospital;
- (f) to receive and investigate any matter referred to it by a patient or a relative of a patient concerning the treatment of the patient at a mental hospital and where necessary to take, or recommend to the Minister, any remedial action;
- (g) to advise the Government on the care of persons suffering from mental subnormality without mental disorder;
- (h) to initiate and organize community or family based programmes for the care of persons suffering from mental disorder; and
- (i) to perform such other functions as may be conferred upon it by or under this or other written law.

Section 6 of Cap 248 of which it is proposed to amend

6. The Director of Mental Health and staff of the Board

(1) There shall be a Director of Mental Health whose office shall be an office in the public service and who shall be the secretary and chief executive officer of the Board.

(2) There may be appointed such staff for the Board, who may be public officers, as are necessary to enable the Board to effectively carry out its functions.

Section 7 of Cap 248 of which it is proposed to amend

7. District mental health councils

(1) The Minister may, in consultation with the Board, appoint district mental health councils to perform, at the district level, such of the Board's functions as the Minister shall direct and report thereon to the Board in such manner as the Minister shall approve.

(2) A district mental health council shall consist of not less than five and not more than seven persons including the district medical officer of health.

(3) The members of a district mental health council other than the district medical officer of health shall serve thereon at the Minister's pleasure but for not more than three years at one time and shall be eligible for re-appointment.

(4) For the purposes of this section the Nairobi Area shall be a district for which a district mental health council may be appointed.

Section 8 of Cap 248 of which it is proposed to amend

8. Expenses of the Board and the district mental health councils

(1) The expenses of the Board and the district mental health councils shall be met out of funds voted for the purpose by Parliament.

(2) There may be paid to the members of the Board, other than public officers in receipt of a salary, such allowances as the Minister, in consultation with the Minister for the time being responsible for finance, shall determine.

Title of Part IV of Cap 248 of which it is proposed to amend

PART IV – MENTAL HOSPITALS

Section 9 of Cap 248 of which it is proposed to amend

9. Establishment of mental hospitals

(1) A mental hospital authorized by the Director under section 2 of the Mental Treatment Act (Cap. 248 (1970) now repealed) shall be deemed to have been established under this Act.

(2) A hospital or part of a hospital or other place may be authorized by the Board, by notice in the *Gazette*, to be a mental hospital and a place for the reception and treatment as in-patients of two or more persons who are suffering from mental disorder.

(3) The Board may, under this section, authorize places within prisons established under the Prisons Act (Cap. 90) to be places for the

reception and treatment during their term of remand or imprisonment of remand prisoners and convicted criminal prisoners who are persons suffering from mental disorder.

(4) An application to the Board for authority to establish a mental hospital shall be in the prescribed form accompanied by the prescribed fee.

(5) The Minister may, in consultation with the Board, make rules for the control and proper management of mental hospitals and may by such rules prescribe the standards to be maintained for mental hospitals.

(6) Every mental hospital shall have facilities for in-patient and out-patient treatment of persons suffering from mental disorder.

(7) There may be established public mental hospitals operated and managed by the Government and private mental hospitals operated and managed by persons other than the Government.

Title of Part V of Cap 248 of which it is proposed to amend

PART V – VOLUNTARY PATIENTS

Section 10 of Cap 248 of which it is proposed to amend

10. Power to receive voluntary patients

(1) Any person who has attained the apparent age of sixteen years, who desires to voluntarily submit himself to treatment for mental disorder and who makes to the person in charge a written application in duplicate in the form prescribed, may be received as a voluntary patient into a mental hospital.

(2) Any person who has not attained the apparent age of sixteen years and whose parent or guardian desires to submit him to treatment for mental disorder may, if the parent or guardian makes to the person in charge of a mental hospital a written application in duplicate in the prescribed form, be received as a voluntary patient.

