REFERENCE MANUAL

The Mental Healthcare Act, 2017

For mental health professionals

CONCEPTUALISED & DEVELOPED BY:
Centre for Mental Health Law & Policy
Indian Law Society, Pune

SUPPORTED BY:
Mariwala Health Initiative

Supported by:

Reference Manual for Implementation of the Mental Healthcare Act, 2017 for mental health professionals

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ABBREVIATIONS

MO	Medical Officer
NR	Nominated Representative
MP	Medical Practitioner
MHP	Mental Health Professional
MHE	Mental Health Establishment
CMHA	Central Mental Health Authority
SMHA	State Mental Health Authority
MO /MHP *in charge*	Medical Officer or Mental Health Professional in charge of the Mental Health Establishment
MHRB	Mental Health Review Board
MHCA	Mental Healthcare Act, 2018
MHCA rules	The Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018
CMHA /MHRB rules	The Mental Healthcare (Central Mental Health Authority & Mental Health Review Boards) Rules, 2018
SMHA rules	The Mental Healthcare (State Mental Health Authority) Rules, 2018

CHAPTER 1

Introduction

1. What is the Mental Healthcare Act, 2017?

The Mental Healthcare Act, 2017 ("MHCA") came into force on 29th May, 2018 after repealing the previous Mental Health Act, 1987. The MHCA was enacted in compliance with the United Nations Convention on the Rights of Persons with Disabilities ("CRPD"). The MHCA brings about a paradigm shift by introducing a rights-based approach to the treatment and care of persons with mental illness. It also recognizes the right of all persons to access mental healthcare and treatment from mental health services run or funded by the Central and State Governments.

Further, the Act recognizes the capacity of all persons with mental illness to make decisions regarding their mental healthcare and treatment in accordance with their will and preferences. It also prescribes the obligations of mental health professionals, caregivers, law enforcement officials and government authorities along with the necessary procedures, compliances and safeguards for providing mental healthcare and treatment to persons with mental illness.

The MHCA operationalizes several concepts enshrined in the CRPD such as legal capacity, advance directives, nominated representatives, supported decision-making, and so on. It also lays down all the rights of persons with mental illness placing the duty on the Central and State Governments and mental health establishments to ensure that these rights are protected and promoted.

BASIC GUIDING PRINCIPLES OF THE MHCA

- All individuals are invested with basic human rights, including the right to equality, liberty & dignity.
- Every person must be given the autonomy to make the choices they consider the best for themselves, and this extends to decisions about their mental healthcare and treatment.
- Everyone has the right to full participation and inclusion in society,
- No person can be discriminated against on the basis of their physical, intellectual, cognitive or psychosocial disabilities.
- Supported decision making is an integral to exercising capacity to take decisions about one's mental healthcare and treatment.

The most significant feature of the MHCA is that **it places persons with mental illness at the center of the mental healthcare system**. It recognizes the inherent capacity of all persons with mental illness to take decisions regarding their mental healthcare and treatment and ensures that their will and preferences are considered primary at all times from admission to recovery after discharge from mental health establishments. Thus, the MHCA must be interpreted in light of the guiding principles mentioned above to ensure that the will and preferences of all persons with mental illness are respected at all times. The MHCA should be implemented in this spirit by all stakeholders.

2. What is the United Nations Convention on Rights of Persons with Disabilities?

The United Nations Convention on Rights of Persons with Disabilities ["CRPD"] is an international convention which was adopted by Member States of the United Nations in 2006 with a view to "promote, protect and ensure the full and equal enjoyment of all human right and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity". The term "persons with disabilities" in the CRPD includes "those who have long-term physical, mental, intellectual or sensory impairments …" Thus, the CRPD extends to persons with mental illness or psychosocial disabilities.

The UNCRPD rejects the medical model of disability and instead recognizes the *social model of disability* which understands disability as "arising from interaction between persons with impairments, and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others". This means that disability is not because a person has impairments. On the contrary, disability is a result of environmental, attitudinal and organizational barriers which do not allow persons with impairments to participate in society on an equal basis with others. Most importantly, the CRPD recognizes the individual autonomy, dignity and capacity of persons with disabilities and how the same should be actualized through law and policy.

Thus, the CRPD also provides a normative framework to protect, promote and fulfil the rights of persons with mental illness and psychosocial disabilities. Member States or countries which have ratified the CRPD are required to amend their domestic laws relating to persons with disabilities to ensure compliance with the CRPD. India ratified the CRPD on 1st October 2007 and subsequently enacted the MHCA in pursuance of its obligations under the same.

3. What are the Implications for Mental Health Professionals?

The MHCA brings about a significant change in the approach to mental healthcare and treatment. Therefore, the law requires mental health professionals to bring about changes in their clinical practice for providing mental healthcare and treatment to persons with mental illness. The MHCA lays down several procedures, duties and compliances for mental health professionals. Psychiatrists and other mental health

professionals are required to comply with these provisions. strictly. Failure to do so is regarded as an offence under the law and will attract penalties for the same.

The following are some *implications* for all mental health professionals and their clinical practice:

- Mental health professionals must study the MHCA in detail to understand their duties and responsibilities under the law.
- Medical personnel and staff must be trained and sensitized to implement the provisions of the MHCA. Training and sensitization should focus on developing knowledge, attitudes, skills and practices of all those concerned with the implementation of the MHCA. Training given to the mental health professionals must also include awareness about the rights of patient.
- Infrastructure in the mental health establishments should be developed or upgraded in accordance with the minimum standards prescribed by the State governments.
- Mental health establishments should develop appropriate protocols, policies and standard operating procedures to ensure compliance with the safeguards prescribed in the MHCA. It is the duty of the mental health establishments to monitor whether all the protocols, policies and procedures made by them are fulfilled or not.
- Develop documentation such as application forms, information pamphlets, formats for documenting medical records, templates for recording informed consent, and other relevant protocols.
- Display information signages and aids that provide persons with mental illness, caregivers and family members information about their rights under the MHCA.
- Conduct regular audits to ensure that mental health establishments meet at least the minimum standards as prescribed by the authorities.
- Mental health establishments, especially those which are funded by the Central or State Governments should pursue advocacy with appropriate authorities to drive the implementation of the MHCA.

4. About the Manual

This reference manual on the MHCA is designed for mental health professionals providing treatment and care to persons with mental illness. The reference manual is meant to serve as a guide for understanding and implementing the provisions of the MHCA. The manual consists of the following chapters:

1) Mental Illness, Advance Directives & Nominated Representatives
2) Rights of Persons with Mental Illness
3) Central & State Mental Health Authorities
4) Mental Health Review Boards
5) Mental Health Establishments
6) Admissions, Treatment & Discharge
7) Miscellaneous Provisions
8) Applications & Compliance Checklists

Additionally, the manual also incorporates important provisions of the following rules/regulations (click on the link to access the documents):

1) The Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018 [the MHCA Rules, 2018]
2) The Mental Healthcare (Central Mental Health Authority and Mental Health Review Boards) Rules, 2018 [the CMHA/MHRB Rules, 2018]
3) The Mental Healthcare (State Mental Health Authority) Rules, 2018 [the SMHA Rules, 2018]
4) The Mental Healthcare (Central Mental Health Authority) Regulations, 2020 [the CMHA Regulations, 2020]

Each chapter in the manual discusses the provisions of the MHCA in a simple and accessible manner. The chapters explain the relevant procedures, obligations and compliances for implementing the provisions of the MHCA. In addition, the manual also highlights what mental health professionals can do to ensure compliance with the MHCA.

5. Important Concepts for Mental Healthcare & Treatment in the MHCA

The MHCA codifies key terms for the provision of mental healthcare and treatment. Some of these include:

- **Capacity** to make decisions regarding one's own mental healthcare and treatment. Capacity is presumed to be inherent in all persons. It implies the ability of a person to provide informed consent and make decisions for their treatment and care. Capacity can be expressed in different ways and may require the support of another person. Supported decision making, informed consent and advance directives are integral aspects of exercising one's capacity.

- **Advance directive** is a declaration made by a person stating how they would like to be treated (or not) in the situation that they have a mental illness and cannot take decisions regarding their treatment individually or without support. Advance directives are meant to ensure that a person is provided mental healthcare or treatment in accordance with their will and preferences. will prevail.

- **Nominated representative** is appointed by a person with mental illness represent and provide support to the person for making decisions regarding their mental health care treatment. Nominated representatives are expected to reflect the will and preferences of such persons if they are unable to take decisions on their own.

- **Informed consent** is an integral part of exercising one's capacity. It is usually taken from persons with mental illness before providing them any mental healthcare, treatment or service. In the event if the person is unable to give consent, medical personnel should refer to the advance directive and/or obtain consent from the nominated representative.

- **Equality & non-discrimination** means that all persons with mental illness must be treated equally and *at par* with patients who have physical illnesses. They must be provided services in the same manner, extent and quality. It also implies that no person with mental illness can be discriminated against on the basis of social, cultural, political, and economic grounds such as caste, class, ethnicity, sex, gender, sexual orientation, language or any other such ground.

- **Independent admission** means persons with mental illness can be admitted into a mental health establishment only if they consent to do so, and don't require very high support. Admissions can be made only if the person has a mental illness which is severe enough and requires admission for treatment.

