

The Implementation Guidelines, January

**For the New
Mental Health Care Act, 2002
January 2005**

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Introduction

The new Mental Health Care (MHC) Act was passed on 15 December 2004. The President promulgated the Act after the Regulations had been signed and published by the Minister of Health. Transitional arrangements S74 (3) of the Act obligates the Department of Justice to complete all legal processes started prior to 15 December 2004.

Aims and Objectives

The aims and objectives of the Act is to:

- ❑ Make Mental health care, treatment and rehabilitation **accessible and equitable to the whole population**
- ❑ Always act in the **best interest of the user** and ensure that the users rights are exercised
- ❑ Ensure that the user is **treated as close to home** as possible (through the integration of mental health care into general health)

General principles

The following principles guide the Act:

- ❑ All Mental Health users must be provided with care, treatment and rehabilitation services
- ❑ The person, human dignity and privacy of each individual must be respected
- ❑ Regard must always be taken of what is in the best interest of the individual
- ❑ No MHC user may be discriminated against on the grounds of their Mental health status
- ❑ No MHC user may be exploited or abused.

Definitions

Assisted MHC user

Person receiving assisted care, treatment and rehabilitation

Head of Health Establishment (HHE)

Person who manages the establishment concerned

Health Establishment

Institutions, facilities, buildings or places where persons receive care, treatment or rehabilitation, diagnostic or therapeutic interventions, or other health services (including CHC, clinics, hospitals and psychiatric hospitals)

Involuntary MHC user

A person receiving involuntary care, treatment and rehabilitation

Mental Health Care Practitioner

A psychiatrist, registered medical practitioner (doctor), a nurse, occupational therapist, psychologist, social worker – who has been trained to provide MHC treatment and rehabilitation services.

Mental Health Care Provider

A person providing MHC services to MHC users and includes MHC practitioners

Voluntary care, treatment or rehabilitation

Health care interventions to a person who gives consent to such interventions

When to use this Act?

This Act must be used when

- There is reasonable belief that the mental health care user has a mental illness
- the user with mental illness is likely to inflict serious harm to self or others; or damage to property
- care, treatment and rehabilitation of the user is necessary for the protection of the financial interests or reputation of the user
- the mental health care user is incapable of making an informed decision on the need for care, treatment and rehabilitation services and is unwilling to receive the care, treatment and rehabilitation required

Mental Health Care practitioners

Refers to a psychiatrist or registered medical practitioner, professional nurse or clinical psychologist. A social worker or occupational therapist would qualify if they have received the necessary training in mental health care, treatment and rehabilitation. The HHE should determine which social worker and Occupational therapist meet the criteria.

Types of admissions

The Act makes provision for 4 types of admissions excluding state patients or **mentally** ill prisoners

VOLUNTARY CARE, TREATMENT AND REHABILITATION SERVICES

A mental health care user who submits voluntarily to a health establishment is entitled to appropriate care or to be referred to an appropriate health establishment voluntary care, treatment and rehabilitation.

EMERGENCY CARE, TREATMENT AND REHABILITATION SERVICES

Any person or health establishment that provides care treatment and rehabilitation services to a mental health care user or admits the user in circumstances referred to in subsection (1) (c).

- (a) must report this fact in writing in the form of form MHCA 01 of the annexure to the relevant review board; and
- (b) may not continue to provide care treatment and rehabilitation services to the user concerned for longer than 24 hours.

ASSISTED CARE, TREATMENT AND REHABILITATION SERVICES

Health intervention to person incapable of making informed decision but who does not refuse care, treatment and rehabilitation.

INVOLUNTARY CARE, TREATMENT AND REHABILITATION SERVICES

A person incapable of making an informed decision on the need for mental health care, treatment and rehabilitation services and is unwilling to receive such service. Require such service to protect from self and others

Administrative support

The HHE has to ensure that the necessary administrative capacity is in place to support this process.