(3) Any person received as a voluntary patient under this section may leave the mental hospital, upon giving to the person in charge seventy-two hours' notice in writing of his intention to leave and if he is a person who has not attained the apparent age of sixteen years, upon such notice being given by his parent or guardian, and the release shall be at the discretion of the person in charge of the mental hospital concerned.

Section 11 of Cap 248 of which it is proposed to amend

11. Voluntary patient to be reviewed within seventy-two hours

Where a person is received into a mental hospital as a voluntary patient under section 10, the person in charge shall within seventy-two

hours review the condition of that patient or cause the condition to be reviewed within that time.

Section 12 of Cap 248 of which it is proposed to amend

12. Notification of reception, death or departure of voluntary patient

Where a person is received into a mental hospital as a voluntary patient under section 10, or where a person so received dies in or departs from a mental hospital, information of his reception, death or departure shall be given by the person in charge to the district mental health council.

Section 13 of Cap 248 of which it is proposed to amend

13. Voluntary patient not to be retained for more than forty-two days after becoming incapable of expressing himself

(1) A voluntary patient received into a mental hospital under section 10 who at any time becomes incapable of expressing himself as willing or unwilling to continue to receive treatment, shall not be retained as a voluntary patient for more than forty-two days thereafter, and shall be discharged on or before the expiration of that period unless, in the meantime he has again become capable of so expressing himself and the person in charge, in consultation with the district mental health council, considers that his continued stay in the mental hospital may be of benefit to the voluntary patient and the person in charge of the patient shall subject to sections 15 and 22, retain the person in the mental hospital until an order for discharge can be made under section 21.

(2) If a voluntary patient who has not attained the age of sixteen years and who has been received in a mental hospital under section 10 ceases to have any parent or guardian or if his parent or guardian is incapable of performing or refuses or persistently neglects to perform, his duty as parent or guardian, the person in charge shall report the circumstances of the case and the condition of the voluntary patient to the district mental health council who shall forthwith consider the report and give such directions for the retention or discharge of the patient as may be proper.

(3) The person in charge shall act on any direction given by the district mental health council under subsection (2).

Title of Part VI of Cap 248 of which it is proposed to amend

PART VI – INVOLUNTARY PATIENTS

Section 14 of Cap 248 of which it is proposed to amend

14. Temporary treatment without certificate of certain persons

(1) Subject to this section, a person who is suffering from mental disorder and is likely to benefit by treatment in a mental hospital but is for

the time being incapable of expressing himself as willing or unwilling to receive treatment, may, on a written application under this section, be received into a mental hospital as an involuntary patient for treatment.

(2) An application under this section shall be made in the prescribed form to the person in charge and shall be made—

- (a) by the husband or wife, or by a relative, of the person to whom it relates; or
- (b) if there is no husband, wife or relative available or willing to make an application, by any other person who shall state in his application the reason why it is not made as provided under paragraph (a), the connection of the applicant with the person to whom the application relates and the circumstances in which the application is made.

(3) The application shall be accompanied by a recommendation in duplicate, in the prescribed form, signed by a medical practitioner, who shall where practicable be the usual medical practitioner attending the person concerned and where this is not practicable a medical practitioner approved by the Director for the purpose of making any such recommendation, shall make it.

(4) The medical practitioner who makes a recommendation under this section shall, before signing the recommendation, examine the person to whom the recommendation relates and specify in the recommendation the date or dates on which he examined the person and the grounds on which the recommendation is based.

(5) A recommendation shall cease to have effect on the expiration of fourteen days from the last date on which the person to whom the recommendation relates was examined by the medical practitioner.

(6) A person received as an involuntary patient into a mental hospital may be admitted in the hospital for a period not exceeding six months which period may be extended by the person in charge for a further period not exceeding six months:

Provided that an involuntary patient shall not be admitted in a mental hospital for any continuous period exceeding twelve months.

(7) Where a person has been received into a mental hospital as an involuntary patient under this section, or if a patient so received dies in or departs from the mental hospital, information of the reception, death or departure shall be given by the person in charge to the district mental health council.