- **Supported admission** is when persons with mental illness have a mental illness of such severity that they are unable to take decisions on their own, require high support, and treatment in a mental health establishment. Supported patients are admitted into a mental health establishment on an application from their nominated representative. In the first instance supported admission can last for only *30 days.* If it is to be extended beyond this period, then medical officer or mental health professional in charge of the mental health establishment must satisfy in accordance with the MHCA's provisions, that the person requires admission for a longer period and further take permission of the Mental Health Review Board within the prescribed time period.

- **Registration of mental health establishments** is compulsory for every mental health establishment where persons with mental illness may be admitted, reside or kept for care, treatment, convalescence and rehabilitation. In order to receive the certificate of registration, health establishments must satisfy the minimum standards laid down by the Central and State Governments.

- **Mental health review boards** or MHRBs are authorities that are mandated to ensure that the rights of persons with mental illness are protected. They also have a duty to ensure that mental health professionals, and mental health establishments are complying with the provisions of the MHCA. MHRBs are also authorities where relevant persons can challenge the decision of any medical personnel and make applications to protect their rights under the MHCA.

- **Central & State mental health authorities** are statutory bodies which are required to oversee the overall implementation of the MHCA. They are required to register mental health establishments and mental health professionals, lay down regulations and develop minimum standards for mental health establishments and services.

6. Important Definitions under the MHCA

S.NO.	CONCEPT	DEFINITION
1.	**Caregiver**	A person who resides with a person with mental illness and is responsible for providing care to that person. A care-giver includes a relative, friend, family member, or any other person who provides care for free or with remuneration.
2.	**Clinical Psychologist**	Includes a person who has: (i) A recognized qualification in Clinical Psychology from an institution approved and recognized by the Rehabilitation Council of India. (ii) A post-graduate degree in *Psychology or Clinical Psychology or Applied Psychology* **and** a Master of Philosophy in *Clinical Psychology or Medical and Social Psychology obtained* after completing a full-time course of two years which includes supervised clinical training from a University recognized by the University Grants Commission and approved and recognized by the Rehabilitation Council of India Act, 1992, or such recognized qualifications as may be prescribed.
3.	**Family/Relative**	A group of persons related by blood, adoption or marriage.
4.	**Half-Way Homes**	A transitional living facility for persons with mental illness who are discharged as inpatient from a mental health establishment, but are not fully ready to live independently on their own or with the family.
5.	**Hospital and Community Based Rehabilitation Establishment**	An establishment providing hospital and community-based rehabilitation services.
6.	**Hospital and Community Based**	Rehabilitation services provided to a person with mental illness using existing community

	Rehabilitation Service	resources with an aim to promote his reintegration in the community and to make such person independent in all aspects of life including financial, social, relationship building and maintaining.
7.	**Informed Consent**	Consent which is given for a specific intervention related to mental healthcare, treatment or related services. Such consent is without any force, fraud, threat, mistake, misrepresentation or undue influence. In other words, consent is of one's free will. It is obtained after disclosing to the person *adequate information* which includes risks, benefits, and alternatives to the specific intervention in a language and manner understood by the person.
8.	**Least Restrictive Alternative/Least Restrictive Environment/Least Restrictive Option**	An option for treatment and space or environment for treatment which (i) meets the person's treatment needs; and (ii) imposes the least restriction on the person's rights.
9.	**Local Authority**	Includes a Municipal Corporation, Municipal Corporation, Zilla Parishad, Nagar Panchayat, or Panchayat. It includes any other authority or body having administrative control over the mental health establishment or empowered under any law to function as a local authority in any city, town or village.
10.	**Medical Officer in Charge**	The psychiatrist or medical practitioner who is in charge of a mental health establishment.
11.	**Medical Practitioner**	A person who possesses a recognized medical qualification as defined in: (i) Section 2 (h) of the Indian Medical Council Act, 1956 and whose name is entered in a State Medical Register (ii) Section 2 (1) (h) of the Indian Medicine Central Council Act, 1970 and whose named is entered in a State Register of Indian Medicine (iii) Section 2 (1) (g) of the Homoeopathy Central Council Act, 1973 and whose name is entered in State Register of Homoeopathy

12.	**Mental Healthcare**	Analysis and diagnosis of a person's mental condition and treatment including, care and rehabilitation of such person for their mental illness or suspected mental illness.
13.	**Minor**	An individual under the age of 18.
14.	**Mental Health Nurse**	A person who has a diploma or degree in *general nursing or psychiatric nursing* recognized by the Nursing Council of India and registered with the relevant nursing council in the State.
15.	**Mental Health Professional**	A mental health professional includes the following professionals: (i) A psychiatrist as defined in Section 2 (1) (y) of the MHCA. (ii) A professional registered with the State Mental Health Authority which includes mental health nurses, clinical psychologists, psychiatric social workers. (iii) A professional who has a post graduate degree in Ayurveda for Mano Vigyan Avum Manas Roga, in Homoeopathy for Psychiatry, in Unani for Moalijat (Nafasiyatt) or in Siddha for Sirappu Maruthuvam.
16.	**Psychiatric Social Worker**	A person with a post-graduate degree in Social Work and Master of Philosophy in Psychiatric Social Work after a full-time course of two years which includes supervised clinical training from any university recognized by the University Grants Commission, or such recognized qualifications as may be prescribed.
17.	**Psychiatrist**	A medical practitioner with a post-graduate degree or diploma in *psychiatry* from a university recognized by: (i) University Grants Commission; or (ii) National Board of Examinations and included in the First Schedule to the Indian Medical Council Act, 1956; or (iii) Medical Council of India (iv) Includes any medical officer who having regard to their knowledge and experience in psychiatry has been

		declared by any State Government as a psychiatrist for the purposes of the MHCA.
18.	**Sheltered Accommodation**	Safe and secure accommodation option for persons with mental illness, who want to live and manage their affairs independently, but need occasional help and support.
19.	**Supported Accommodation**	A living arrangement whereby a person, in need of support, who has a rented or ownership accommodation, but has no live-in caregiver, gets domociliary care and a range of support services from a caregiver or an agency to help him live independently and safely in the privacy of their home.

CHAPTER 2

Mental Illness, Advance Directives & Nominated Representatives

1. What is Mental Illness? [Section 2 (1) (s) & Section 3]

1.1. The MHCA defines 'mental illness' in Section 2 (1) (s) broadly to include all:

(a) substantial disorders of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to (i) recognize reality or (ii) ability to meet the ordinary demands of life or;

(b) mental conditions associated with the abuse of alcohol and drugs.

1.2. However, the definition of 'mental illness' **excludes** intellectual disabilities such as *mental retardation* which is a condition of arrested or incomplete development of mind of a person specially characterised by sub-normality of intelligence.

A. How is Mental Illness Determined? [Section 3]

1.3. Mental illness should be determined according to medical standards that the Central Government notifies. Acceptable medical standards include latest the edition of the International Classification of Disease (ICD) of the World Health Organisation.

1.4. A person can be classified as a person with mental illness *only for purposes* of:

(i) treatment and other matters under the MHCA; or

(ii) matters under any other law in force which require determination of mental illness.

1.5. For example, a determination of mental illness may be required for:

1.5.1. Providing mental healthcare and treatment under the MHCA;
1.5.2. Availing entitlements under the Rights of Persons with Disabilities Act, 2016;
1.5.3. Proceedings under the Hindu Marriage Act, 1955 or Indian Penal Code, 1860;
1.5.4. Any other such laws in force.

1.6. A person's mental illness cannot be determined based on:

1.6.1. **Political, Economic, Social, Cultural, Racial, Religious Status or Membership**.
A person cannot be determined as having a mental illness only because they belong to a particular group, community or identity.

> *Rohan,* a 25-year-old man, is brought to a psychiatrist by his parents after they find out that he is romantically attracted to men. While talking to the Psychiatrist, Rohan identifies himself as gay, and a member of the LGBT community. Rohan cannot be classified as a person with mental illness because he is homosexual and an active member the LGBT community.

1.6.2. **Non-conformity with moral, social, cultural, work, political, or religious values and beliefs prevailing in a person's community**.
A person cannot be classified as having a mental illness only because their beliefs or values are opposed to those prevailing in any community**.**

> *Pooja* believes in inter-caste marriages and wishes to marry someone outside her caste. This is completely opposed to the customs of the community she belongs to which believes that all marriages should be within one's caste. Pooja cannot be classified as a person with mental illness because her values are opposed to her community's.

1.6.3. **Past treatment or hospitalisation in a MHE**.
A person's past history of mental illness or being treated in a MHE is an important part of the person's medical history. However, it is not enough to determine that such person has a mental illness in the present or will have a mental illness in future.

> *Anila* has a history of mental illness for the past 10 years. One day she and her husband have a violent fight about some marital issues. Anila is forcefully brought by her husband to see a psychiatrist at a state-run mental health hospital. He claims that she has a mental illness and needs treatment while citing her past history. The doctor inquires about Anila's past history. The doctor then conducts an examination and decides that in the present situation Anila does not have a mental illness.

B. What is Unsound Mind? Is it the Same as Mental Illness?

1.7. If a person has mental illness, this by itself **does not** imply that the person is of unsound mind. having a sound mind.

