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TUESDAY 13TH SEPTEMBER, 2022

THE OFFICIAL GAZETTE 13TH SEPTEMBER, 2022
LEGAL SUPPLEMENT — A

GUYANA

ACT No. 14 of 2022

MENTAL HEALTH PROTECTION AND PROMOTION ACT 2022

I assent.

Mohamed Irfaan Ali,
President.
13th September, 2022

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AN ACT to provide mental health care and treatment for persons with mental illness and to protect, promote and fulfil the human rights of those persons during the delivery of mental health care; to provide for the establishment of the Mental Health Board; to repeal the Mental Hospital Ordinance and for related matters.

A.D. 2022 Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Mental Health Protection and Promotion Act 2022 and shall come into operation on the day the Minister may, by order, appoint.

Interpretation.

2. In this Act-

"admitting medical officer" means a medical practitioner other than a psychiatrist who may admit a person with a mental illness to a health facility;

"Board" means the Mental Health Board established under section 51;

"Chairperson" means the Chairperson of the Board;

"Chief Medical Officer" means the Chief Medical Officer of the Ministry responsible for health;

"child" means a person under the age of eighteen years;

"court" means any court in Guyana of competent jurisdiction and includes a magistrate or a judge having powers to act in connection with proceedings before that court;

"guardian" means-

(a) a person appointed under section 30; or

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(b) in relation to a child, a person appointed under section 30 or 31 of the Custody, Contact, Guardianship and Maintenance Act;

"healthcare provider" means a person or institution duly licensed under the relevant law to provide mental health care or mental health services;

"health facility" means a place in which one or more members of the public receive health services or treatment and includes, a hospital, a health centre, a health post, a training institution for health professionals, a laboratory, a diagnostic or therapeutic clinic, a nursing home, a place where chronic or extended care services are offered, a hospice, a place where rehabilitation health services are provided, a medical or surgical clinic, an emergency care centre, or any other place that may be designated by the Minister;

"inpatient" means a person who receives mental health care within a mental health facility;

"involuntary treatment" means the provision of mental health care to a person who is incapable of making informed decisions due to the person's mental health status and who refuses mental health care for the person's own protection or the protection of others;

"Medical Director" means a registered medical practitioner in charge of the medical and professional services of a health facility or a mental health facility;

Cap. 32:02

"medical practitioner" means a medical practitioner registered pursuant to the provisions of the Medical Practitioners Act;

"mental health care or mental health services" means the promotion of health and prevention of diseases, diagnostic, care, treatment, habilitation and rehabilitation services which are provided to a person who is suffering from a mental illness;

"mental health facility" means any health facility designated by the Minister of health as a mental health facility in accordance with section 8;

"mental health status" means the level of mental well-being of an individual as affected by physical, social and psychological factors and which may result in a psychiatric diagnosis;

"mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, including mental conditions associated with alcohol and drugs but does not include solely intellectual disability;

"Minister" means the Minister responsible for health and the term "Ministry" shall be construed accordingly;

"nominated representative" means a person nominated in accordance with section 23;

"outpatient" means a person who receives mental health care and is not admitted to a mental health facility;

"prescribed" means prescribed by regulations made by the Minister;

"psychiatrist" means a medical practitioner registered by the Medical Council of Guyana with additional qualification to the level of a Doctor of Medicine or equivalent to practice psychiatry in Guyana under the Medical Practitioners Act;

Cap. 32:02

"Secretary" means the Secretary of the Board appointed under section 58.

Objectives of the Act.

3. The objectives of this Act are to-

(a) fulfil and protect the rights of persons living with mental illness;

(b) promote the mental health and well-being of all persons in Guyana;

(c) ensure that persons with mental illness receive the best mental health care with the least restriction on their freedom and interference of their human rights and dignity;

(d) minimise the adverse effects of mental illness on family life and the community; and

(e) address mental health determinants and protective factors.

PART II

THE PROMOTION OF MENTAL HEALTH AND ACCESS TO MENTAL HEALTH SERVICES

Implementation of policies and measures.

4. The Minster shall ensure that policies and measures in relation to mental health care are implemented in a manner which promotes-

(a) the accessibility of mental health services to all persons;

(b) the provision of community based mental health care and rehabilitation services;

(c) the human rights of persons with mental illness; and

(d) the improvement of the mental health status of persons in Guyana.

Accessibility to mental health services.

5. Mental health services shall be equitable and accessible to all persons in Guyana.

The promotion of mental health awareness.

6. The Minister, in collaboration with civil society, shall take all measures to ensure that-

(a) the provisions of this Act are promoted widely in Guyana;

(b) a mental health promotion policy is prepared to address the determinants of mental health, promote wellness, prevent suicides and substance abuse;

(c) programmes to reduce stigma associated with mental illness are planned, designed, funded and implemented in an effective manner;

(d) all medical personnel in public health facilities, including healthcare providers attached to the prisons, are trained to provide basic and emergency mental healthcare;

(e) public servants, including police officers, are given periodic sensitisation and awareness training on mental health care; and

(f) members of the Judiciary and other persons working in the justice sector are provided with awareness-raising and training programmes on the rights of persons with mental illness.

Co-ordination.

7. In ensuring the objectives of this Act and the promotion of mental health in Guyana are realised, the Minister shall take all measures to ensure effective co-ordination on matters relating to mental health between the Ministries and Departments of Government such as those responsible for health, human services and social security, home affairs, legal affairs and labour.

Designation of mental health facility.

8. The Minister may, by order, designate any licensed health facility as a mental health facility for the care and treatment of persons with mental illness and for the prevention and promotion of mental health.

PART III
DETERMINATION OF MENTAL ILLNESS, CAPACITY AND CONSENT

Determination of mental illness.

9. (1) Mental illness shall be diagnosed in accordance with nationally or internationally accepted medical standards, including the latest edition of the International Classification of Diseases of the World Health Organization, or as may be prescribed.