15. Board's powers of discharge

Where any person has been received into a mental hospital under Part V or this Part, the Board may at any time order that the person shall be discharged or otherwise dealt with under this Act.

Title of Part VII of Cap 248 of which it is proposed to amend

PART VII – EMERGENCY ADMISSION

Section 16 of Cap 248 of which it is proposed to amend

16. Power to take person suffering from mental disorder into custody

(1) Any police officer of or above the rank of inspector, officer in charge of a police station, administrative officer, chief or assistant chief may take or cause to be taken into his custody—

- (a) any person whom he believes to be suffering from mental disorder and who is found within the limits of his jurisdiction; and
- (b) any person within the limits of his jurisdiction whom he believes is dangerous to himself or to others, or who, because of the mental disorder acts or is likely to act in a manner offensive to public decency; and
- (c) any person whom he believes to be suffering from mental disorder and is not under proper care and control, or is being cruelly treated or neglected by any relative or other person having charge of him.

(2) Any person taken into custody under subsection (1) shall be taken to a mental hospital by the person taking him into custody within twenty-four hours of being taken into custody or within a reasonable time, and the burden of proving that the person was taken to a mental hospital within a reasonable time shall lie on the person taking him into custody.

(3) The person in charge of the mental hospital to which a person is taken under this section shall admit that person for a period not exceeding seventy-two hours for the purpose of enabling him to be examined and of making any necessary arrangements for his treatment and care.

(4) The person in charge may after examination under subsection (3), if he thinks fit, make the person admitted into the mental hospital over to the care of any relative or detain the person in the mental hospital as an involuntary patient deemed to be admitted under Part VI.

Title of Part VIII of Cap 248 of which it is proposed to amend

PART VIII – ADMISSION AND DISCHARGE OF MEMBERS OF THE ARMED FORCES

Section 17 of Cap 248 of which it is proposed to amend

17. Admission of member of armed forces into mental hospital for observation and treatment

(1) Notwithstanding anything to the contrary in this Act, any member of the armed forces may be admitted into a mental hospital for observation

if a medical officer of the armed forces by a letter addressed to the person in charge certifies that—

- (a) he has examined the member of the armed forces within a period of forty-eight hours before issuing the letter; and
- (b) for the reasons recorded in the letter the member of the armed forces is a proper person to be admitted to a mental hospital for observation and treatment.

(2) A member of the armed forces may be admitted to a mental hospital under subsection (1) for an initial period not exceeding twenty-eight days from the date of admission and that period may be extended if at or before the end of the twenty-eight days two medical practitioners, one of whom shall be a psychiatrist, recommend the extension after re-examining the patient.

(3) A member of the armed forces admitted to a mental hospital under subsection (1) may be discharged from that hospital if two medical practitioners, one of whom shall be psychiatrist, by a letter addressed to the person in charge certify that—

- (a) they have examined the member of the armed forces within a period of seventy-two hours before issuing the letter; and
- (b) for the reasons recorded in the letter it is desirable that the member of the armed forces be discharged from the mental hospital and where the mental hospital is not an armed forces hospital the member of the armed forces shall be discharged to the nearest armed forces health unit which shall arrange to transport the patient to his armed forces unit.

(4) Where any member of the armed forces suffers from mental disorder while away from his armed forces unit, and is in any circumstances admitted into a mental hospital, the person in charge shall inform the nearest armed forces unit directly or through an administrative officer or gazetted police officer.

(5) If a member of the armed forces admitted to a mental hospital under this section ceases to be a member of the armed forces while admitted, the relevant authority in the armed forces shall inform the person in charge of that fact and the patient shall be deemed to be an involuntary patient under Part VI admitted from the date the information is received.