Responsibilities:

- Ensure the availability of the appropriate forms.**
- Forms must be easily accessible to applicants at the point of entry (i.e. trauma/emergency unit)
- Developing a database and filing system on 72-hour admissions, involuntary users, periodic reviews, discharges and involuntary outpatients
- Liaison with the Review Board to Function as Coordinator** for the collection of all relevant forms from the MHC practitioners, HHE's submission to the Review Board

72 Hour Assessments

The Act makes provision for a 72-hour period in which the MHC user should be assessed to ensure appropriate care and treatment and that the person is not inappropriately referred to a designated facility (psychiatric unit or hospital).

Designated Units within general hospitals

The following hospitals will be designated by the National minister of Health as having dedicated units within hospitals who can provide mental health care, treatment or rehabilitation.

- Tygerberg
- Grootte Schuur
- Red Cross Hospital
- George Hospital

Designated Psychiatric hospitals and Care and Rehabilitation Centres

The following health facilities will be designated by the National Minister to provide dedicated mental health care, treatment or rehabilitation :

1) Psychiatric Hospitals

- Valkenberg Hospital
- Lentegeur Hospital
- Stikland Hospital
- Nelspoort

2) Care and Rehabilitation Centres

- Alexandra Hospital
- Lentegeur
- Nelspoort

Levels of care

Community Health Clinic

- Mental health care, treatment or rehabilitation on an Outpatient basis for **voluntary and involuntary users**
- **Where there is a MHC nurse and a medical officer (24-hour clinics)** these clinics are able to do assessments for involuntary admissions

District and Regional Hospitals

- Able to do emergency admissions, assessments for involuntary admissions, and admissions for 72-hour assessments where possible.

Designated Psychiatric Hospitals and Tertiary Units

- Will initially admit most of the involuntary users including the 72-Hour Assessment, however, this must be seen as a transitional plan while support structures and infrastructure is being put in place to devolve the 72-Hour Assessment Service to the Regional and/or District Hospitals. **Please note that not all designated dedicated units will provide 72-hour assessment eg Red Cross will only have therapeutic programmes.**

Review Boards

The Role of the Review Board

- The MEC of a province appoints the Review Board
- A Review Board may be established for a single, a cluster or all health establishments providing MHC services in the province

Composition of the Board

The Review Board consists of no fewer than 3 persons and no more than 5 persons, who are South African citizens appointed by MEC of the province. The Review Board must at least consist of a

- MHC practitioner
- Magistrate, an attorney or an advocate admitted in terms of the law of the Republic
- A member of the community concerned.

Powers and Functions of the Review Board

The Review Board must:

- Consider appeals against decisions of the HHE
- Make decisions with regard to assisted or involuntary MHC, treatment and rehabilitation services
- Consider reviews and make decisions on assisted or involuntary MHC users
- Consider 72-hours assessment made by the HHE and make decisions to provide further involuntary care, treatment and rehabilitation
- Consider applications for transfer of MHC users to maximum security facilities, and

- Consider periodic reports on the mental health status of mentally ill prisoners

The Review Board may, when performing its functions, consult or obtain representations from any person, including a person or body with expertise.

South African Police Services

The Role of the SA Police Services

If a member of the SAPS apprehends a person in terms of the S 40(1) of the Act, that member must cause that person to be:

- Taken to a health establishment administered under the auspices of the State, listed in terms of regulation 12 by the provincial department concerned, for assessment of mental health status of that person, and
- Handed over using form MHCA 22 into the custody of the HHE or any other person designated by the HHE to receive such a person.

Absconds

Return of an absconded person who has been apprehended and is being held in custody by the SAPS:

1. If a user has absconded or deemed to have absconded, the HHE may notify and request assistance from the SAPS to locate, apprehend and return the user to the health establishment concerned, using form MHCA 25.
2. If a user is apprehended by the SAPS in the vicinity of the health establishment, must return such a user immediately to such establishment and hand over to the HHE or any person designated by the HHE to receive such a user, using form MHCA 26