(2) No person or authority shall classify a person as a person with mental illness, except for purposes directly relating to the treatment of the mental illness or in other matters as provided for under this Act or any other written law.

(3) The mental illness of a person shall not be diagnosed or determined on the basis of-

(a) the political, economic, social status or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status of the person; or

(b) non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community.

Mental capacity to make mental health care or treatment decision.

10. (1) Every person, including a person with mental illness, is deemed to have the mental capacity to make decisions regarding his or her mental health care or treatment unless the person is unable to-

(a) understand the information that is relevant to make a decision on the person's treatment, admission or personal assistance;

(b) appreciate any reasonably foreseeable consequence of a decision or lack of a decision on the person's treatment, admission or personal assistance;

(c) due to their mental health status, to fully appreciate the consequences of making a decision; or

(d) communicate the decision under subsection (a) by means of speech, gesture or any other manner.

(2) A lack of mental capacity shall not be established merely by reference to-

(a) a person being diagnosed with a mental illness;

(b) a person's age or appearance; or

(c) a condition of the person, or an aspect of the person's behaviour, which might lead others to make unjustified assumptions about the person's mental capacity.

(3) The information referred to under subsection (1) shall be given to a person using simple language which the person understands or by sign language, visual aids, or any other means to enable the person to understand the information.

(4) Where a person makes a decision regarding his or her mental health care or treatment which is considered by others persons as inappropriate or wrong, it shall not automatically follow that the person does not have the mental capacity to make a mental health care or treatment decision, so long as the person has the capacity to make the mental health care or treatment decision.

Informed consent.

11. (1) No person or entity shall administer voluntary mental health care or treatment to any person without the informed consent of the person.

(2) The informed consent given pursuant to subsection (1) shall be in writing.

(3) Notwithstanding subsection (2), where the person is not able to put their informed consent in writing, informed consent may be given orally, or in any other suitable manner, including sign language, and the psychiatrist before treating the person shall attest in writing that the consent was freely given.

(4) Where the person is a child, consent shall be given by the parent of the child or the guardian of the child, as the case may be.

(5) Where the court has determined that a person lacks the mental capacity to make decisions regarding his or her mental health care or treatment, consent may be given by the nominated representative or guardian, of the person, as the case may be.

(6) For consent to be informed it shall be obtained freely without threats or inducements, where-

(a) a medical practitioner or healthcare provider is satisfied that the person with a mental illness is capable of understanding the nature, purpose and likely risks and side effects of the proposed mental health care; and

(b) a medical practitioner or healthcare provider has given the person with a mental illness adequate information, in a form and language that the person with a mental illness understands, on-

(i) the nature, purpose and likely duration and expected benefits of the proposed treatment;

(ii) the possible pain or discomfort and likely risks and side effects of the proposed treatment; and

(iii) any alternative treatment, if available, and the option to seek a second opinion.

(7) Any informed consent given by a person pursuant to this section shall be recorded by the medical practitioner or healthcare provider and the consent shall form part of the person's medical records.

Adjudication by court on mental capacity.

12. Upon the application of any person to the court challenging the mental capacity of a person, the court shall, when making a decision, consider the provisions of section 10 which relates to mental capacity.

PART IV

HUMAN RIGHTS OF PERSONS WITH MENTAL ILLNESS

Application of Part.

13. (1) The rights of persons with mental illness and the duties of a person or an institution set out in this Part shall be in addition to any other rights and duties that the person or institution may have in respect of the Constitution and any other written law.

(2) In making a decision under this Act concerning the mental health care of a person with a mental illness, including a decision to admit the person to a mental health facility, the person's will and preference shall be considered.

Right to mental health care.

14. (1) Every person shall have the right to access mental health care and mental health services of an acceptable and good quality.

(2) Every person with mental illness shall receive mental health care according to standards equivalent to those applicable to any other health care user.

(3) Every person with mental illness shall have the right to exercise all civil, political, economic, social and cultural rights accorded to every person by the Constitution and any other written law in Guyana.

Respect, human dignity and privacy.

15. (1) Where any person has to make a decision under this Act concerning the mental health care of another person, including a decision to admit the person to a mental health facility, priority shall be given to the need to respect the human rights of the person, including, the right to dignity, integrity, privacy and autonomy.

(2) Every person with a mental illness shall have the right to mental health care which seeks to facilitate the person's integration back into community life as earliest as possible.

(3) A person with a mental illness has a right to participate in the formulation of the person's treatment plans and where the person is incapable of exercising this right due to the person's mental health status, the person's nominated representative or guardian, as the case may be, may participate in the formulation of the treatment plan.

(4) A person with a mental illness has the right to be examined in private and in the absence of other persons other than the psychiatrist or healthcare provider specifically required for the consultation or examination.

(5) A person with a mental illness is entitled to choose and appoint a representative of the person's choice including a legal representative.

(6) A person with a mental illness shall not be used for teaching and research purposes without the person's consent and where that person is incapable of giving consent the person's nominated representative may give consent in accordance with section 27.

Right to live and be treated in community.

16. (1) A person with mental illness shall-

(a) have the right to live in, be part of, and not be segregated from the community; and

(b) not continue to remain in a mental health facility merely because the person does not have a family or is not accepted by his or her family or is homeless.

(2) Every person with mental illness shall, in so far as practicable, be provided with care, treatment and rehabilitation services and community-based programs that improve the mental capacity of that person to develop to realise their potential and to facilitate the person's integration into community life.

(3) In the provision of mental health care, priority shall be given to providing a person with care and treatment within their community and family environment and the provision of mental health care in a hospital shall only be carried out when it provides greater therapeutic benefits than the rest of the interventions that can be carried out in the family, community or social environment.

(4) Where it is not possible for a person with a mental illness to live with family or where the person with a mental illness has been abandoned by family, the Ministry in collaboration with the Ministry with responsibility for human services and social security shall provide appropriate support, including legal aid, to facilitate the person exercising their rights to the family home and living in the family home.