Section 19 of Cap 248 of which it is proposed to amend

19. Admission of patients from foreign countries

(1) Where it is necessary to admit a person suffering from mental disorder from any foreign country into any mental hospital in Kenya for

observation or treatment the Government or other relevant authority in that country shall apply in writing to the Board to approve the admission and no mental hospital shall receive a person suffering from mental disorder from a foreign country without the Board's written approval.

(2) The application for the Board's approval under subsection (1) shall indicate that the person to whom it relates has been legally detained in the foreign country for a period not exceeding two months under the law in that country relating to the detention and treatment of persons suffering from mental disorder and his admission into the mental hospital in Kenya has been found necessary.

(3) No person shall be admitted into a mental hospital under this section unless he is accompanied by a warrant or other document duly authorizing his detention in and removal from the foreign country and the warrant or other document together with the Board's approval under subsection (2) shall be sufficient authority for his conveyance to, admission and treatment in the mental hospital to which the Board's approval relates.

(4) On the admission of a person into a mental hospital under this section, not being a person transferred to the mental hospital under section 23, the person in charge shall within seventy-two hours or such longer period as the Board may approve—

- (a) examine the person or cause the person to be examined to determine the extent of mental disorder and the nature of treatment; and
- (b) within that period forward to the Board his report on the findings together with the warrant or other document from the foreign country concerned accompanying the person.

(5) A person shall not be detained in a mental hospital under this section for a period longer than two months from the date of admission to the mental hospital unless the Board, on application in the prescribed form by the person in charge, approves.

Section 20 of Cap 248 of which it is proposed to amend

20. Admission fees under this Part

(1) The Minister may, after consultation with the Minister for the time being responsible for Finance, by notice in the *Gazette*, prescribe the fees payable for admission of persons into Government mental hospitals under this Part and the manner of payment of those fees.

(2) A non-Government mental hospital admitting persons under this Part may charge such fees and in such manner as the Minister for the time being responsible for finance may from time to time approve in writing.

Title of Part X of Cap 248 of which it is proposed to amend

PART X – DISCHARGE AND TRANSFER OF PATIENTS

Section 21 of Cap 248 of which it is proposed to amend

21. Discharges

The person in charge of a mental hospital may, by order in writing and upon the recommendation of the medical practitioner in charge of any person's treatment in the mental hospital, order the discharge of any person admitted to the mental hospital and that person shall thereupon be discharged as having recovered from mental disorder:

Provided that—

- (i) an order shall not be made under this section for a person who is detained under the Criminal Procedure Code (Cap. 75); and
- (ii) this section shall not prejudice the Board's powers under section 15.

Section 22 of Cap 248 of which it is proposed to amend

22. Order for delivery of patient into care of relative or friend

(1) If any relative or friend of a person admitted into any mental hospital under this Act desires to take the person into his custody and care, he may apply to the person in charge, who may, subject to subsection (2), order that the person be delivered into the custody and care of the relative or friend upon such terms and conditions to be complied with by the relative or friend.

(2) In the exercise of his powers under subsection (1) the person in charge shall consult with the medical practitioner in charge of the person's treatment in the mental hospital and the Board or the relevant district mental health council which is performing the Board's functions under section 7(1):

Provided that the consultation shall be conducted with the minimum delay.

(3) A relative or friend who takes a person from a mental hospital under this section but is subsequently unable or unwilling to continue to take care of the person, shall report the matter to the person in charge of the mental hospital from which the person was taken and the person in charge may admit the person back to the mental hospital under the terms

and conditions he had been admitted before delivery to the relative or friend.

(4) The person in charge shall report the re-admission under subsection (3) to the Board or the relevant district mental health council as the case may be.

(5) Subsection (3) shall not apply to any person from a foreign country who may only be readmitted under Part IX.

(6) The person in charge of a mental hospital from which a person has been taken into the custody and care of a relative under subsection (3) may at any time during such custody and upon the recommendations of the medical practitioner in charge of the person's treatment in the mental hospital order that the person be discharged as having recovered from mental disorder.