3. If a MHC user who has absconded from a health establishment is apprehended by the SAPS, and the apprehension is not in the vicinity of that health establishment, the SAPS must
 - a. Notify the HHE that such a user has been apprehended and is in the custody of the SAPS, and
 - b. Provide the information with regard to the physical and mental condition of the user that the notifying member is able to provide.
4. The HHE must if circumstances so require, take steps to ensure that a MHC practitioner from a health establishment nearest to the police station where the MHC user is held in custody or another suitable MHC practitioner, examines that MHC user and provides the treatment that may be required at the police station or the nearest local health establishment.
5. After an examination, it is the responsibility of the member in command of the SAPS station where the MHC user is being detained, to consult with the HHE concerned and to make arrangements for the return of such a MHC user, taking into account the physical and mental condition of such a user.]

Provided that if the user is:

- Too dangerous to be transferred in a vehicle staffed only by health personnel
- Likely to abscond during the transfer, unless guarded, that the user must be conveyed by the SAPS or a member of the SAPS must accompany that user while being conveyed.

A MHC user may be held in custody at a police station for a period of not more than 24 hours to effect the return of that user.

TRANSFER OF ASSISTED AND INVOLUNTARY MHC USERS -Communication and Transport)

Communication

- Telephonic contact to be maintained in addition to paper trail.

Transport

When can police react on a call for assistance?

A police will have to use their on discretion when the public is involved but where a mental health care practitioner request assistance , they may not refuse

When to call on the police to assist with transport?

The head of the health establishment concerned **may only in exceptional circumstances** and upon the recommendation of the mental health care practitioner, request assistance of the SAP service with the transfer of an assisted or an involuntary mental health care user.

- (a) Too dangerous to be transferred in a vehicle staffed only by health personnel:
- (b) Likely to abscond during the transfer, unless guarded.

When to make use of the Emergency Services ? (EMS)

EMS will be used for all services needed except in conditions as mentioned above when police services are needed. EMS needs definitions of emergencies to be managed.

Staff accompanying MHC users (ESCORTS)

A health care practitioner must accompany the MHC user when transferred to the next level of care. It is the responsibility of the HHE to make a staff member available

Most Frequently asked questions

➤ Who can stand in for the HHE?

Deputy, as appointed by the HHE. **The precise delegations will still be clarified. Will need to be a middle manager not involved in clinical process eg matron on duty, head of nursing, head of administration**

- **What training should a professional have before they qualify as a mental health care practitioner ?**
All clinical fields where undergraduate training have included psychiatry. Medical practitioners, all professional nurses who have psychiatry in training so all four year integrated course, all clinical psychologists , Occupational therapists if training included psychiatry and social workers if training included psychiatry. Changed since first draft of regulations and this needs to be specified to those who trained before.
- **Will medical Aids be paying for both assessments ?**
No, Medical Aid for private patients will only pay for one medical assessment but MHC Act requires two assessments
- **When to refer to GSH/ TBH or when to refer directly to APH ?**
Currently APH will be responsible for 72 hour assessments **except when organic or neurological symptoms are not ruled out.** In this event they have to be sent to GSH/TGH. (Guideline has been sent out)
- **Can Private institutions keep emergency users?**
Yes, but a license and written application must be made to the National department of Health to keep assisted and involuntary MHC users
- **Can clinics refuse to see MHC service users?**
No, however they may not have the capacity to do the full assessment in which case they will have to refer to the next level of care after they have clinically evaluated the Mental health care user

➤ **Will mental health care practitioners be covered by workmen's compensation if escorting s user?**

Needs clarification

➤ **Who can act as a Commissioner of Oaths?**

HHE to identify the appropriate person in facility and provide them with tools such as stamps

The Government Gazette Schedule for health services indicates the following person qualify for commissioner of oaths

- (a) District Surgeon, Additional District Surgeon and Assistant District Surgeon.**
- (b) Government-subsidised hospital: Matron, Medical Superintendent, Secretary and Sister.**

Flowcharts

The following flow charts outlines the processes with regard to :

- Emergency admissions
- Assisted admissions
- Involuntary admissions including 72-Hour Assessments
- Appeals
- The Management of State Patients
- And a List of all the forms and who completes it.