(5) The Ministry shall within a reasonable period, provide support for or support the establishment of less restrictive community-based establishments including half-way homes and group homes for persons who no longer require treatment in a mental health facility.

(6) Admission to a mental health facility shall not amount to segregation from the community.

Non-Discrimination.

17. No person shall be discriminated against because of the person's mental health status.

Disclosure of information.

18. (1) Subject to subsection (3), a person with a mental illness has the right to confidentiality and access to their health records.

(2) Records which identify a person as a person with a mental illness, the manner of behaviour of the person as well as their diagnosis and treatment shall not be disclosed to another person or entity without the written consent of the person or where the person is unable to give consent, the person's nominated representative or guardian, as the case may be.

(3) Notwithstanding subsection (2), a Medical Director may disclose, to the Chief Medical Officer or to the Medical Director of another mental health facility, when required, any information if failure to do so would seriously prejudice the health or safety of the person with a mental illness or another person.

(4) Subject to subsection (3), any person who discloses any confidential information without the consent of the person with a mental illness or the consent of their nominated representative or guardian, as the case may be, commits an offence and shall be liable on summary conviction to a fine of five hundred thousand dollars or imprisonment for three months.

Least restrictive alternative.

19. (1) The delivery of mental health care to a person with a mental illness shall be based on the principle of the least restrictive alternative.

(2) The principle of least restrictive alternative means offering an option for treatment or the setting of any treatment which meets the person's treatment needs and imposes the least restriction on the person's rights.

Knowledge of rights.

20. (1) A person with a mental illness shall, before having any mental health care administered, be informed by the person providing that care, in a manner and

language that the person with a mental illness understands, of the person's rights, except where the person lacks the mental capacity to make an informed decision.

(2) Where a person with a mental illness lacks the mental capacity to make an informed decision, the nominated representative, or guardian, as the case may be, shall be given the information immediately and the person with a mental illness shall be given the information when the person has recovered mental capacity.

Access to justice.

21. (1) Every person with a mental illness shall have access to justice on an equal basis with others and shall have the right to participate in the administration of justice.

(2) The court shall employ any appropriate procedural accommodations to ensure that a person with a mental illness can participate in all legal proceedings.

The best interest of the child.

22. (1) In performing a function under this Act in relation to a child, every person shall have regard to-

(a) what is in the best interests of the child as a primary consideration;

(b) the child's wishes, to the extent that it is practicable to ascertain those wishes; and

(c) the views of the child's parent or guardian, as the case may be.

(2) A child receiving mental health care shall as far as possible, be treated in the least restrictive environment.

(3) In cases where a child is required to be admitted to a mental health facility, the child shall be accommodated separately from adults, and the developmental needs of the child shall be taken care of.

(4) Special provision shall be made for the accommodation of a child whose conduct may at any time be harmful to the child or other persons.

(5) The following treatments shall not be administered to a child-

(a) deep brain stimulation and other irreversible treatments; and

(b) electroconvulsive therapy.

PART V

NOMINATED REPRESENTATIVE AND GUARDIANSHIP

Advance directive.

23. (1) Every person who is not a child, shall have the right to make, in writing, an advance directive in such a manner as may be prescribed, specifying any or all of the following-

(a) the manner in which the person wishes to be cared for or treated for a future mental illness;

(b) the manner in which the person wishes not to be cared for or treated for a future mental illness; and

(c) the individual or individuals, in order of precedence, the person wants to appoint as his or her nominated representative.

(2) The written nomination shall be signed by the person or made by the thumb impression or mark of the person and shall be witnessed by two persons.

(3) The nominated representative shall-

(a) be an adult;

(b) give consent in writing to act as the nominated representative of the person; and

(c) be competent to discharge the duties assigned to him or her under this Act.

(4) An advance directive may be made by a person irrespective of his or her past mental illness or treatment for mental illness.

(5) An advance directive shall be invoked only when the person with a mental illness ceases to have mental capacity, as determined under this Act, to make mental health care or treatment decisions and shall remain effective until the person regains the mental capacity to make mental health care or treatment decisions.

(6) Any decisions made by a person while he or she has the mental capacity to make mental health care or treatment decisions shall override any previously written advance directive by the person.

(7) A person making an advance directive shall, until it is proved otherwise, be presumed to have the capacity to do so.

(8) Subject to section 26, an advance directive may be revoked, amended or cancelled in writing at any time by the person who made it.

(9) The appointment of a nominated representative, or the non-appointment of a nominated representative, shall not be construed as the lack of capacity of the person to take decisions about his or her mental health care or treatment.

Maintenance of register.

24. Any advance directive shall be registered and maintained by the Board and shall be made available in the form and manner as may be prescribed.

Advance directive not to apply to emergency treatment.

25. An advance directive shall not apply to any emergency treatment given pursuant to section 43.

Reviewing, altering, modifying or cancelling the advance directive.

26. (1) A healthcare provider, a relative or the care-giver of a person may make an application to the High Court to review, alter, modify or cancel the advance directive.

(2) Upon receipt of the application under subsection (1), the High Court shall, after giving an opportunity to be heard to all concerned parties, including the person who made the directive, either uphold, modify, alter or cancel the advance directive after taking into consideration the following-

(a) whether the advance directive was made by the person of his or her own free will and free from force, undue influence or coercion;

(b) whether the person intended the advance directive to apply in the circumstances prompting the application;

(c) whether the person was sufficiently well informed to make the advance directive;

(d) whether the person had the mental capacity to make decisions relating to his or her mental health care when the advanced directive was made; and

(e) whether the content of the advance directive contravened this law or any other written law.

(3) The High Court in making a decision under this section may if it is of the opinion that it is in the interest of the person with mental illness to do so, revoke the appointment of a nominated representative, and appoint a different representative.

Duty of nominated representative.