Section 23 of Cap 248 of which it is proposed to amend

23. Transfer of patients in Government hospitals

(1) Any person detained in a Government mental hospital under this Act may be transferred by order of the Director from one Government mental hospital to another.

(2) Where a person is transferred under subsection (1), the person responsible for conveying him shall produce to the person in charge of the mental hospital to which the transfer is made a certified copy of the order of the Director.

Section 24 of Cap 248 of which it is proposed to amend

24. Removal of patients to other countries

(1) A friend or relative of a person suffering from mental disorder and who desires that the person, whether admitted into a mental hospital or not, should be removed from Kenya to a foreign country for subsequent treatment and care, shall apply to the Board for approval of the removal.

(2) The Board shall inquire into the case of the person to whom the application under subsection (1) relates in such manner as it deems fit, and if satisfied that the removal is likely to be for the person's benefit, and that proper arrangements have been made for the proper removal and subsequent treatment and care the Board may by warrant in the prescribed form and subject to subsection (3), direct that the person be delivered to a person, named in the warrant, for the purpose of being removed to the foreign country specified in the warrant.

(3) No warrant for the removal of any person to a foreign country shall be issued by the Board under subsection (2) unless a prior consent to

receive the person has been obtained from the proper authorities in the foreign country.

Part XII of Cap 248 of which it is proposed to amend

PART XII – JUDICIAL POWER OVER PERSONS AND ESTATES OF PERSONS SUFFERING FROM MENTAL DISORDER

26. Order for custody, management and guardianship

(1) The court may make orders—

- (a) for the management of the estate of any person suffering from mental disorder; and
- (b) for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.

(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.

(3) Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.

27. Power of manager in respect of estate

(1) Where a manager is appointed under this Part, the court may order that the manager shall have such general or special powers for the management of the estate as the court considers necessary and proper regard being had to the nature of the property whether movable or immovable, of which the estate may consist:

Provided that—

- (i) a manager so appointed shall not, without the special permission of the court—
 - (a) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist;
 - (b) lease any such property for a term exceeding five years; or

(c) invest in any securities other than those authorized by section 4 of the Trustee Act (Cap. 167);

(ii) no manager may invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has an interest, nor on the purchase of immovable property under the authority of paragraph (d) of section 4(1) of the Trustee Act without the prior consent of the court.

(2) Where the person appointed to be manager of an estate or guardian of a person under this Part is unwilling to act gratuitously, the court may fix such allowance to be paid out of the estate of the person in respect of whom the manager or guardian has been appointed as, in the circumstances of the case, the court may think fit.

(3) Any manager appointed under any other law in force before the commencement of this Act shall be deemed to have been appointed under this Act as from such commencement, but shall not be required to file any inventory or statement under subsection (1) of section 33 if he has already done so before such commencement.

(4) For the purposes of this Act and the Penal Code (Cap. 63), a manager shall be deemed to be a trustee under any other law for the time being in force.

28. Power to make order concerning any matter with the person

(1) The court may, upon application made to it by petition concerning any matter connected with a person suffering from mental disorder or with his estate, make such order, subject to this Part, regarding such application as, in the circumstance's of the case, the court may think fit.

(2) The Minister, the Public Trustee or a manager may take out, as a matter of course, an application in chambers for the determination of any question arising out of the management of any estate in respect of which an order has been made under this Part.

29. Power to apply property for maintenance of person suffering from mental disorder without appointing manager

(1) Where it appears to the court that, having regard to the circumstances of a person who is suffering from mental disorder and of his family and any other relative circumstance, it is expedient that his property should be made available for his or their maintenance it may, instead of appointing a manager or, notwithstanding such appointment, order that the property or the proceeds thereof when realized be paid to such person as the court may think fit, to be applied for such maintenance.

(2) Where it appears to the court that a person is suffering from mental disorder of a temporary nature and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent upon him for their maintenance, the court may in the manner provided in subsection (1), direct that his property or sufficient part of it be applied for such purpose.