Annexure A
EMERGENCY ADMISSION

The emergency process precedes the involuntary process – it allows the HHE to admit a user for 24 hours (previously S12. Allows HHE to admit users for up to 10 days). The Emergency process should be used with caution and only used when there is no alternative. Both hospitals and police can hold a user for 24 hours.

1. FORM MHCA 01 is completed when a user is at danger of inflicting grievous harm to himself, others or property. This application can be used allowing SAPS / community to have such a user admitted to any health establishment providing 24 hour care.

2. After 24 hours the user will be discharged, or transferred for voluntary or involuntary care

Annexure B
ASSISTED ADMISSIONS

1. Handing over custody by SAPS form MHCA 22 or by spouse, next of kin, partner, associate, parent/guardian, staff member if other not available, >18yrs

2. Application form MHCA 04 (spouse, next of kin, partner, associate, Parent/guardian, staff member if other not available, >18yrs)

3. Examination and Findings of 2 MH Practitioners – 1 must be a Medical Officer. (MHCA 05 x 2)

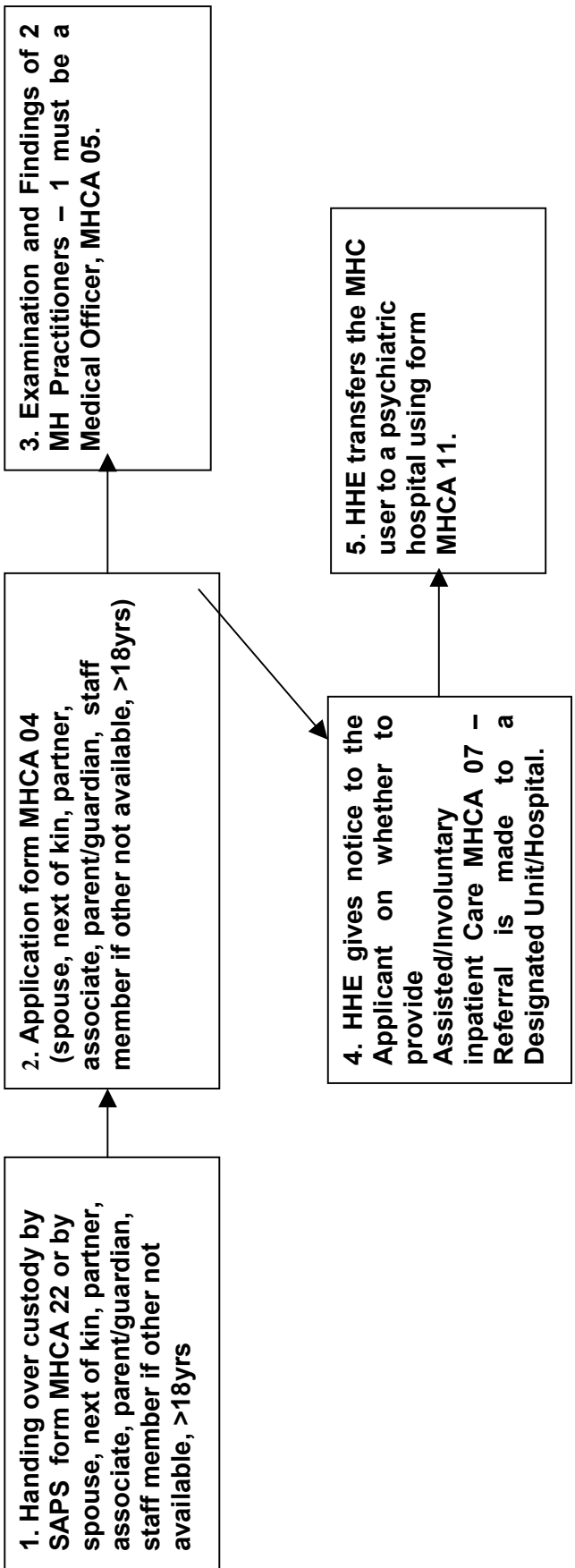
4. HHE gives notice to the Applicant on whether to provide Assisted Inpatient Care MHCA 07 – if appropriate, referral is made to a Designated Unit/Hospital.