27. A nominated representative shall, while fulfilling his or her duties under this Act, -

(a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;

(b) give particular credence to the views of the person with mental illness;

(c) provide support to the person with mental illness in making treatment decisions;

(d) have the right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;

(e) be involved in discharge planning;

(f) apply to a mental health facility for involuntary inpatient admission;

(g) apply to the Board and the High Court, as the case may be, on behalf of the person with mental illness for discharge from a mental health facility;

(h) apply to the High Court against any violation of the rights of the person with mental illness.

Access to the advance directive.

28. The person making the advance directive and his or her nominated representative shall have a duty to ensure that the Medical Director, medical practitioner or any other mental health provider, as the case may be, has access to the advance directive when required.

Liability in relation to advance directive.

29. A medical practitioner or a mental health provider shall not be liable for any unforeseen consequences-

(a) on following a valid advance directive; or

(b) not following a valid advance directive if the advance directive was not made available due to any person not complying with section 28.

Application for guardianship.

30. (1) Where a person lacks mental capacity and no nominated representative has been appointed by that person, the High Court, on the application

of an interested person, may appoint a guardian to make decisions on behalf of that person.

(2) A guardianship application shall be accompanied by the written statement of two medical practitioners capable of rendering a mental health illness diagnosis, including at least one psychiatrist.

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(3) Where the person is a child, PARTS IV and VII of the Custody, Contact, Guardianship and Maintenance Act which deal with the appointment of a guardian for a child and the procedure before the Court, shall *mutatis mutandis* apply to this section.

(4) The High Court may, on an application made pursuant to this section, only appoint a guardian for the person with a mental illness if the High Court is satisfied that there is evidence that-

(a) the person with a mental illness lacks capacity to make a decision about his or her mental health care or treatment;

(b) less intrusive and less restrictive alternative measures than the appointment of a guardian have been considered or have been implemented and would not likely be or have not been effective to meet the needs of the person with a mental illness; and

(c) it is in the best interest of the person with a mental illness to make the order.

(5) The High Court shall, in a guardianship order under this section, specify a date, not later than ninety days after the date of the guardianship order, by which the guardianship order shall be reviewed by the High Court and after which the guardianship order expires unless it is extended under subsection (6) (b).

(6) On a review of a guardianship order the High Court may-

(a) terminate the guardianship order; or

(b) extend the guardianship order for up to six months, after which time the guardianship order expires.

Persons eligible to be guardian.

31. (1) A person shall be eligible to be appointed as a guardian under section 30 where that person-

(a) is an adult;

(b) has consent to be a guardian;

(c) will act in the best interests of the person with a mental illness; and

(d) is suitable to be appointed as guardian having regard to-

(i) the relationship between the proposed guardian and the person with a mental illness insofar as it appears relevant to the ability of the proposed guardian to discharge the responsibilities of guardian; and

(ii) the apparent ability of the proposed guardian to effectively exercise the powers mentioned in section 32.

(2) In assessing whether a proposed guardian will act in the best interests of the person with a mental illness, the High Court may consider evidence of any matter, including a potential conflict of interest, that might create a substantial risk that the proposed guardian would not act in the best interests of the person with a mental illness.

(3) For the purposes of subsection (2), a proposed guardian shall not be considered to have a potential conflict of interest by reason only that the proposed guardian is-

(a) a relative of the person with a mental illness; or

(b) a potential beneficiary of the person with a mental illness.

Powers of the guardian.

32. Where the High Court appoints a guardian, the guardian shall have the power to-

(a) require the person with a mental illness to reside at a place specified by the High Court;

(b) require the person with a mental illness to attend at places and times so specified for the purposes of medical treatment including mental health services, occupation, education or training;

(c) require access to the person with mental illness to be given, of any place where the person with a mental illness is residing, to any physician, social worker or other person so specified; and

(d) deal with the estate of the person with a mental illness.

PART VI

CARE AND TREATMENT OF PERSONS WITH MENTAL ILLNESS

Admission of persons with mental illness.

33. (1) A person with mental illness may be treated, as far as possible, at their home or near to their home without requiring care and treatment in a mental health facility.

(2) Subject to subsection (3), where a person with mental illness requires treatment in a mental health facility, it shall be provided on the basis of voluntary admission.

(3) Where a person lacks mental capacity to make decisions for the person's mental health care, he or she may be provided care and treatment at a mental health facility.

Voluntary admission to mental health facility.

34. (1) All admissions in a mental health facility shall, as far as possible, be voluntary admissions except where conditions for an involuntary inpatient admission exists.

(2) Any person, except a child, who considers himself or herself to have a mental illness or has been diagnosed with a mental illness and desires to be admitted in any mental health facility or has been referred by a medical practitioner to such facility for care and treatment may apply in writing to the Medical Director for admission.

(3) Where an application is received under subsection (2), the admitting medical officer of the mental health facility shall cause the person to be examined by a psychiatrist and shall make a report to the Medical Director.

(4) The Medical Director shall admit the person to the mental health facility if he or she is satisfied that-

(a) the person has a mental illness of a severity requiring admission to a mental health facility;

(b) the person is likely to benefit from admission and treatment to the mental health facility; and

(c) the person-

(i) has given informed consent in accordance with section 11 to be admitted as a voluntary admission;

(ii) understands the nature and purpose of admission to and treatment in the mental health facility; and

(iii) has the capacity to make mental health care decisions without support or requires minimal support from others in making those decisions.

(5) Where a person is unable to understand the purpose, nature or likely effects of the proposed treatment and of the probable result of not accepting the

treatment or requires a very high level of support in making decisions, the person shall not be admitted under this section.

(6) A person voluntarily admitted under this section has a right to discharge himself or herself from the mental health facility unless the Medical Director is of the opinion that the person meets the criteria for involuntary inpatient admission in accordance with section 36.

(7) Where a person meets the criteria for involuntary inpatient admission under this section, the Medical Director may prevent self-discharge for a period not exceeding twenty-four hours to allow for an assessment as required under section 36 and the Medical Director shall inform the person and their nominated representative or guardian, as the case may be, of this decision.