1.8. Similarly, if a person has been declared by a court of law as of unsound mind, then this by itself **does not** imply that the person has a mental illness. A person can be of unsound mind without having a mental illness, and conversely, can have a mental illness while having a sound mind.

1.9. Unsoundness of mind is a *legal concept* determined in law. To be considered as unsound mind, the person must be declared as such by a competent court of law.

1.10. Mental illness is a *medical concept* which is determined according to internationally recognized and established medical standards.

While unsound mind has not been defined under any law, according to **Section 12** of the **Indian Contract Act, 1872**, a person of **sound mind** (for the purpose of making a contract) is one who is capable of understanding the contract and of *forming rational judgment as to its effect upon his or her interests.*

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ Determine a person's mental illness only in accordance with nationally or internationally recognized medical standards notified by the Central Government.
- ✓ Ensure that determination of mental illness is only for treatment under the MHCA or for matters under any other law in force which require a determination of mental illness.
- ✓ Desist from certifying any person with mental illness as of unsound mind or legally insane.
- ✓ Sensitise and train medical personnel/staff that mental illness is not related to a person's status; identity in a group or community; or beliefs and values which do not conform with those prevailing in any community.

2. Capacity to Make Mental Healthcare and Treatment Decisions [Section 4]

A. What is Capacity to Make Mental Healthcare and Treatment Decisions?

2.1. Capacity under the MHCA refers to one's **ability to make decisions** regarding their mental healthcare and treatment. Under the MHCA, all persons are **presumed** to have capacity. Capacity to make decisions in other matters such as entering into contracts, buying or selling property, marriage, parenthood, etc. **is not covered** under the MHCA.

Decisions Regarding Mental Healthcare and Treatment

Decision making refers to the process by which a person expresses their will and preferences to choose a particular option/s of mental healthcare and treatment presented to them by medical personnel. Decisions can be made only when a person is provided adequate information and support (if required) which can help them make a choice in favour or against the options presented to them. Such information should include all the risks, benefits, alternatives, and consequences of choosing a particular option for treatment or not choosing it. A person can express their decision by giving informed consent to accept or refuse a particular form of treatment.

Criteria for Informed Consent

a) The person/patient giving consent must have capacity to do so.
b) Consent must be obtained freely, without threats or improper inducements.
c) There should be appropriate and adequate disclosure of information.
d) Information must be provided on the purpose, method, likely duration and expected benefits of the proposed treatment.
e) Possible pain or discomfort and risks of the proposed treatment, and likely side-effects, should be adequately discussed with the patient.
f) Choices should be offered in accordance with good clinical practice. Alternative modes of treatment, especially those that are less intrusive, should be discussed and offered to the patient.
g) Information should be provided in a language and form that is understandable to the patient.
h) Consequences of refusing treatment, which may include discharge from the hospital, should be explained to the person.
i) The consent should be documented in the patient's medical records.
j) The right to consent means the right to refuse or stop treatment

2.2. Capacity to make decisions regarding mental healthcare and treatment means that a person is able to:

2.2.1. **Understand information** relevant to make a decision on treatment, admission or personal assistance;

2.2.2. **Appreciate** any reasonably foreseeable consequence of a decision or lack of decision regarding treatment, admission or personal assistance;

2.2.3. **Communicate** the decision by means of speech, expression, gesture or any other means.

2.3. It is important that the information provided to a person is communicated in a manner which is understood by the person in the following ways:

2.3.1. Simple and non-technical language which is easy to understand for the person with mental illness; or

2.3.2. Sign language in case the person is unable to understand verbal communication; or

2.3.3. Visual aids if the person can understand the information visually or pictorially; or

2.3.4. Any other medium through which such person will be able to understand the information.

B. What are the Principles for Assessing the Capacity of a Person?

2.4. **How to Assess Capacity:**
MPs and MHPs should assess a person's capacity according to guidelines laid down by the **Expert Committee appointed by the Central Authority** as per Section 81 of the MHCA. While assessing capacity of a person they must comply with the guidance document and follow the procedure therein.

2.5. **Mental Illness is not the Same as Capacity:**
The MHCA makes a distinction between the determination of mental illness and the assessment of capacity. Merely having a mental illness does not imply that a person doesn't have capacity. Capacity can be exercised even if a person has mental illness. Therefore, determination of a mental illness has to be done separately and independently from the assessment of capacity.

2.6. **Presumption of Capacity:**
Every person is presumed to have capacity. If any MP or MHP has a contrary opinion, then they must establish that the person with mental illness does not have the ability to make decisions as per the criteria mentioned in Section 4 (1) of the MHCA.

2.7. **Recording Assessment of Capacity:**
Every assessment of capacity must be recorded by the MPs and MHPs in the medical notes/records. Similarly, every time informed consent is obtained (or not) from the person with mental illness it must be recorded in the medical notes/records of such person.

2.8. **Propriety of a Decision:**
A person's capacity will not be denied merely because their decision is perceived as inappropriate or wrong by medical personnel, staff or any other authority. In such a situation it is sufficient that such person has the capacity to make decisions on their mental healthcare and treatment as per Section 4 (1) of the MHCA.

2.9. **Support Provided by Nominated Representative:**
If a person has appointed a nominated representative to support them in making decisions, this by itself will not imply that the person, does not have capacity to make decisions. Similarly, as per Section 14 (8) if a person is unable to appoint a nominated representative for any reason, that by itself will not prove that the person lacks capacity.

2.10. **Supported Decision Making:**
A person can exercise capacity with support from the nominated representative. The level of support can vary at different intervals of time: in some moments a person might require high support and in some moments a person might not require any support. Support could also vary with the complexity of the decision to be taken- simpler decisions might not require as much support, whereas complex decisions could require more support.

2.11. **Continuous Review of Capacity:**
The assessment of a person's capacity must be reviewed on an ongoing basis by medical personnel for the entire duration of admission and treatment.

2.12. **Losing and Regaining Capacity:**
A person could lose and regain capacity at different points in time, depending on the condition of the person. This itself shall not be a reason to conclude that the person does not have capacity as long as they are able to make decisions with or without support).

2.13. **Lack of Access to Support:**
Lack of access to support cannot be a ground for determining that the person does not have capacity. The nominated representative and medical personnel must ensure that support is provided to the person so that they can exercise capacity to make decisions.

2.14. **Personal Beliefs of Medical Personnel:**
Medical personnel or staff in charge of assessing capacity of a person must not let their personal values, beliefs or ideals influence their assessment of the person's capacity.

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ Comply with the principle that a person with mental illness has capacity to make decisions regarding their mental healthcare and treatment with or without support. If there is reason to believe that the person does not have capacity, then the same must be proved through a capacity assessment
- ✓ Assess the capacity of a person with mental illness according to the guidelines laid down by the Expert Committee appointed by the Central Mental Health Authority.
- ✓ Assess capacity of a person with mental illness at regular intervals to ensure that the person can take decisions regarding their treatment.
- ✓ Record assessments and observations in the person's medical records every time a capacity assessment is carried out.
- ✓ Take informed consent of the person with mental illness before providing any treatment or care. Record the same in the person's medical records.
- ✓ Inform the person with mental illness with all necessary details to enable them to take decisions. Communicate information in a language or manner that is understood by the person.
- ✓ Provide any form of support required by the person with mental illness to make decisions.

3. Advance Directives [Section 5 to Section 13]

3.1. **Article 12 of the CRPD** states that all persons with disabilities have **legal capacity** on an equal basis with others. This means that all persons are equal before the law. Persons with disabilities have the same legal rights as other persons in all aspects of their lives. Further, it also implies that persons with disabilities have the right to exercise these rights with the protection of the law.

3.2. Legal capacity also means that all persons have the right to make decisions regarding their mental healthcare and treatment. To exercise legal capacity some persons may require support. To assist such persons in exercising their capacity support of any kind that enables them to make decisions in accordance with their own will and preferences, should be provided. The CRPD refers to this as *supported decision-making.*

3.3. **General Comment 1** of the Committee on the Rights of Persons with Disabilities further states that one of the forms of support that may be provided to persons with disabilities (including persons with mental illness) is the ability to plan in advance for a situation where they might not be able to communicate their decisions. They can do so by stating their will and preferences in advance, so that if there is a situation in the future where they are unable to make decisions, they can be treated in accordance with their will and preferences.

A. What is an Advance Directive?

3.4. Advance planning can be done by writing advance directives. These are written documents in the nature of declarations about how a person wishes to be treated for a mental illness in a situation where they do not have capacity to make decisions regarding the same. Thus, in an advance directive a person can specify the treatment, care and support that they want. They can also specify the options that they don't want and how they wish to be treated when they have a mental illness and are unable to care for themselves. In this way advance directives ensure that the capacity of a person is exercised by providing such person support in accordance with their will and preferences.

B. Who can Write an Advance Directive?

3.5. According to the MHCA, every person (whether or not they have a history of mental illness) has the right to make an advance directive by themselves. However, minors cannot make advance directives for themselves.

C. What can be Specified in an Advance Directive?

3.6. According to the MHCA every advance directive written by a person can specify any or all of the following information:

- The way the person wishes to be cared for and treated for a mental illness; or
- The way the person wishes not to be cared for and treated for a mental illness; or
- Individuals he or she wishes to appoint at nominated representative in order of precedence.