5. HHE must within 7 days send the Review Board the decision along with copies of the medical/mental examinations on forms 05, using form MHCA 07.

No 72 HA is required for assisted MHC users

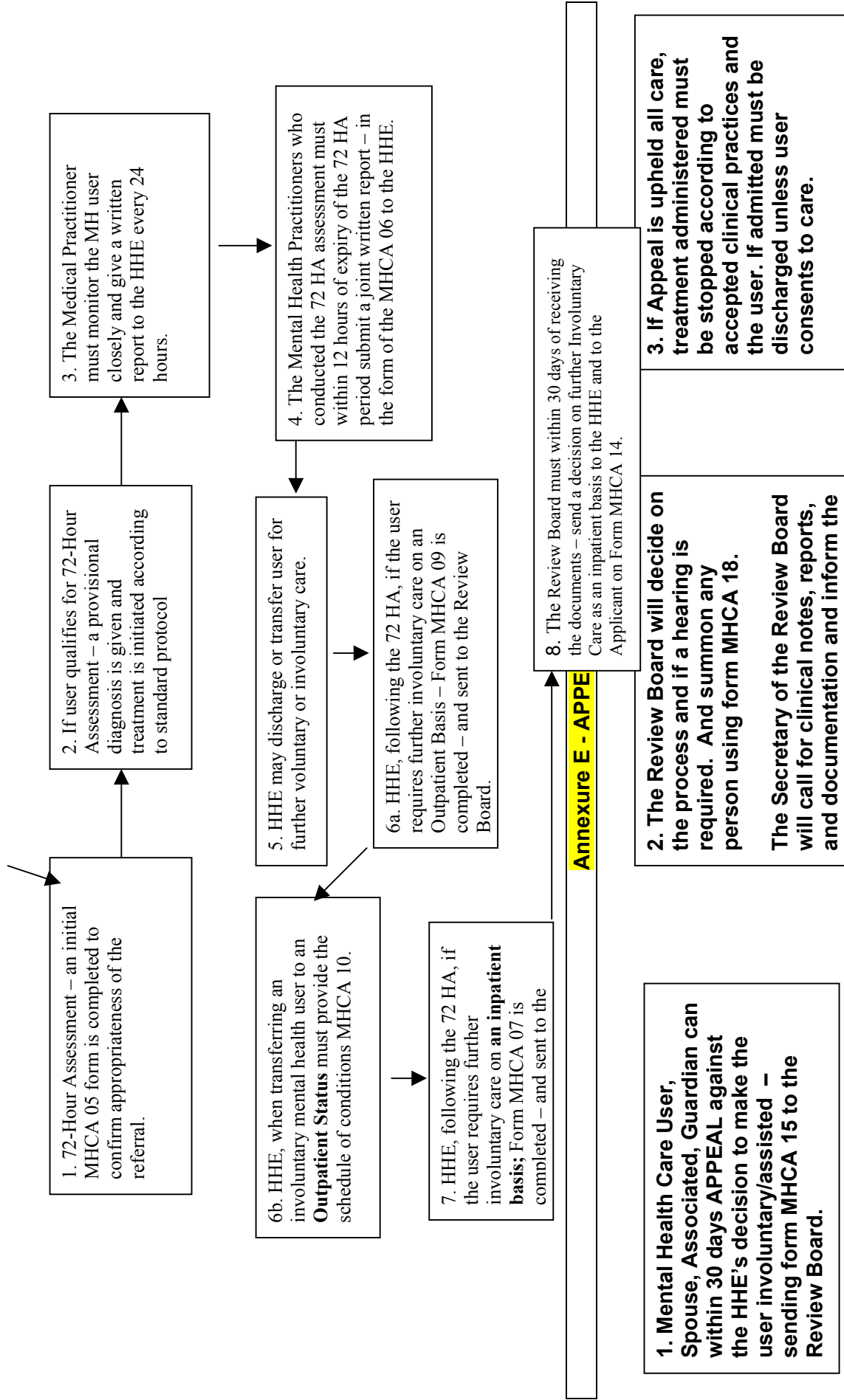
**ANNEXURE C
INVOLUNTARY ADMISSIONS**

District Hospitals: (i.e False Bay, Stellenbosch Regional Hospitals: (i.e. Karl Bremer, GF Jooste, Hottentots Holland , Eben Donges
24-Hour Assessment Units: Elsie's rivier