(8) Before a person is admitted to the mental health facility in accordance with this section the person shall be informed by the admitting medical officer that if at any time the person meets the criteria under section 36, the person may be kept in the mental health facility as an involuntary inpatient admission.

Discharge reports.

35. The Medical Director shall issue a discharge report to the person with mental illness who was admitted for the purpose of receiving care, treatment and rehabilitation services.

Criteria for admission to mental health facility.

36. (1) In cases where a person with mental illness lacks mental capacity to make mental health care decisions, that person may be admitted to a mental health facility as an involuntary inpatient admission.

(2) An application for an involuntary inpatient admission shall be made by the nominated representative or guardian, as the case may be, and shall be in the manner set out in section 37(1).

(3) The Medical Director shall admit the person with mental illness upon an application made under subsection (2) if-

(a) the person has been independently examined on the day of admission or in the preceding seven days, by two medical practitioners, of which one is a psychiatrist and both independently conclude that the person has a mental illness of such severity that the person-

(i) has recently threatened or attempted to cause bodily harm to himself or herself;

(ii) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or

(iii)has recently shown or is showing an inability to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;

(b) the medical practitioners in paragraph (a) certify, after taking into account any advance directive, that admission to the mental health facility is the least restrictive care option possible; and

(c) the person is not eligible to receive care and treatment as a voluntary admitted person.

Application for involuntary inpatient admission.

37. (1) An application under section 36 shall be made in writing and shall state-

(a) the relationship of the applicant and the person to whom the application relates;

(b) the conduct observed by the applicant demonstrating the need for an involuntary inpatient admission;

(c) the grounds on which the applicant believes that the person with a mental illness needs mental health care treatment; and

(d) the time, date and place where the person to whom the application relates was last seen by the applicant, and the behaviour described was last observed.

(2) The medical practitioners mentioned in section 36 (3) shall not be related by blood or marriage to the person who is being assessed for an involuntary inpatient admission.

(3) The following persons shall be disqualified from making an application under subsection (1)-

(a) a child, except where the child is at least sixteen years old and-
  (i) is the person's child; or
  (ii) the only person living with the person,
  who is the subject of the application;
(b) a medical practitioner or a police officer who is a relative of the person to whom the application relates;
(c) a person with an interest in the receipt of any payments made on account of the maintenance of the person to whom the application relates; or
(d) the relative of any of the persons mentioned in paragraphs (b) and (c).

(4) Upon receipt and review of the application made under this section by the Medical Director, a police officer or any other person authorised by the Medical Director may take the person mentioned in the application to the mental health facility for an assessment in accordance with section 36.

Provision of involuntary treatment.

38. (1) Where the Medical Director grants the application for involuntary inpatient admission, the Medical Director shall-

(a) cause the person to be admitted and request a psychiatrist to assess the physical and mental health status of the person with a mental illness for a period of seventy-two hours in order to determine whether the person requires continued involuntary inpatient admission;

(b) ensure that the person is given the appropriate mental health care that he or she requires; and

(c) inform the Chief Medical Officer of the particulars of the involuntary treatment administered and the outcomes of any further assessments within seventy-two hours of the commencement of the involuntary inpatient admission.

(2) The Medical Director shall, within twenty-four hours after the expiry of the seventy-two hours assessment period referred to in subsection (1) (a), make available the findings of the assessment to the applicant and the person with a mental illness.

(3) If, based on the assessment made under subsection (1) (a)-

(a) the mental health status of the person with a mental illness does not warrant further involuntary inpatient admission, the person shall be discharged immediately by the mental health facility;

(b) further involuntary inpatient admission is needed, the psychiatrist shall-

(i) within forty-eight hours, submit a written request to the Medical Director to approve further involuntary treatment on an inpatient basis; and

(ii) give notice to the applicant and the person with a mental illness of the date on which the written request under subparagraph (i) was submitted to the Medical Director.

(4) The written request by the psychiatrist to the Medical Director shall be submitted in writing and contain the following-

(a) a copy of the application made under section 37;

(b) a copy of the notice given pursuant to subsection (3) (b) (ii);

(c) a copy of the findings of the assessment made pursuant to subsection (1) (a);

(d) the basis for the request; and

(e) a prognostic and expected timeframe for the involuntary treatment.

(5) The Medical Director shall inform the Chief Medical Officer as soon as practicable of the written request of the psychiatrist.

(6) Subject to the decision of the Board or the High Court where a person has filed an appeal, where the Medical Director is satisfied that the criteria for involuntary inpatient admission still exists, the person with a mental illness shall continue to be cared for on an inpatient basis at the mental health facility.

Appeal against decision on involuntary treatment.

39. (1) A person with a mental illness, a nominated representative or guardian, as the case may be, may appeal to the Board against the decision of the Medical Director to provide the person with involuntary treatment.

(2) An appeal filed pursuant to subsection (1) shall contain the facts and grounds on which the appeal is based.

(3) Within thirty days after the receipt of the notice of appeal, the Board, shall-

(a) obtain from the Medical Director, a copy of the involuntary application and a copy of any assessment conducted on the person with a mental illness;

(b) give the applicant, the person with a mental illness and the medical practitioners who assessed the person with a mental illness an opportunity to be heard, either orally or in writing, on the merits of the appeal;

(c) if necessary, hear evidence from any other medical practitioner or mental health professional;

(d) consider the appeal; and

(e) send a copy of its written decision and the reason for that decision to the Chief Medical Officer, the Medical Director and the applicant or person with a mental illness, as the case may be.

(4) After hearing the appeal, the Board may-

(a) dismiss the appeal and confirm the decision to provide the person with a mental illness with involuntary treatment;

(b) allow the appeal and direct that the matter be re-examined by a psychiatrist; or

(c) set aside the decision to provide the person with a mental illness with involuntary treatment and substitute any other decision as it thinks fit.