D. When and How Will the Advance Directive be Effective?

3.7. The advance directive is effective only when the person ceases to have capacity and is not able to make decisions regarding their mental healthcare and treatment. It remains effective till the person regains capacity following which informed consent shall be taken from the person before providing treatment.

3.8. If a person makes a decision when they have capacity, then this decision will override any previous advance directives if made by the person. However, if the person loses capacity subsequently, then the latest advance directive shall apply to any form of mental healthcare provided to the person.

3.9. The advance directive is not applicable to emergency treatments under Section 94.

3.10. Advance directives cannot be contrary to the law- if it is then it will be considered as inapplicable.

Examples of Advance Directives:

In the event if I, XYZ, have a mental illness and am not in the condition to take decisions by myself, then:

a. I wish to be cared for and treated as under:

I wish to be admitted in a hospital which is close to my family home. I want my food to be cooked at home. If I am in a lot of pain or distress, then I wish to be given medicines to calm me even if I don't give permission in that moment.

b. I wish not to be cared for and treated as under:

I do not want to be administered lithium because of its side effects. I do not want any visitors to come to the hospital to meet me. Under no circumstances do I wish to be physically restrained.

At all times I will be supported by my mother who will take decisions on my behalf since she knows me and my wishes the best.

I have been living with schizophrenia for 15 years and live alone. Whenever I have a serious episode I admit myself into a hospital as I am unable to take care of myself on my own. If I am admitted I want the hospital authorities to contact my brother on the number given below as he is my nominated representative.
I do not like it if there are many people present around me in the hospital ward and would prefer getting a bed which is away from everyone else. I am scared of injections and prefer taking medicines orally.

If I am very anxious I would like to be given a sedative to calm me down and put me to sleep.

E. What is the Procedure for Making an Advance Directive?

i. How to Prepare the Advance Directive:

3.11. An advance directive has to be made in accordance with **Regulation 3** and **Form A** prescribed by the Central Mental Health Authority in the **CMHA Regulations, 2020.**

3.12. If the nominated representative is nominated in the advance directive, they have to record their consent for the same by **signing on the advance directive**. The nominated representative can at any time withdraw consent by writing an application to the MHRB and sending a copy of the same to the person who has made the advance directive.

3.13. Every application should be signed by two witnesses attesting to the fact that the advance directive has been signed by the person making the advance directive in their presence.

3.14. The person will keep one copy of the advance directive with the self and give the other copy to the nominated representative.

ii. Registration of the Advance Directive:

3.15. The person or the nominated representative will have to **register the advance directive** at the nearest MHRB which has jurisdiction over the area where the person resides. No fee is required for the same.

3.16. The advance directive will be made online *within 14 days* of registration.

3.17. MHPs and medical personnel in MHEs can refer to the online register of all advance directives maintained by the MHRB.

iii. Revoking, cancelling or changing the Advance Directive:

3.18. A person can **change the advance directive** as many times following the same procedure (mentioned above). The latest advance directive will cancel all previous ones.

3.19. A person can **revoke or cancel their advance directive** at any time in the same manner as the procedure for making the advance directive.

3.20. A nominated representative mentioned in the advance directive can **withdraw their consent** without giving any reason by (i) submitting a written application to the MHRB (ii) giving three months prior written notice of such withdrawal to the person.

iv. Advance Directive for a Minor:

3.21. The legal guardian of a minor can make an advance directive on the minor's behalf. The same provisions will be applicable to the minor with necessary modifications suited to the minor's context.

F. Duty of Person and Nominated Representative to Inform

3.22. It is the duty of the person or the nominated representative to **inform** the medical personnel about the advance directive and provide a copy of the same.

G. Duty of the Medical Personnel to Follow the Advance Directive

3.23. Once the MO/MHP in charge, or the medical practitioner or the treating MHP is informed of the advance directive they should review whether the same is registered by referring to the online register of advance directives.

3.24. It is the duty of the MO/MHP in charge or the Psychiatrist in charge of treatment of the person to provide treatment to the person **in accordance with the valid advance directive.** The advance directive will be applicable whenever the person doesn't have capacity and is unable to give informed consent.

3.25. The medical personnel or MHP will not be liable for unforeseen consequences of following an advance directive.

3.26. No person will release a copy of the advance directive to any unauthorised person or to the media.

H. Review, Modification, Alteration or Cancellation of Advance Directive

i. Application to the MHRB to challenge the Advance Directive:

3.27. An advance directive can be challenged before the MHRB for review, modification, alteration or cancellation.

3.28. The MHP, relative, or care-giver of the person with mental illness can challenge the advance directive by submitting an application to the MHRB.

3.29. The application can be made if any one of them does not wish to follow the advance directive or believes that the advance directive must not be followed for any reason.

ii. Procedure for Challenging Advance Directive:

3.30. An application must be submitted to the MHRB by the MHP, relative, or care-giver of the person with mental illness.

3.31. Upon receipt of the application, the MHRB will provide a hearing to all the concerned parties to hear all sides.

3.32. The MHRB will make a decision to uphold, modify, alter or cancel the advance directive based on the following criteria:

3.32.1. **Free Will**
Whether the advance directive was with the person's own free will without force, undue influence or coercion; or

3.32.2. **Change in Circumstances**
If the circumstances are different from what the person had anticipated while making the advance directive, and whether such person intended for the same to apply in the new circumstances; or

3.32.3. **Well-Informed**
Whether the person was sufficiently well informed to make the decision; or

3.32.4. **Capacity**
Whether the person had capacity to make the advance directive or take decisions relating to their mental healthcare and treatment; or

3.32.5. **Contrary to Law**
If the advance directive is contrary to any law or constitutional provisions in force.

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ Ask for the advance directive whenever a person with mental illness is admitted for treatment and ensure that the advance driective is registered.
- ✓ Follow the advance directive while providing treatment to the person with mental illness. Ensure all medical personnel and staff are made aware of the contents of the advance directive.
- ✓ Approach the Mental Health Review Board for reviewing, modifying, altering or cancelling the advance directive if you are unable to follow it for any reason.

4. Nominated Representatives [Section 14 to Section 17]

A. Who is a Nominated Representative?

4.1. A nominated representative [NR] is a person who has been appointed by a person with mental illness to:

4.1.1. Represent them in matters related to their mental healthcare, admission and treatment;

4.1.2. Provide varying levels of support to such person to exercise their capacity;

4.1.3. Give informed consent on behalf of the person in situations where the person requires very high support or has no capacity; and

4.1.4. Any other matter related to the mental healthcare and treatment of such person.

B. What are the Duties of a Nominated Representative?

S.no.	DUTIES
1.	Consider the current and past wishes, life history, values, cultural background and best interests of the person with mental illness
2.	Take into account the views of the person with mental illness so that they can understand the nature of decisions under consideration
3.	Provide support in making treatment decisions for supported admission
4.	Seek information on diagnosis and treatment to provide support to the person with mental illness
5.	Have access to family or home-based rehabilitation services for the benefit of the person with mental illness
6.	Be involved in discharge planning
7.	Apply to the MHE for supported admission or admission of minors
8.	Apply to MHRB for discharge of person with mental illness
9.	Apply to MHRB against violation of rights of person with mental illness
10.	Appoint suitable attendant for the minor admitted in the MHE
11.	Give or withhold consent for research

C. What is the Procedure to Appoint a Nominated Representative?

4.2. Every person has the right to appoint a nominated representative on their own.

4.3. The eligibility criteria for a person to become a nominated representative are:

4.3.1. The person is not a minor; and

4.3.2. The person is competent to discharge duties or perform functions and gives consent to the MHP for the same.

4.4. The person will make the nomination in writing on a plain paper with their signature or thumb impression.

4.5. In case the nominated representative has not been appointed for any reason, then the medical personnel will have to consider the following individuals as a *deemed nominated representative* in order of precedence [Section 14(4)]:

4.5.1. Individual appointed as nominated representative in the advance directive; or

4.5.2. Relative; or

4.5.3. Caregiver; or

4.5.4. Suitable person appointed by the MHRB; or

4.5.5. Director, Department of Social Welfare or representative as appointed by the MHRB.

4.5.6. A representative of a registered organisation working for persons with mental illness can submit a written application to the MO/MHP in charge or Psychiatrist in charge of the person's treatment or any other treating MHP in the MHE. Such person can be accepted by the medical personnel as a temporary nominated representative till the MHRB appoints one.

4.6. A person may revoke or cancel the appointment of their nominated representative and appoint a new person instead in accordance with the procedure mentioned above.

D. Who can be the Nominated Representative of a Minor?

4.7. In the case of minors, the legal guardian shall be the nominated representative of the minor.

4.8. A MHP or any other person acting in the best interest of the minor can submit an application with evidence to the MHRB to appoint a new nominated representative for the minor. The application can be filed if the legal guardian is not acting in the best interests of the minor or is not competent.

4.9. The nature of evidence could be documentary, audio-visual, testimonies of relevant persons, observations of interactions, interviews or any other written material.

4.10. The MHRB after receiving the application and reviewing the evidence can appoint a suitable person as nominated representative of the minor with mental illness after concluding that:

4.10.1. The legal guardian is not acting in the best interest of the minor; or

4.10.2. The legal guardian is not fit to be the nominated representative of the minor.

4.11. If no individual is available, the MHRB will appoint the Director, Department of Social Welfare of the relevant State as the nominated representative.