(3) The receipt of any person under subsection (1) shall be a valid discharge to any person who pays any money delivers any property of the person suffering from mental disorder to the person so appointed.

30. Powers of court over property of person who has no manager appointed

Where no manager is appointed, the court may, if it appears to be just or for the benefit of the person suffering from mental disorder, order that any property of such person, be sold, charged, mortgaged or otherwise disposed of as may seem most expedient for the purpose of raising, securing or repaying, with or without interest money to be applied, or which has been applied to all or any of the following purposes—

- (a) the payment of the debts or engagements of such person;
- (b) the discharge of any encumbrance on his property;
- (c) the payment of any debt or encumbrance on his property for the maintenance of such person or otherwise for his benefit;
- (d) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent upon him for maintenance, including the expenses of his removal from Kenya if he is so removed and all expenses incidental thereto; or
- (e) the payment of the costs of any inquiry under this Act and of any costs incurred by order or under the authority of the court.

31. Power to order transfer of property of person residing out of Kenya

Where any movable or immovable property is vested in any person residing out of Kenya, the court may, upon being satisfied that such person is suffering from mental disorder and that a manager has been appointed for his estate according to the law of the place where he is residing, order some fit person to pay, deliver or transfer such property, or any part of that property, to the name of the appointed, as the court may think fit.

32. Execution of conveyances and powers by manager under order of court

A manager, or such other person as the court may appoint for the purpose, shall on behalf of the person suffering from mental disorder execute any conveyance and instrument relating to any sale, mortgage or other disposition of such person's estate as the court may order, and any conveyance or other instrument executed by such manager, or any other such person, with the sanction of the court, shall be as valid and effectual in all respects as if it had been executed by the person suffering from mental disorder while he was not so suffering.

33. Manager to furnish inventory and annual accounts

(1) Every person appointed by the court to be manager of the estate of a person under this Part shall, within six months of the date of his appointment, deliver to the court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) an inventory of the property belonging to the person of whose estate he has been appointed manager and all such sums of money, goods and effects as he receives on account of the estate, together with a statement of all debts owed by or due to such person, and every such manager shall furnish to the court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) annually, within three months of the 31st December, an account of the property in his charge showing the sums received and disbursed on account of the estate during the year and the balance; such inventory, statement and account shall be in the prescribed form.

(2) Any person may, on payment of such fee as may be prescribed, inspect and obtain a copy of any inventory, statement or account delivered to the court and to the public Trustee under subsection (1).

(3) The Public Trustee shall report to the Minister annually on all accounts delivered to him under subsection (2).

(4) Where any person, by petition to the court, impugns the accuracy of any inventory or statement or of any annual account made under this section, the court may summon the manager and inquire summarily into the matter, and make such order as it thinks proper or the court may refer the petition to a magistrate having jurisdiction in the place where the property belonging to the estate concerned is situated, for inquiry and report, and upon receipt of the magistrate's report the court may make such order as it thinks fit.

34. Removal of managers and guardians

(1) The court may, for any sufficient cause, remove any manager or guardian appointed by it under this Part, and may appoint any other fit

person in his place; and may make such order as it considers necessary to ensure that the person removed transfers the property under his care, and of which he was manager, to his successor, and accounts to the successor for all money received or disbursed by him in connection with the property.

(2) The court may also, for any sufficient cause, remove the guardian of a person appointed by it and appoint any other fit person in his place.

35. Termination of appointment of manager

(1) On any termination of the appointment of any manager, that manager shall deliver an account, in the prescribed form, of the property of which he was manager, to the court which made his appointment.

(2) No such account shall be accepted as correct until it is approved by the Public Trustee who may charge such fee as may be prescribed.

(3) Any manager who, within a time fixed by the court, neglects or refuses to deliver on account under this section, or deliver to a person named by the court any property belonging to the estate of which he was manager, shall be guilty of an offence.