(5) Where the Board dismisses the appeal and makes an order that the person with a mental illness should be provided with involuntary inpatient admission, that admission shall be for a period of sixty days for the first time and any subsequent extension, may be for up to ninety days.

(6) The Medical Director may at any time discharge the person with a mental illness, if she or he is of the opinion that the person no longer meets the criteria for involuntary inpatient admission.

(7) Any person who is dissatisfied with the Board's decision may appeal to the High Court, except that an application for appeal shall only be made on the grounds of judicial review.

Admission of a child.

40. (1) The parent or guardian of a child with a mental illness may make an application for the admission of the child to a mental health facility.

(2) The criteria for involuntary inpatient admission under section 36 shall *mutatis mutandis* apply to an admission of a child with a mental illness.

(3) A child with a mental illness shall only be treated with the consent of the parent or guardian of the child.

Person with mental illness at home.

41. (1) Where a person at home has a mental illness of such a degree that in the opinion of their nominated representative or guardian, as the case may be, warrants care and treatment and that person is not willing to go to a mental health facility for that purpose, the nominated representative or guardian may make a request to the nearest health facility for an assessment at home.

(2) Where a request is received under subsection (1), a medical practitioner shall visit the person with a mental illness and make an assessment.

(3) Where the medical practitioner on assessment of the person is of the opinion that the person has a mental illness and is neglecting himself or herself to an extent which puts the person's life or the safety of others at risk, the medical practitioner may request a police officer for assistance in moving the person to the nearest mental health facility.

(4) A police officer to whom a request is made under subsection (3), shall give all the necessary assistance to the medical practitioner for moving the person with a mental illness to the nearest mental health facility and file a report.

Person with mental illness wandering the streets.

42. (1) A police officer shall, on being informed by a member of the public or on seeing a person suspected of having a mental illness wandering in a public place, convey such person to the nearest health facility for an assessment.

(2) Where a police officer conveys a person to a health facility under this section, the police officer shall file a report and that report shall specify the reasons for conveying the person to the health facility.

Emergency treatment.

43. (1) Notwithstanding any other provisions of this Act, any emergency treatment for mental illness may be provided by any medical practitioner to a person with a mental illness either at a mental health facility or in the community with or without the informed consent of the person with a mental illness if it is immediately necessary to prevent-

(a) death or irreversible harm to the health of the person; or

(b) the person from inflicting serious harm to self or others.

(2) Emergency treatment under subsection (1) includes transportation of the person with mental illness to the nearest mental health facility for assessment.

(3) Any emergency treatment under this section shall be limited to twenty-four hours.

(4) The medical practitioner who gives treatment to a person admitted under an emergency application shall-

(a) ensure that a record is made of the provision of mental health care including-

(i) particulars of the mental health care provided;

(ii) the time and place at which the mental health care is provided; and

(iii) the names of the person administering the treatment and the person involved in giving the treatment; and

(b) send to the Chief Medical Officer a report with respect to the administering of the treatment including the information required in paragraph (a).

(5) Where the Chief Medical Officer receives the report mentioned in subsection (4) (b), he or she shall send this report to the Board.

Periodic review on involuntary inpatient admissions.

44. (1) The Medical Director shall, every three months, submit a report to the Chief Medical Officer on all persons with a mental illness involuntarily admitted to a mental health facility.

(2) The report shall-

(a) state the mental capacity of the person to express need for mental health care;

(b) state whether there is other mental health care that is less restrictive or intrusive on the person's right to movement, privacy and dignity; and

(c) make recommendations regarding a plan for further mental health care.

(3) The Chief Medical Officer shall submit this report to the Board for approval and recommendation.

(4) Within fourteen days after receipt of the report, the Board shall-

(a) consider the report including any other information which the Board thinks is necessary to assist it in making a recommendation; and

(b) send written notice of its recommendation to the Chief Medical Officer.

(5) If the Board, based on the report submitted by the Chief Medical Officer, recommends that the involuntary treatment of a person with a mental illness be stopped, the person shall be discharged and if necessary, given outpatient mental health care and support.

Rights of representatives, relatives and care-givers.

45. (1) Nominated representatives, guardians, relatives and care-givers of a person with a mental illness shall have the right to-

(a) visit the person with a mental illness in the mental health facility;

(b) provide feedback to the mental health facility including complaints about any deficiency in the services; and

(c) where necessary, receive support from mental health services to enable them to effectively perform their role.

(2) Nominated representatives, guardians, relatives and care-givers, as the case may be, shall be involved in setting treatment goals, planning for treatment, discharge, care and treatment after discharge from the mental health facility.

(3) The involvement of any person mentioned in subsection (2) in the case of a voluntarily admitted person, shall be done with the consent of the person with mental illness and in the case of a person with mental illness admitted to involuntary treatment, with the consent of the person who made the application pursuant to section 37.

Leave to persons admitted for involuntary treatment.

46. (1) The Medical Director may allow a person with a mental illness admitted for involuntary treatment in a mental health facility to leave that facility for a period not exceeding seven days.

(2) The leave given under subsection (1) may be revoked at any time by the Medical Director if he or she is satisfied that the revocation is necessary for the improvement of, or to prevent deterioration of the mental health of the person.

(3) Where a person with mental illness who has been granted leave under subsection (1) refuses on revocation of the leave or expiry of the leave to return to the mental health facility, or is missing from the mental health facility, the Medical Director shall inform the police and the person who had made the application for admission of that person.

(4) The police shall have the responsibility to transport the person back to the mental health facility.

Admission of person with mental illness under court order.

47. (1) An order made by a court directing the admission of a person with a mental illness into a mental health facility, shall be sufficient authority for the admission of the person in the facility to receive mental health care.

(2) The court before whom the person with a mental illness is brought shall, before making a decision, cause the person to be assessed by a psychiatrist or medical practitioner, where no psychiatrist is available, as soon as possible to determine the appropriate treatment, if any, the person should receive.