E. Revocation, Alteration, Modification of Nominated Representative Appointed by the MHRB

4.12. The MHRB can revoke an appointment of nominated representative made by it under Section 14 and appoint a different nominated representative.

4.13. If it is observed that the appointed nominated representative is not acting in the best interests of the minor or is not competent to fulfil their role, then an application can be submitted to the MHRB to revoke, alter, or modify its order appointing a nominated representative for a minor with mental illness.

4.14. The application can be submitted by:

a. A person with mental illness; or
b. Relative; or
c. Psychiatrist in charge of the person's treatment; or
d. MO/MHP in charge

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ Ensure that the person with mental illness has a nominated representative at the time of admission.
- ✓ If a nominated representative has not been appointed, follow the order of nominated representatives as mentioned in Section 14 (4).
- ✓ In case there is a conflict as to who is the nominated representative, refer the matter to the Mental Health Review Board.
- ✓ In case the nominated representative is not competent or acting against the best interests of the person with mental illness, approach the Mental Health Review Board for appointing a new nominated representative.

CHAPTER 3

Rights of Persons with Mental Illness

1. Right to Access Mental Healthcare [Section 18]

Every person **has the right to access mental healthcare and treatment** from government health services-including those services *run or funded* by the Central and State Governments.

A. What is the Right to Access Mental Healthcare?

1.1. Mental health services shall be **provided to all persons *without* discrimination** based on caste, class, gender, sex, sexual orientation, religion, culture, social or political beliefs or disability.

1.2. No person can be denied or provided lower standard of mental health services because they belong to a particular group, community or identity.

1.3. The right to mental healthcare and treatment means that such services should be:

1.3.1. **Affordable in Cost**
Affordable cost implies that persons should not face an unreasonable burden on their income/resources for mental healthcare services. Further, persons belonging to socio-economically marginalised communities must be able to access public mental health services at minimal costs. Medical insurance should also be provided to cover costs for mental healthcare and treatment.

1.3.2. **Of Good Quality**
Mental healthcare services should fulfil the *minimum standards* laid down by the Central and State Governments. Quality also implies that mental healthcare, treatment and services should improve health outcomes, be acceptable and sastisfactory to those availing the same.

1.3.3. **Available in Sufficient Quantity**
The number of mental health establishments, medical personnel, equipment, medicines and infrastructure should be in sufficient number and in proportion to the number of persons with mental illness in each district and State. Each MHE should be equipped with

adequate services, equipment, supplies, medication and personnel to provide services to all those who are being treated there.

1.3.4. **Geographically Acessible**
Mental health services should be available in such manner that persons don't have to travel long distances to access them. Mental health services should be available at the level of the sub-health centres, primary health centres, community health centres and at the district hospitals.

1.3.5. **Healthcare Provided in an Acceptable Manner**
The will and preferences of persons with mental illness should be respected while providing mental healthcare services. Medical personnel should ensure that the same are provided in accordance with advance directives or with informed consent of such persons.

B. What are the Minimum Services to be Provided by Central & State Governments?

1.4. The Central and State Governments are mandated to provide the following services *as a minimum* to ensure the right to access mental healthcare and treatment:

1.4.1. Mental healthcare services such as outpatient and inpatient services;

1.4.2. Provision of halfway homes, sheltered accommodation, supported accommodation;

1.4.3. Mental health services to support family of persons with mental illness;

1.4.4. Home based rehabilitation;

1.4.5. Hospital and community-based rehabilitation establishments and services;

1.4.6. Provision for child mental health services and old age mental health services.

1.5. The Central and State Governments are mandated to ensure the following in addition to the above-mentioned services:

1.5.1. **Integration with Public Health System**
Integrate mental health services with general healthcare services at the primary, secondary, tertiary healthcare levels and all health programmes. In other words, mental health services would not be provided as segregated services but integrated into different levels of the public health system.

1.5.2. **Community Based Treatment**
Treatment which is provided in the community and supports persons with mental illness to live in the community with their families.

1.5.3. **Institutionalisation as Last Resort**
Ensure that long term care in a mental health establishment will be provided in exceptional circumstances and for as short a duration as possible. It is a last resort when community-based treatment or other alternatives have failed.

1.5.4. **Physically Accessible Mental Healthcare**
Ensure that persons with mental illness don't have to travel long distances to access mental healthcare and treatment. Mental health services should be available close to where a person resides.

1.5.5. **Treatment in Each District**
Ensure minimum mental healthcare services are available in each district. Where such services are not available and persons used private mental health services in the same district, their medical costs should be reimbursed by the government. **Rule 5 of the MHCA Rules, 2018** provide that a person may apply to the Chief Medical Officer of the District for reimbursement of costs. The Chief Medical Office will examine the application and issue an order to the officer in charge of the Directorate of Health Services to reimburse costs in accordance with the rates specified by the Central Government.

1.5.6. **Mental Healthcare in General Hospitals**
Provide mental health services in all general hospitals run or funded by the Government. Integrate mental healthcare services in all hospitals at all levels of the public health system. In other words, there should be psychiatric wards/OPD services in general hospitals.

1.5.7. **Emergency Mental Healthcare Services**
Provide basic and emergency mental healthcare services at all community health centres and upwards in the public health system.

1.5.8. **Free Mental Healthcare Services**
Provide mental healthcare treatment and services free of cost to persons living below the poverty line, destitute or homeless (they are not required to possess BPL cards). Such persons should be able to access free services at MHEs that are run, funded or recognized by the Central and State Governments.

1.5.9. **Provision of Essential Drugs & Medicines**
All essential drugs and medicines as per the Essential Drugs List should be provided free of cost to all persons with mental illness at MHEs run or funded by the Government. This includes Community Health Centres and upwards in the public health system. Where health services in ayurveda, yoga, unani, siddha, homeopathy or naturopathy systems are being offered, and there is a list of essential medicines for such health services- such medicines will be provided free of cost to persons with mental illness.

1.5.10. **Budgetary Provisions**

The Central & State governments will ensure budgets are made for effective implementation of services. Such budgets will be:

a) *Adequate:* In terms of how much is enough to offset inflation

b) *Prioritised:* These services will be prioritised compared to other budget heads.

c) *Equitous:* Fair allocation of resources taking into account health, social, economic burden of mental illness on individuals, families and their caregivers.

d) *Progress:* Indicating an improvement in the State's response.

2. Right to Equality and Non-Discrimination [Section 21]

A. What is meant by Equality and Non-Discrimination?

2.1. Equality and Non-Discrimination implies the following:

2.1.1. **Non-Discrimination**
Persons with mental illness cannot be discriminated against based on their gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability.

2.1.2. **Parity**
All persons with mental illness have the right to be treated as equal to persons with physical illness in the provision of all healthcare. All MHEs whether private or government run/funded shall provide services to persons with mental illness in the *same manner, extent and quality* as persons with physical illness. In other words, the same set of standards should be applicable to all.

Examples of Parity:

- If persons with physical illness are being provided wholesome food, then food of the same quality should be provided to persons with mental illness.
- If persons with physical illness have their wards in a ventilated and well-lit area, persons with mental illness should be placed in similar wards, and not in a secluded area or a basement.
- There should be no difference in the inventory of emergency medication, supplies and equipment for both persons with physical illness and those with mental illness.

In particular, the MHCA mentions the following services which should be provided in the same manner, extent and quality as persons with physical illness.

a. *Emergency facilities and services:* The same quality of emergency services, paramedics and medical personnel, equipment, medicines and treatment will be provided to all persons with mental illness as is provided to persons with physical illness. Emergency services including ambulance services must be provided at their doorstep from the nearest MHE. CMHA and SMHAs need to make protocols and train the relevant department to implement the same.

b. *Ambulance services:* Ambulance services will be provided to any person with mental illness having a medical or *psychiatric emergency* by the authorities designated for the same. There shall not be any delay in providing such service, or difference in the quality of ambulances, equipment, or personnel managing such services from what is provided to persons with physical illness. These services must be advertised accordingly.

c. *Living conditions:* All persons with mental illness shall be kept in the same living conditions as persons with physical illness. In other words, there cannot be a separate set of standards for persons with mental illness below par from what is provided to persons with physical illness.

d. Any other health services

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ MHEs should sensitise all medical personnel and staff to comply with principles of equality and non-discrimination while providing mental healthcare and treatment.
- ✓ MHEs should conduct internal audits to ensure that all facilities and services provided to persons with mental illness are *at par* with persons who have other physical illnesses.
- ✓ Wherever discrepancies or inconsistencies are observed MHEs should provide appropriate infrastructure and ensure there is no gap in the standard of services provided to persons with mental illness.
- ✓ Collect regular feedback from persons with mental illness admitted in the MHEs about the quality of mental healthcare and treatment provided.

3. Right to Community Living [Section 19]

A. What is the Right to Community Living?

3.1. Persons with mental illness have the right to community living. In other words, this means that such persons:

3.1.1. Have a right to live in and be a part of society and cannot be segregated or excluded from their community.

3.1.2. Have a right not to be admitted or kept in a MHE for long stay solely on any of the following grounds:

a. they cannot live with their family; or
b. there is an absence of community support or they have been segregated or excluded; or
c. they are homeless; or
d. they have no family relatives willing to take care of them.