36. Orders on recovery of person previously suffering from mental disorder

Where any person has been found under this Act to be suffering from mental disorder, and it is subsequently shown to the court that there is reason to believe that he has recovered from the mental disorder, the court may, after receiving evidence by affidavit or otherwise, make such order as in the circumstances it deems just and expedient.

37. Examination of females

The attendance and examination of any person under this Act shall, if such person is a woman who according to the custom or religion of such woman ought not to be compelled to appear in public, be regulated by the law and practice for the examination of any such woman in civil cases.

38. Court procedure

Where a person alleged to be suffering from mental disorder is before the court or magistrate, such court or magistrate shall, whenever possible, sit *in camera*.

39. Chief Justice may delegate power to magistrates

The Chief Justice may, by notice in the *Gazette* confer upon any magistrate, either generally or in respect of a particular person or class of persons all or any of the powers conferred upon or vested in the court under this Act.

Section 40 of Cap 248 of which it is proposed to amend

40. Letters of patients

(1) The person in charge of a mental hospital or every person having charge of any patient in the mental hospital shall forward all letters written by the patient and addressed to the Board or the relevant district mental health council, or to any member of the Board or relevant council as soon as practicable after such letters come to his notice.

(2) Letters addressed by patients to persons other than those mentioned in subsection (1) shall be forwarded as the person in charge may, in his discretion, decide.

(3) Every person in charge of a mental hospital and every person having charge of any patient in a mental hospital shall be entitled to examine and at his discretion, retain any letters addressed to persons other than to those mentioned in subsection (1).

Section 41 of Cap 248 of which it is proposed to amend

41. Power to refuse reception into mental hospital

Notwithstanding anything in this Act, a person in charge of a mental hospital may refuse to receive any person into the hospital if there is insufficient or unsuitable accommodation available therein.

Section 42 of Cap 248 of which it is proposed to amend

42. Protection of persons acting under Act

(1) Any person who does any act in pursuance or intended pursuance of this Act shall not be under any civil or criminal liability in respect thereof, if the court is satisfied that he has acted in good faith and with reasonable care.

(2) Any proceedings taken against any person for any act under subsection (1) may, upon application to the court in which they are taken, be stayed, if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious, and the court may award to the defendant such costs or compensation, or both, as it considers reasonable.

(3) No proceedings under this section shall be commenced after the expiry of six months from the act complained of or, in the case of a continuance of injury or damage, after the expiry of six months from the discovery of such Act.

(4) Nothing in this section shall be construed as depriving any person of any defence.

(5) No criminal proceedings shall be commenced under this Act without the prior consent in writing of the Attorney-General.

Section 43 of Cap 248 of which it is proposed to amend

43. Who may not give certificates

No medical recommendation for admission of a person to a mental hospital and no medical certificate for the purposes of Parts V, VI, and VII shall be signed by any person owning a financial interest in such mental hospital unless the person in respect of whom the recommendation or certificate is signed, is at the time of signing, admitted to the mental hospital or is lawfully detained in some other suitable place for observation as to his mental condition, by the person who signs the certificate.

[Act No. 11 of 1993, Sch.]

Section 44 of Cap 248 of which it is proposed to amend

44. Amendment of order of certification

Where, after a person has been admitted into any mental hospital, the person in charge discovers any defect in the admission procedure or the medical recommendation upon which the person was admitted is defective, he may require the defect to be corrected at any time within fourteen days after the person is admitted into the mental hospital.

Section 45 of Cap 248 of which it is proposed to amend

45. Detention of escapee

Every person admitted into a mental hospital under this Act shall remain admitted until he leaves or is removed or discharged, in accordance with this Act; and, if any person admitted to a mental hospital escapes, he may be taken by any police officer, by any person employed in such mental hospital or by any other person authorized by the person in charge of the mental hospital, and conveyed to and received into the mental hospital.