(3) The court, before whom the person with a mental illness is brought, shall in making a decision consider the report of the psychiatrist or medical practitioner who assessed the person as well as the wishes and testimony of the person with mental illness, and where necessary the person's nominated representative or guardian, as the case may be.

(4) In the event that the court decides that the person with a mental illness meets the criteria for involuntary inpatient admission under section 37 and should be admitted to a mental health facility, the admission of the person shall be regarded as

an involuntary inpatient admission and the provisions relating to involuntary inpatient admission under this Act shall apply.

(5) Where the person with a mental illness, the subject of this section, has no nominated representative or guardian, the Ministry responsible for human services and social security shall be the person's nominated representative.

Prisoners with mental illness.

48. (1) The Minister may, in consultation with the Minister responsible for home affairs, set apart any mental health facility with adequate security and other arrangements exclusively for the admission of prisoners with mental illness and for providing mental health services to those prisoners.

(2) Where the Director of Prisons has a reason to believe, through personal observation or otherwise, that a prisoner may be suffering from a mental illness, the Director of Prisons shall make an application to the Medical Director for the transfer of the prisoner to the mental health facility to be assessed by a psychiatrist.

(3) On the directions of the Medical Director, the psychiatrist shall assess the person and may recommend-

(a) outpatient treatment and send the prisoner back to prison;

(b) admission to the mental health facility either as a voluntary admission; or

(c) admission to the mental health facility where the prisoner meets the criteria for an involuntary inpatient admission under section 37.

(4) The Director of Prisons shall take all necessary steps to ensure that the required levels of mental health care are provided to the prisoner where the prisoner is returned to the prison pursuant to subsection (3) (a).

(5) Where the psychiatrist recommends that the prisoner should be provided mental health care in a mental health facility, the Director of Prisons shall cause the prisoner to be transported immediately to the mental health facility.

(6) The Medical Director shall direct a psychiatrist to conduct periodic reviews of the mental health status of the prisoner and submit to the Medical Director a report on the treatment plan, status of the prisoner and the prisoner's return to the prison.

(7) Where the psychiatrist submits the report mentioned in subsection (6) to the Medical Director, the Medical Director shall cause that report to be submitted to the Director of Prisons.

(8) Where the psychiatrist has determined that the prisoner no longer requires mental health care then if the person is-

(a) a prisoner whose sentence has expired, the Minister responsible for Home Affairs shall direct that the prisoner be discharged from prison;

(b) a prisoner whose sentence has not expired, the prisoner shall be returned to prison to serve the remainder of any term to which the prisoner is liable or the Minister responsible for home affairs may direct that the prisoner be discharged; or

(c) a person awaiting trial or remanded in custody, the person shall be returned to the prison where the person was removed from until the person is dealt with according to the law.

(9) Where a prisoner is admitted to the mental health facility under this section, the time spent by the prisoner at the mental health facility shall be treated as time spent in prison.

Seclusion and physical restraint.

49. (1) A person shall not be kept in seclusion unless it is necessary and conducted in accordance with any regulations the Minister may take.

(2) A person shall not be subjected to physical restraint unless it is the only means available to prevent immediate or imminent harm to the person concerned or to others.

(3) Physical restraint shall-

(a) be done in a mental health facility;

(b) be authorised by a psychiatrist or medical practitioner with expertise in mental health; and

(c) not be used as a means of punishment or for the convenience of the staff of the mental health facility.

(4) All instances of physical restraint including the reasons, nature and duration of each use of physical restraint, shall be-

(a) recorded by the mental health facility;

(b) form part of the person with mental illness's medical records; and

(c) made available to the Board on a regular basis.

(5) Physical restraint in each instance shall be restricted to a maximum of three hours.

(6) The nominated representative, guardian or care-giver of the person shall be given prompt notice of the use of physical restraint.

Administration of mental health treatment.

50. (1) Treatments such as deep brain stimulation and electroconvulsive therapy shall only be used as a last resort and every such treatment shall be ethically approved by the Board and performed in accordance with any regulations the Minister may make.

(2) The Minister, in consultation with the Board, may make regulations providing for the use of deep brain stimulation, electroconvulsive therapy and any other such treatment and those treatments shall not be administered to any person except in accordance with those regulations.

PART VII

THE MENTAL HEALTH BOARD

Establishment of the Board.

51. (1) There is established a Board to be known as the Mental Health Board which shall comprise of eleven members.

(2) The Minister shall appoint the following persons to be members of the Board-

(a) a psychiatrist;

(b) an attorney-at-law of at least ten years standing at the bar nominated by the Attorney General;

(c) a person nominated by the Minister responsible for human services and social security;

(d) a person nominated by the Medical Profession;

(e) a person who is a social worker or counsellor;

(f) a person with a background in clinical psychology;

(g) a human rights specialist;

(h) the Chief Medical Officer as an *ex-officio* member;

(i) the Chief Nursing Officer as an *ex-officio* member;

(j) a user of mental health services; and

(k) a family member or care-giver of a person with mental illness.

(3) The Minister shall appoint one of the members of the Board to be the Chairperson.

(4) Whenever the psychiatrist is clinically involved in a case before the Board or when any other member of the Board is involved in a case before the Board, the Minister shall temporarily appoint a person of similar qualification to act in the place of that member.

Powers and functions of the Board.

52. (1) The powers and functions of the Board shall be to-

(a) promote standards of best practices and efficiency of mental health care services;

(b) set criteria and standards for specific mental health care services, interventions and treatments as necessary;

(c) inspect with sufficient frequency every mental health facility to ensure that the conditions, treatment and care of persons with mental illness comply with the provisions of this Act;

(d) review the use of restraints in mental health facilities;

(e) advise and assist the Minister on matters relating to-

(i) the promotion of mental health and wellness;

(ii) the establishment of protective measures against mental health determinants;

(iii)human resources development; and

(iv) mental health care and treatment in Guyana;

(f) receive and investigate complaints on any matter connected with mental health care and treatment;

(g) undergo a periodic review at least once every six months of all persons receiving mental health care in a mental health facility;

(h) consider appeals against any decision made by the Medical Director or a psychiatrist; and

(i) consider reviews and make decisions with respect to involuntary treatment.