3.2. Persons with mental illness who cannot live with their family or have been abandoned by it have the following rights:

3.2.1. Legal aid to exercise their right to live with the family.

3.2.2. Any appropriate support to ensure that they can continue to live in their community.

3.2.3. If they can't live in their community, they must be provided other means to live and support themselves through community rehabilitation services, sheltered accommodation, supported accommodation, long-stay facilities, etc.

3.3. The Central and State Governments must set up *least restrictive establishments* such as half-ways, groups homes, etc. for those who no longer require long-stay in mental health hospitals.

3.4. The Central and State Governments must ensure that a person with mental illness has access to legal aid, and support in case they cannot stay in their community.

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ Admit persons who have been abandoned or excluded from their communities *only* if they meet the criteria for admission under the MHCA. If the person does not meet the criteria, then they cannot be admitted even if they are homeless or unable to live with their family.
- ✓ Refer such persons to appropriate shelter homes for persons who are homeless or abandoned by their families.
- ✓ Inform persons of their right to access legal aid along with contact information of the District Legal Services Authorities to access legal aid.
- ✓ Provide contact details of government departments, rehabilitation services and legal aid providers. Display this information in the MHE at a place which is accessible and visible to all.

4. Right to Protection from Cruel, Inhuman and Degrading Treatment [Section 20]

4.1. Every person with mental illness has a right to live with dignity.

4.2. This means that such person with mental illness should be protected from cruel, inhuman and degrading treatment by providing services and facilities that ensure the dignity of such persons.

4.3. The services and facilities provided to persons with mental illness should meet the minimum standards prescribed by the relevant Authority and central/state governments.

4.4. Persons with mental illness should be assured the following rights during the period that they are admitted in MHEs in accordance with these minimum standards.

4.5. These standards are the *bare minimum* for all MHEs. However, MHEs are expected to provide the best possible health facilities and services *beyond these minimum standards* within the limits of their own resources, and constraints.

4.6. The following table captures the rights of such persons and some ways in which they can be actualised (this list is merely illustrative and not exhaustive):

RIGHT	EXAMPLES
Right to live in a safe and hygienic environment. Right to adequate provisions for wholesome food, sanitation, space and access to articles of hygiene.	• The physical conditions and environment of the MHE should be safe and hygienic. • The wards, bathrooms, toilets, corridors and other rooms should be well ventilated and lit with adequate provisions for fans, coolers and lights. • The entire premises of the MHE including rooms, bathrooms and toilets should be functional and cleaned on a regular basis. • The premises should not be invaded by rodents or mosquitoes. Mosquito repellents or nets should be provided in the wards and other indoor areas. • Physical infrastructure such as the walls, windows, roofs, flooring, etc. must not be damaged or in poor condition requiring repair. • The linen, clothes and utensils provided to patients should be regularly cleaned and replaced. • The food provided to the patients should be wholesome and tasty, according to dietary requirements, and cooked in clean kitchens. It must be ensured that patients are provided with a diverse menu and food which is not stale, rotten or inedible.
Right to adequate sanitary conditions. Women's personal hygiene and access to items required during menstruation.	• The MHE should provide proper sanitary conditions to all patients in the same manner and quality. • For example, adequate bathrooms and toilets must be provided keeping in mind the number of patients in each ward. • Separate bathrooms and toilets should be ensured for women with provisions for menstrual hygiene such as sanitary napkins, toilet paper and waste-paper baskets to dispose used articles. • Additionally, bathrooms and toilets must be equipped with sanitary products- soaps, disinfectants, toiletries, sanitisers toilet paper, air refreshers, buckets and bugs, etc.
Right to facilities for leisure, recreation, education and religious practices	• The MHEs should provide facilities such as a common room for patients of each ward which is equipped with a television, books, drawing/painting supplies, board games, and indoor sports facilities.

	• Similarly, outdoor sports facilities should also be provided for play. • The MHEs should make provisions for prayer rooms for persons with different faiths and ensure that no person of any faith is discriminated against in the provision of these spaces. • Additionally, the MHE should also provide educational opportunities whether in the form of vocational training, language courses or other workshops that can engage patients. • The MHE should hold classes for yoga, meditation, music & dance, art courses, etc.
Right to privacy	• The privacy of the patients must be respected to the extent possible. • Beds in each ward should be enclosed by curtains which can be drawn in case the patient wants some privacy. • Provision of common rooms should be ensured so that patients can spend their time when they wish to be alone. • Facilities for telephonic and email communication should be provided in a manner where patients don't feel that their privacy is being infringed. Any mails and communication received or sent by patients should not be checked or reviewed by anyone. • The medical records and information of any patient should not be shared with another patients or person not concerned with the patient's treatment and care.
Right to proper clothing to prevent exposure of body. Right to wear personal clothes if wished, and not forced to wear uniforms provided by the MHE.	• The MHE should provide clothing in case patients don't have their own clothing. • Such clothing should be of good quality, of sizeable fittings and comfortable to wear. • Clothing should be of the same quality as provided to patients of other physical illnesses and must be appropriate for both men and women. • Patients should be given an option to wear their own clothing or the clothing provided by the MHE.
Right not to be forced to work in a MHE. Right to receive appropriate	• No person with mental illness admitted in a MHE should be forced to do any kind of work in the MHE and its premises *without their consent*.

remuneration for work done with consent.	• MHEs may develop a work scheme for patients in order to ensure their holistic development during their stay in the MHE. • However, if patients agree to work of their free will, they should be provided adequate remuneration for the same.
Right to adequate provisions for living in the community.	• MHEs and the medical personnel therein should work closely with the State Government Departments and organisations working on mental illness, rehabilitation and mental healthcare to ensure that a person with mental illness is equipped with all the provisions for living in their community in an integrated manner.
Right to be protected from physical, verbal, emotional and sexual abuse.	• The medical personnel should be cognisant and aware of any signs that a person is experiencing physical, verbal, emotional or sexual abuse from any person. • In case, there is a case of abuse, the MO/MHP in charge should institute an appropriate inquiry into the same and comply with legal procedures.
Right to not to be subject to compulsory tonsuring.	• No person with mental illness should be forced to shave their heads.

5. Right to Information [Section 22]

A. What is the Right to Information?

5.1. Persons with mental illness and their nominated representatives have a right to the following information:

5.1.1. **Provisions of the MHCA or any other law under which they are being admitted, and the criteria for admission under such provisions**

a. MHEs should provide a copy of the provisions of the law which are easy to understand for the person and explained in simple language directly to the person.

b. Such information may be provided by the medical personnel responsible for making admissions and includes the MO/MHP in charge, Psychiatrist in charge of treatment or any other MHP designated to handle admissions.

c. Information should be provided at the time of admission.

5.1.2. **Right to make an application to the MHRB for a review of his or her admission**

a. MHEs should provide information on the procedure to make an application, relevant contact details for approaching the MHRB, and relevant forms for making such an application.

b. Such information may be provided by the medical personnel responsible for making admissions and includes the MO/MHP in charge, Psychiatrist in charge of treatment or any other MHP designated to handle admissions.

c. Information should be provided at the time of admission.

5.1.3. **Nature of the person's mental illness, proposed treatment plan, and known side effects of proposed treatment**

a. MHEs should explain the nature of the illness to each person first; followed by each component of the proposed treatment plan; expected side-effects and management of the same.

b. The person may be informed about the nature of their mental illness at the time of admission- after the assessment and diagnosis are made.

c. The proposed treatment plan should be explained to the person before treatment commences- at the time of taking informed consent from the patient and/or the nominated representative.

d. Information relating to the diagnosis, treatment and side-effects of proposed treatment should be provided by the psychiatrist or mental health professional treating the person.

e. Information regarding the logistics of the wards/hospital premises, schedules for administering medicines, living facilities etc. can be provided by the nurses, or any other MHP responsible for the treatment and care of the person.

5.1.4. **Receiving information in a language and form that can be understood by the person**

a. MHEs should provide information in the language which is understood by the person or the nominated representative.

b. If required, such information can be communicated through other means such as visual or audio-visual aids, sign language, written or any other means understood by the person.

6. Right to Confidentiality [Section 23 and Section 24]

A. What is the Right to Confidentiality?

6.1. Every person with mental illness has the *right to confidentiality* in respect of their mental health, mental healthcare, treatment and physical healthcare.

6.2. In other words, a person's personal information shall not be provided to anyone else without the person's informed consent.

6.3. Such information maybe stored in electronic, or digital format in real or virtual space.

6.4. No photograph or information relating to a person with mental illness undergoing treatment in the MHE should be released to the media without the person's consent.

B. When can Personal Information be Shared?

6.5. A person's right to confidentiality is subject to exceptions in the following situations

6.5.1. The nominated representative requires information to fulfil duties under the Act;

6.5.2. Other mental health professionals, and health professionals require the information to provide care and treatment to the person;

6.5.3. Necessary to protect any other person from harm or violence to the extent that is necessary to provide such protection;

6.5.4. Necessary to prevent threat to life;

6.5.5. Upon an order of the MHRB, Central Authority, High Court, Supreme Court or any statutory body;

6.5.6. In the interests of public safety and security.

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ Take appropriate measures to ensure that a person's personal information is not disclosed to any other person.
- ✓ Personal information of all persons with mental illness should be stored in safe spaces under lock and key that only responsible medical personnel have access to.
- ✓ Sensitise and train all medical personnel to ensure confidentiality of persons with mental illness.
- ✓ While disclosing a person's information the MHP shall intimate to such person that their information is being disclosed to another person.
- ✓ While taking informed consent, the person must be given all relevant information regarding risks and benefits of disclosing the information.
- ✓ Every disclosure with or without consent must be documented in the medical records of the person.