Section 46 of Cap 248 of which it is proposed to amend

46. Insurance for treatment of persons suffering from mental disorder

(1) Every person in Kenya shall, be entitled, if he wishes, to insurance providing for his treatment as a person suffering

from mental disorder and no insurance company shall make any insurance policy providing insurance against sickness, which excludes or restricts the treatment of persons suffering from mental disorder.

(2) An insurance company which makes any insurance policy which expressly excludes or puts restrictions on the treatment of any person suffering from mental disorder shall be guilty of an offence.

Section 49 of Cap 248 of which it is proposed to amend

49. Escape of person suffering from mental disorder

Any person who wilfully assists the escape of any person suffering from mental disorder being conveyed to or from, or while under care and treatment in, a mental hospital, or who harbours any person suffering from mental disorder whom he knows has escaped from a mental hospital, shall be guilty of an offence.

Section 50 of Cap 248 of which it is proposed to amend

50. Permitting patient to quit mental hospital unlawfully

Any person in charge of, or any person employed at, a mental hospital who through wilful neglect or connivance permits any patient in a mental hospital to leave such hospital other than under this Act or any other law for the time being in force shall be guilty of an offence.

Section 51 of Cap 248 of which it is proposed to amend

51. Ill-treatment of person in mental hospital

Any person in charge of, or any person employed at, a mental hospital who strikes, ill-treats, abuses or wilfully neglects any patient in the mental hospital shall be guilty of an offence; but nothing in this section shall be deemed to make it an offence for the person in charge of, or any person employed at, a mental hospital to take steps he considers necessary in the interests of a patient to prevent the patient from causing physical injury to himself or to others.

Section 52 of Cap 248 of which it is proposed to amend

52. Dealings with patients

Any person who, without the consent of the person in charge gives, sells or barter any articles or commodity of any kind to any patient in a mental hospital, whether inside or outside the grounds of the mental hospital, shall be guilty of an offence.

Section 53 of Cap 248 of which it is proposed to amend

53. General penalty

Any person who is guilty of an offence under this Act, or who contravenes any of the provisions of this Act or of any regulations made under this Act shall, where no other penalty is expressly provided, be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

Section 54 of Cap 248 of which it is proposed to amend

54. Regulations

The Minister may, in consultation with the Board, make regulations—

- (a) prescribing anything which under this Act may be prescribed;
- (b) generally for regulating the equipment, administration, control and management of mental hospitals;
- (c) for the care, treatment and rehabilitation of person suffering from mental disorder;
- (d) for the procedure of admission of out-patient patients;
- (e) for the better carrying out of the provisions of this Act.

Section 19 of No. 21 of 2017 of which it is proposed to amend

County health system.

19. (1) There shall be established with respect to every county, a county executive department responsible for health, which shall be in line with the health policy guidelines for setting up county health system and shall in all matters be answerable to the Governor and the County Assembly subject to the provisions of the Constitution and of any applicable written law.

(2) There shall be established the office of the County Director of health who shall be a technical advisor on all matters of health in the County.

(3) The County Director of health shall be recruited through a competitive process in conformity with the rules and regulations set from time to time by the County Public Service Board.

- (4) A person appointed a County Director of health shall—
 - (a) be a medical practitioner registered by the Medical Practitioners and Dentists Board;
 - (b) be at least a holder of a Masters degree in public health, medicine or any other health related discipline; and
 - (c) have at least five years' experience in management of health services.
- (5) The County Director of health shall-
 - (a) be the technical advisor on all matters relating to health within the County;
 - (b) be the technical advisor to the County Health Executive Committee member and the Governor;
 - (c) supervise all health services within the County;

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- (d) promote the public health and the prevention, limitation or suppression of infectious, communicable or preventable diseases within the County;
 - (e) prepare and publish reports and statistical or other information relative to the public health within the County;
 - (f) report periodically to the Director-General for health on all public health occurrences including disease outbreaks, disasters and any other health matters; and
 - (g) perform any other duties as may be assigned by the appointing authority and any other written law.