Annexure D- 72 HOUR ASSESSMENT IN A DESIGNATED UNIT/HOSPITAL
 GSH (UNIT), TYGERBERG (UNIT), RED CROSS (UNIT), GEORGE (UNIT) APH: Alexandra, Lentegeur, Stikland and Valkeberg Hospitals

Designated Unit/Hospital will receive all the forms from the previous assessment, that is, forms 04, 2x 5, 7, 11 and where applicable 22





Annexure F- TRANSFERS AND DISCHARGES

Involuntary

Hospital/unit – form MHCA 11.
Transfer of involuntary MH user on an inpatient basis to a PSYCHIATRIC

Transfer of an Involuntary MH user from an inpatient involuntary user to an Involuntary Outpatient user – Form MHCA 12 – The HHE must inform the Review Board within 2 weeks.

Maximum Security

HHE can request the transfer of an Assisted, Involuntary user, State Patient or mentally ill prisoner to maximum security using Form MHC.A 19

Review Board orders the transfer to maximum on Form MHCA20 as requested in MHCA19

Discharge

HHE must issue a discharge report, MHC.A 22

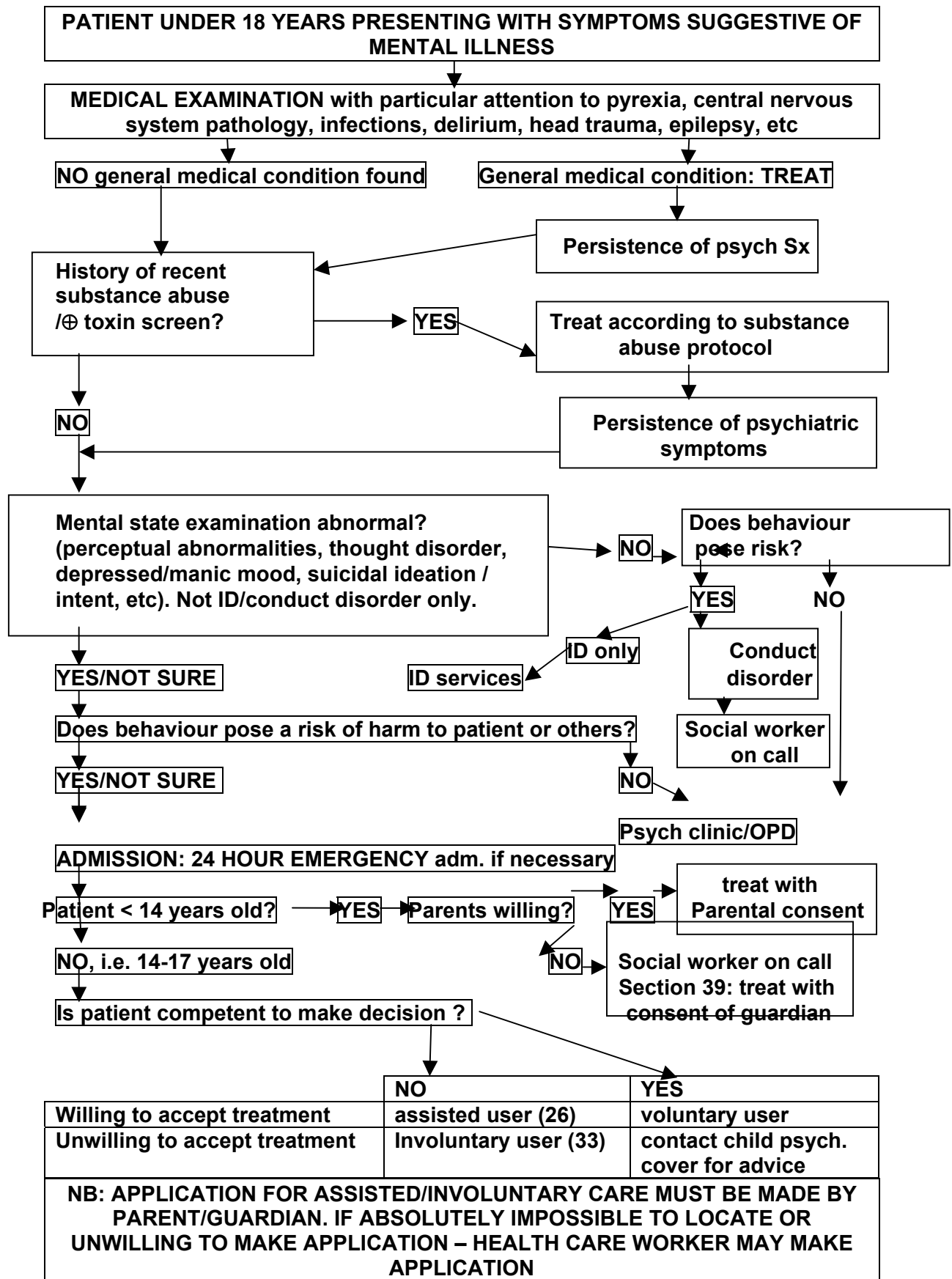
Annexure G -MANAGEMENT OF STATE PATIENTS