(2) The Board may delegate any of its powers and functions, mentioned in subsection (1), to any committee established by the Board or any suitable person.

(3) The Minister may, after consultation with the Chairperson, give the Board directions of a general character as to the policy to be followed in the performance of any of its functions, and the Board shall give effect to those directions.

(4) The Board, through the Chairperson, shall prepare, at the end of the year, an annual report of the activities of the Board for that year and submit the report to the Minister.

(5) The Board shall have the power to-

(a) summon the attendance of any person, including a member of staff of a mental health facility;

(b) take evidence on oath;

(c) require any person to produce any book, record or document as it thinks appropriate; and

(d) make any order as it thinks appropriate in any case.

(6) An appeal shall lie against a decision of the Board to the High Court.

Tenure of office.

53. The members of the Board who are not *ex-officio* members shall hold office for three years and are eligible for reappointment for a maximum of two consecutive terms.

Removal of member of the Board.

54. A member of the Board may be removed from office by the Minister where the member-

(a) ceases to practise in the profession which the member was appointed to the Board;

(b) is unable to effectively perform the member's duties; or

(c) is absent from three consecutive meetings of the Board without giving prior written notice to the Chairperson.

Vacancy.

55. (1) A vacancy in the Board occurs if a member of the Board-

(a) upon one month's written notice to the Minister, tenders his or her resignation;

(b) is removed in accordance with section 54;

(c) dies; or

(d) becomes incapable of doing his or her work for a consecutive period of six months.

(2) A decision taken by the Board shall not be invalid only by reason of a vacancy in the Board when the decision was taken.

(3) Where a vacancy occurs, it shall be filled by the appointment of a person in the same category as the previously appointed member.

Publication of membership of Board in *Gazette.*

56. The names of the Chairperson and other members of the Board, as first constituted and every change in its membership shall be published in the *Gazette.*

Remuneration.

57. The remuneration and other terms and conditions of appointment of members of the Board shall be such as may be determined by the Minister.

Appointment of Secretary.

58. (1) There shall be a Secretary appointed by the Board.

(2) The functions of the Secretary are to-

(a) convene all meetings of the Board;

(b) keep, in accordance with the direction of the Board, the particulars of every involuntary inpatient admission;

(c) ensure that any review or assessment required by this Act to be carried out in respect of a person by the Board, is brought before the Board at an appropriate time;

(d) receive any matter that is to be dealt with by the Board and arrange for it to be dealt with as soon as practicable;

(e) cause to be made, and keep accurate, minutes of the meetings of the Board;

(f) keep a record of decisions of the Board and reasons for those decisions; and

(g) do all such things as the Board or the Chairperson may lawfully require the Secretary to do.

Meetings of the Board.

59. (1) The Board shall meet at least once a month and, at any other time as may be necessary or expedient for the transaction of business and the meeting shall be held at any place, including virtually, and at any time and on any day as the Chairperson may determine.

(2) The Chairperson shall preside at all meetings of the Board, and if the Chairperson is absent from any meeting, the members present and constituting a quorum, shall elect one of their members, not being a psychiatrist, to preside at the meeting.

(3) The quorum of the Board shall be six.

(4) The decisions of the Board shall be by a majority of the members present and voting and the Chairperson or any other member of the Board presiding at the meeting, shall have a casting vote in any case in which the voting is equal.

(5) Subject to the provisions of this Part, the Board shall regulate its own procedure, and may make rules for that purpose.

Protection of members.

60. No action, suit, prosecution or other proceedings shall be brought or instituted against any member of the Board in respect of anything done in good faith in the execution of the provisions of this Act.

PART VIII
OFFENCES

Cruelty, abuse or wilful neglect.

61. Any person who commits any act of cruelty to, abuse or wilful neglect of any person with a mental illness commits an offence and is liable on summary conviction to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.

Abandonment of a person with mental illness.

62. Any person, who intentionally abandons a person with a mental illness that is in their custody, care or protection commits an offence and is liable on summary conviction to a fine of one million dollars or to imprisonment for a term not exceeding six months.

Interfering or obstructing.

63. Any person who, without lawful authority interferes with or obstructs any person in the execution of the person's duties under this Act commits an offence and is liable on summary conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months.

Wilfully makes a false or misleading statement.

64. Any person who wilfully makes any false or misleading advance directive or statement in any application required to be made pursuant to this Act commits an offence and is liable on summary conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months.

Ignorance of victim's mental illness not a defence.

65. It shall not be a defence for a person who is charged under any of the provisions of this Part that the person did not know or had any reason to believe or to suspect that the victim was suffering from a mental illness.

PART IX

MISCELLANEOUS

Amendment to the Prison Act, Cap. 11:01.

66. The Prisons Act is amended by repealing section 26.

Transitional provisions. Cap. 140

67. (1) All acts done under the Mental Hospital Ordinance and any other written law prior to the commencement of this Act shall continue to be applicable except where it is inconsistent with the provisions of this Act.

(2) The Board shall, within six months of the commencement of this Act, review all the cases of all persons currently kept in a mental health facility to determine if the criteria of involuntary inpatient admission apply to any case and where the criteria do apply, the provisions relating to involuntary inpatient admission under this Act shall apply and the person shall be treated as an involuntary inpatient admission.

Regulations.

68. (1) The Minister may make regulations for carrying out the objectives and provisions of this Act.

(2) Any regulations made under this section may provide for offences punishable with a fine not exceeding five hundred thousand dollars and imprisonment for a term not exceeding six months.

Repeal. Cap. 140

69. The Mental Hospital Ordinance is repealed.

Passed by the National Assembly on the 8th August, *2022.*

S.E. Isaacs,

Clerk of the National Assembly.

(BILL No. 7/2022)