7. Right to Access Medical Records [Section 25]

A. Medical Records

7.1. All persons with mental illness have a right to access their medical records.

7.2. According to **Rule 6 of the MHCA Rules, 2018** medical records include documented medical information relating to a person's:

7.2.1. History;
7.2.2. Diagnosis;
7.2.3. Investigations;
7.2.4. Assessment; and
7.2.5. Treatment

7.3. The MHP in charge of records can withhold information if they feel that the disclosure will result in:

7.3.1. Serious mental harm to the person with mental illness; and/or
7.3.2. Likelihood of harm to other persons.

B. Procedure for Providing Information [Rule 6 of the MHCA Rules, 2018]

7.4. A person with mental illness should make an application according to **Form-A** addressed to the MO/MHP in charge of the MHE.

7.5. The person should be provided with the medical records as per **Form-B** within *fifteen days* of submitting the application. The format of basic medical records is also available in **Form-B** of the **CMHA Regulations, 2020.**

7.6. If the MHP cannot decide whether to disclose information due to ethical, legal or safety concerns, they should make an application to the MHRB. The MHRB will make an order as it deems fit.

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ Regularly update the medical records of the person with mental illness.
- ✓ Disclose medical records to a person with mental illness if they submit application for the same.
- ✓ In case medical records cannot be provided for any reason the person with mental illness must be informed that their records are being withheld.
- ✓ If medical records are being withheld, the person must be informed of their right to submit an application to the concerned Board for disclosure of records.
- ✓ If uncertain about whether medical records should be disclosed to the person with mental illness refer the matter to the Mental Health Review Board.

8. Right to Personal Contacts & Communication [Section 26]

A. What Kind of Communication Can be Received or Refused?

8.1. Every person with mental illness admitted in a MHE has the right to:

8.1.1. Refuse or receive visitors;

8.1.2. Refuse or receive and make telephone or mobile phone calls at reasonable times;

8.1.3. Send and receive mail through electronic mode including emails.

8.2. If a person with mental illness informs the MO/MHP in charge that they do not want to receive any mail or email from any person in the community, the same shall be restricted.

8.3. The following persons shall be allowed to visit the person with mental illness under any circumstances:

8.3.1. Any Judge or officer authorised by a competent court;

8.3.2. Members of the MHRB or CMHA or SMHA;

8.3.3. Any member of Parliament or State Legislature;

8.3.4. Nominated representative, lawyer or legal representative of the person;

8.3.5. Medical Practitioner in charge of the person's treatment;

8.3.6. Any other person authorized by the Government.

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ Inform persons with mental illness admitted in the mental health establishment of their right to receive or refuse visitors.
- ✓ Assist the person with mental illness in accessing means for communication such as telephones or email facility.
- ✓ If a person with mental illness is not allowed to refuse a visitor, reasons should be provided to the person for the same.
- ✓ Establish policies for making phone calls, sending e-mails, etc. in the MHE.

9. Right to Legal Aid [Section 27]

9.1. All persons with mental illness are entitled to receiving free legal services under the Legal Services Authorities Act, 1987 or other laws.

9.2. It is the duty of every magistrate; police officer; MO/MHP in charge; or person in charge of a custodial institution to:

9.2.1. Inform the person with mental illness at the time of admission of their right to free legal services;

9.2.2. Provide contact details of the Legal Services Authority or other places where they can avail of free legal aid services and/or legal counselling;

9.2.3. Install a signage board in a prominent place of the MHE with information regarding the right to seek free legal aid and contact information of the Legal Services Authorities;

9.2.4. Information should be displayed the local language that is easy to understand;

9.2.5. A custodial institution is one where vulnerable persons reside or kept at and includes beggars' homes, orphanages, women's protection homes, children's homes, etc.

10. Right to Make Complaints about Deficiencies in Provision of Services [Section 28]

10.1. Any personal with mental illness can complain about the deficiencies in provision of care, treatment, and services in a MHE to (in order of precedence):

10.1.1. MO or MHP in charge of MHP; and if not satisfied with their response

10.1.2. The MHRB; and if not satisfied with their response;

10.1.3. The State Mental Health Authority.

10.2. Such person can also seek a judicial remedy for violation of rights under the MHCA or any other law in force.

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ Set up an internal grievance redressal mechanism to resolve complaints regarding deficiencies in services.
- ✓ Inform persons with mental illness of their right to make a complain regarding deficiency of services.
- ✓ Document all complaints and action taken by the MHE.

11. Custody of Child Belonging to Woman Patient [Section 21 (2)]

11.1. A child under *3 years* of age of a woman admitted in a MHE shall not be separated from the mother during her stay there.

11.2. However, a child can be separated when the treating Psychiatrist is of the opinion based on an examination of the woman, and information provided by others that:

11.2.1. There is a risk to the child from the woman due to her mental illness; or

11.2.2. It is in the interest and safety of the child to be separated from the woman.

11.3. In the case the child is separated from the mother, the woman should have access to the child under supervision of the staff at the MHE or the family during the period of the separation.

11.4. The treating Psychiatrist, staff and other designated personnel shall review the decision to separate the child *every 15 days* during the woman's stay in the MHE.

11.5. Review should be on the basis of the woman's condition, best interests and safety of the child, and whether a separation is required.

11.6. The separation should be terminated as soon as it is no longer required.

11.7. If the separation lasts *more than 30 days* at a stretch, the MHP will have to apply to the relevant Authority for approval.

11.8. The best interest and safety of the child can be determined based on (a) what the child feels, (b) opinions of family members, (c) the condition of the woman with mental illness, and (d) its impact on the child.

12. Medical Insurance [Section 21 (4)]

12.1. Insurers are required to make provisions for medical insurance for treatment of mental illness.

12.2. Insurance policies should be offered to persons with mental illness on the same basis as is available for treatment of persons with physical illness.

12.3. This implies that there should be no discrimination in the insurances policies, indemnity plans, premium price ranges, aspects of health services covered, reimbursements, duration, etc.

12.4. If insurance companies (and designated company personnel) do not make provisions for medical insurance for treatment of mental illness they can be held liable for committing an offence under Section 108 and Section 109 of the MHCA.

12.5. Any persons including the MHE may file complaints against any insurance companies that deny medical insurance to persons with mental illness admitted in the MHE.

CHAPTER 4

Central Mental Health Authority & State Mental Health Authority

1. Central Mental Health Authority [Section 33 to Section 44]

A. What is the Central Mental Health Authority?

1.1. Central Mental Health Authority [or "CMHA"] is a regulatory body set up under the Central Government for monitoring implementation of the MHCA, making regulations for matters under the MHCA, registration of MHEs and any other related issues.

B. Who are the Members of the Central Mental Health Authority?

1.2. The following are the members of the CMHA:

1.2.1. **Ex-officio Members**

a. **Chairperson Ex-officio**: Secretary or Additional Secretary, Department of Health and Family Welfare.
b. Joint Secretary, Department of Health and Family Welfare, in charge of mental health
c. Joint Secretary Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy.
d. Director General of Health Services.
e. Joint Secretary Department of Disability Affair of the Ministry of Social Justice and Empowerment.
f. Joint Secretary in the Ministry of Women and Child Development.
g. Directors of the Central Institutions of Mental Health.
h. Representatives from Central Government Ministries or Departments.

1.2.2. **Members**

a. One **Mental Health Professional** as defined in Section 2 (1) (r) (iii) with at least 15 years experience nominated by Central Government
b. One **Psychiatric Social Worker** with at least 15 years experience nominated by Central Government
c. One **Clinical Psychologist** with at least 15 years experience nominated by Central Government
d. One **Mental Health Nurse** with at least 15 years experience nominated by Central Government

e. Two **persons representing persons who have or have had mental illness** to be nominated by the Central Government
f. Two **persons representing caregivers of persons with mental illness** or organisations representing caregivers nominated by the Central Government.
g. Two **persons representing non-governmental organisations** which provide services to persons with mental illness nominated by the Central Government.
h. Two **persons representing areas relevant to mental health**, if considered necessary.

C. Functions of the Central Mental Health Authority

S. NO.	FUNCTIONS OF CENTRAL MENTAL HEALTH AUTHORITY
1.	Registration of all MHEs under the control of the Central Government.
2.	Maintenance, Compilation, Update and Publishing (Online) of Register of all MHEs in the country based on information provided by all State Mental Health Authorities of registered establishments.
3.	Develop quality and service provision norms for different types of MHEs under the Central Government.
4.	Supervise all MHEs under the Central Government.
5.	Receive complaints about deficiencies in provision of services.
6.	Maintain and Publish National Register of clinical psychologists, mental health nurses, and psychiatric social workers based on information provided by all State Authorities of persons registered to work as MHPs.
7.	Train all persons including law enforcement officials, MHPs and other health professionals about the provisions of the MHCA.