1. DG & HOD Designate Health Establishments (S41).

2. Court Order issued i.t.o. Criminal Procedures Act (S42)
Copies Sent to: Curator Ad Litem and Correctional Services Head

3. Copy of Order to DG (within 14 days) requesting transfer to designated facility

Annexure H - CHILD & ADOLESCENT PSYCHIATRY (INTERIM)



LIST OF FORMS IN THE REGULATIONS – 15 December 2004

| NUMBER | FORM | Responsibility of: |
|---------------|--|--|
| 01 | Emergency Admission or Treatment without Consent – to report of the Review Board | HHE informed by MHC practitioner |
| 02 | Report on Exploitation, Physical or other Abuse, Neglect or degrading Treatment | Various |
| 03 | Discharge Report | HHE – informed by Consultant |
| 04 | Application for Assisted or Involuntary Care, Treatment or Rehabilitation | Various – spouse, associate, MHC Practitioner |
| 05 | Examination and Findings of Mental Health Care Practitioner following an application for Assisted/Involuntary Care | Mental Health Practitioners at District level, District and Regional Hospitals |
| 06 | 72-Hour Assessment and findings of Medical Practitioner or Mental Health Care Practitioner after HHE granted application for Involuntary Care | Mental Health Practitioners at the beginning and end of the 72 HA |
| 07 | Notice by HHE on whether to provide Assisted/Involuntary Inpatient Care | HHE where the form MHCA 05s, assessments are filled in |
| 08 | Notice by HHE to Review Board requesting approval for further involuntary care, rehabilitation on an INPATIENT basis | HHE post the 72HA to the Review Board for further involuntary care |
| 09 | Notice of HHE after 72 Hour Assessment Period Informing Review Board that the User warrants further involuntary care, rehabilitation on an OUTPATIENT basis | HHE, cosigned by Consultant, where 72 HA is completed |
| 10 | Transfer of involuntary mental health user – schedule of conditions relating to outpatient care | HHE, delegate to clinician |
| 11 | Transfer of involuntary MHC user on inpatient basis to psychiatric hospital | HHE of referring hospital |
| 12 | Transfer of involuntary MHC user from inpatient to outpatient care | HHE, cosigned by clinician |
| 13A | Periodical Report on MH user (Assisted/Involuntary/Mentally Ill person) Sect. 30 (2), 37 (2), 55(1) | HHE |
| 13B | Periodical Report on MH user Sect. 46 (2) | HHE |
| 14 | Decision by the Review Board re: Assisted/Involuntary mental health care, appeal against decision of HHE re: Assisted/Involuntary Care | REVIEW BOARD |
| 15 | Appeal to Review Board Against Decision of HHE | User, Family, |

| | | |
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| | (Assisted/Involuntary care) | Spouse |
| 16 | Order by High Court for further treatment/rehabilitation/discharge of an involuntary user on an inpatient basis | Justice Department |
| 17 | Decision by Review Board following periodical report on Assisted/Involuntary user and mentally ill prisoners | REVIEW BOARD |
| 18 | Summons to Appeal before a Review Board | REVIEW BOARD |
| 19 | Request by HHE to Review Board to Transfer Assisted/Involuntary user to Max Security, a state patient/mentally ill prisoner between designated facilities | HHE |
| 20 | Order by Review Board to transfer Assisted/Involuntary and/or State Patient/Mentally Ill prisoner between designated facilities | REVIEW BOARD |
| 21 | Notice of Transfer of State Patient or mentally ill prisoner | Head consultant |
| 22 | Handing over custody by the SA Police of a person suspected of being mentally ill or severely/profoundly intellectually disabled – and likely to inflict serious harm | SAPS |
| 23 | Transfer of State Patients from detention center to designated health establishments | DG National DoH |
| 24 | Transfer of state patients between designated health establishments | Head Provincial DoH |
| 25 | Notice of Abscondment to SA police and request for assistance to locate, apprehend, and return user | HHE |
| 26 | Notice of return of Absconded user to the health establishment | HHE |
| 27 | Leave of Absence to State patients (Sect 45); Assisted/Involuntary users (Sect 66(1)(j)) | HHE |
| 28 | Cancellation of leave of absence | HHE |
| 29 | Application for Discharge of State Patient to Judge in Chambers (Where applicant is not an official curator ad litem or administrator) | HHE |
| 30 | Application for discharge of state patient to judge in chambers (where the applicant is an official curator ad litem or administrator) | Curator/Administrator |
| 31 | Order by Judge in Chambers for Conditional Discharge of state patient | Justice Department |
| 32 | 6-Monthly Report on Conditionally Discharged State Patient | HHE |
| 33 | Unconditional Discharge by HHE of state patient previously discharged conditionally | HHE |
| 34 | Application to Registrar of the High Court for an Order Amending the Conditions/Revoking the Conditional Discharge of a State Patient | HHE |
| 35 | Application by State Patient to Judge in Chambers for Amendment to any Condition applicable to discharge or requesting unconditional discharge | State Patient |
| 36 | Assessment of mental health status of prisoner following request from Head of Prison and/or magistrate | HHE |
| 37 | Magisterial order to Head of Prison to – (a) transfer prisoner to health establishment or (b) take necessary steps to ensure that the required levels of | Magistrate |

| | | |
|----|---|----------------------|
| | care/treatment are provided to the prisoner | |
| 38 | Application to Magistrate for continued detention of a mentally ill prisoner | HHE |
| 39 | Application to Master of High Court to Appoint Administrator | Various |
| 40 | Decision by Master of the High Court on Appointment of an Administrator | Master: High Court |
| 41 | Notice of Appeal to High Court Judge in Chambers regarding the decision of the Master of the High Court to appoint or not to appoint an administrator | Various |
| 42 | Notice of Decision of High Court to Appoint an Administrator or to terminate the appointment of an Administrator | High Court - Justice |
| 43 | Confirmation of Appointment of Administrator | Justice Department |
| 44 | Application for Termination of Term of Office of an Administrator and the Decision of the Master of the High Court | Various |
| 45 | Notice of Appeal to High Court Judge in Chambers regarding the Application for the termination of the term of office of an Administrator | Various |
| 46 | Notice of Decision of High Court Judge in Chambers regarding appeal against Decision of Master of High Court | Justice Department |
| 47 | Record of Electro Convulsive Treatment (ECT) | HHE |
| 48 | Record of Mechanical Restraint and Seclusion | HHE |
| | | |

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