8.	Advise the Central Government on all matters relating to mental healthcare and services.
9.	Discharge other functions with respect to matters relating to mental health as the Central Government decides.

D. Power of Central Mental Health Authority to Make Regulations

S.NO.	POWER OF CENTRAL MENTAL HEALTH AUTHORITY TO MAKE REGULATIONS
1.	Manner of making advance directives & additional regulations regarding the procedure of advance directives under Section 6 & Section 12 (3)
2.	Salaries, allowances, and other terms and conditions of service of the Chief Executive Officer and other officers/employees
3.	Time and place of meetings of the CMHA and rules of procedure in regard to transaction of business at meetings
4.	Minimum standards of facilities and services under Section 65 (4) (a)
5.	Minimum qualifications for personnel engaged in MHEs under Section 65 (4) (b)
6.	Provisions of maintenance of records and reporting under Section 65 (4) (c)
7.	Any other conditions under Section 65 (4) (d)
8.	Categories of different MHEs under Section 65 (5) (a)

9.	Form of application to be made by MHE and fee to be accompanies under Section 66 (12)
10.	Manner of submitting evidence under Section 66 (13)
11.	Manner of filing objections under Section 66 (14)
12.	Regulations for psycho-surgery, restraints and seclusion under Section 96 (2) and Section 97 (8)
13.	Any other matter as required

E. Officers & Employees of Central Mental Health Authority

1.3. The CMHA will have a Chief Executive Officer of the level of Director to the Government of India (or above) appointed by the Central Government.

1.4. The CMHA will determine the member, nature and categories of the other officers with the approval of the State Government.

1.5. The salaries, allowances and terms and conditions of service of all the officers and employees will be decided by the CMHA, with the approval of the Central Government.

1.6. The Chief Executive Officer will have administrative control over officers and employees of the CMHA.

1.7. The Chief Executive Officer will also be the legal representative of the CMHA.

1.8. The functions of the Chief Executive Officer are:

1.8.1. Day-to-day administration of the Authority;

1.8.2. Implementing work programmes and decisions adopted by the CMHA;

1.8.3. Drawing proposals for work programmes of the CMHA;

1.8.4. Preparation of the statement of revenue and expenditure and execution of the budget of the CMHA;

1.8.5. Submit the following for the CMHA's approval every year:

a. General report carrying activities of the CMHA in the previous year;

b. Programmes of work;
c. Annual Accounts of the previous year;
d. Budget for the coming year

F. What is the Procedure for Meetings?

1.9. The CMHA will have to meet at least twice a year according to rules of procedure that it shall specify by regulations.

1.10. In the absence of the chairperson the senior most member will preside over the meeting.

1.11. Decisions will be taken by a majority vote and in case of a tie, the chairperson (or presiding member) will have a second or casting vote.

1.12. All decisions of the CMHA will require the signature of the chairperson or any other member authorized.

1.13. If there is conflict of interest because of any direct or indirect pecuniary interest in any matter before the CMHA, such member will disclose the same (recorded in the proceedings) and not take part in the deliberation of such matter.

1.14. For more details of the functioning of the CMHA refer to **Chapter – III of the CMHA Regulations, 2020** and the **CMHA/MHRB Rules of 2018.**

2. State Mental Health Authorities [Section 33 to Section 44]

A. What is a State Mental Health Authority?

2.1. State Mental Health Authority [or "SMHA"] is a regulatory body set up under every State Government for monitoring implementation of the MHCA, making regulations for matters under the MHCA, registration of MHEs and any other related issues.

B. Who are the Members of the State Mental Health Authorities?

2.2. The following are the members of the SMHA:

2.2.1. **Ex-officio Members**

a. **Chairperson Ex-officio**: Secretary or Principal Secretary, Department of Health of State Government.
b. Joint Secretary, Department of Health of the State Government, in charge of mental health
c. Joint Secretary, Department of Social Welfare
d. Director of Health Services or Medical Education.

e. Representatives from Central Government Ministries or Departments.

2.2.2. **Members**

a. **Head of any of the Mental Hospitals** in the State or **Head of Department of Psychiatry** at any Government Medical College, to be nominated by the State Government.
b. One **Eminent Psychiatrist** from the State not in Government Service to be nominated by the State Government.
c. One **Mental Health Professional** as defined in Section 2 (1) (r) (iii) with at least 15 years experience nominated by the State Government
d. One **Clinical Psychologist** with at least 15 years experience nominated by the State Government
e. One **Psychiatric Social Worker** with at least 15 years experience nominated by the State Government
f. One **Mental Health Nurse** with at least 15 years experience nominated by the State Government
g. Two **persons representing persons who have or have had mental illness** to be nominated by the State Government
h. Two **persons representing caregivers of persons with mental illness** or organisations representing caregivers nominated by the State Government.
i. Two **persons representing non-governmental organisations** which provide services to persons with mental illness nominated by the State Government.

C. Functions of the State Mental Health Authorities

S.NO.	FUNCTIONS OF STATE MENTAL HEALTH AUTHORITIES
1.	Registration of all MHEs in the State except those registered under the CMHA.
2.	Maintain and publish (including online) a register of such establishments.
3.	Develop quality and service provision norms for different types of MHEs in the State.
4.	Supervise all MHEs in the State.

5.	Receive complaints about deficiencies in provision of services.
6.	Register clinical psychologists, mental health nurses, and psychiatric social workers in the State to work as MHPs and publish the list of such registered MHPs as specified by the regulations of the SMHA.
7.	Train all relevant persons including law enforcement officials, MHPs and other health professionals about the provisions of the MHCA.
8.	Discharge other functions with respect to matters relating to mental health as the State Government decides.

D. Power of State Mental Health Authorities to Make Regulations

S.NO.	POWER OF STATE MENTAL HEALTH AUTHORITY TO MAKE REGULATIONS
1.	Minimum quality standards of mental health services under Section 18 (9)
2.	Salaries, allowances, and other terms and conditions of service of the Chief Executive Officer and other officers/employees
3.	Time and place of meetings of the SMHA and rules of procedure in regard to transaction of business at meetings
4.	Manner in which SMHA will publish list of registered mental health professionals under Section 55 (1) (d)
5.	Form of application to be made by MHE and fee to be accompanies under Section 66 (12)
6.	Manner of filing objections under Section 66 (14)

7.	Any other matter as required

E. Officers & Employees of State Mental Health Authorities

2.3. The SMHA will have a Chief Executive Officer of the level of Deputy Director to the State Government (or above) appointed by the State Government.

2.4. The SMHA will determine the member, nature and categories of the other officers with the approval of the State Government.

2.5. The salaries, allowances and terms and conditions of service of all the officers and employees will be decided by the SMHA, with the approval of the State Government.

2.6. The Chief Executive Officer will have administrative control over officers and employees of the SMHA.

2.7. The Chief Executive Officer will also be the legal representative of the SMHA.

2.8. The functions of the Chief Executive Officer are:

2.8.1. Day-to-day administration of the Authority;

2.8.2. Implementing work programmes and decisions adopted by the SMHA;

2.8.3. Drawing proposals for work programmes of the SMHA;

2.8.4. Preparation of the statement of revenue and expenditure and execution of the budget of the SMHA;

2.8.5. Submit the following for the SMHA's approval every year:

a. General report carrying activities of the SMHA in the previous year;
b. Programmes of work;
c. Annual Accounts of the previous year;
d. Budget for the coming year

F. What is the Procedure for Meetings?

2.9. The SMHA will have to meet at least twice a year according to rules of procedure that it shall specify by regulations.

2.10. In the absence of the chairperson the senior most member will preside over the meeting.

2.11. Decisions will be taken by a majority vote and in case of a tie, the chairperson (or presiding member) will have a second or casting vote.

2.12. All decisions of the SMHA will require the signature of the chairperson or any other member authorised.

2.13. If there is conflict of interest because of any direct or indirect pecuniary interest in any matter before the SMHA, such member will disclose the same (recorded in the proceedings) and not take part in the deliberation of such matter.

2.14. For more details of the functioning of the SMHA refer to the **SMHA Rules of 2018.**

CHAPTER 5

Mental Health Review Boards

1. What Are Mental Health Review Boards? [Section 73]

1.1. The Mental Health Review Boards ["the MHRB"] are quasi-judicial bodies which have powers to protect the rights of persons with mental illness and ensure proper implementation of the provisions of the MHCA. The MHRBs will ensure that the rights of persons with mental illness are not violated, and that the admission, treatment and care of such persons takes place according to the procedures in the MHCA.

1.2. The MHRBs have the following powers and functions:

1.2.1. **Review of Advance Directives**
Register, review, alter, modify or cancel an advance directive based on an application from the MHP, family member or caregiver who does not wish to follow the advance directive of the person with mental illness [Section 11].

1.2.2. **Nominated Representative**
Take decisions regarding the appointment, or revocation of nominated representatives [Sections 14, 15 and 16].

1.2.3. **Review of Decision to Admit**
Receive and decide applications from (i) persons with mental illness (ii) nominated representatives (iii) any other interested person, against the decision of a MO/MHP for: (a) admitting a minor (b) supported admission for 30 days (c) continued supported admission beyond 30 days [Sections 87, 89 and 90].

1.2.4. **Review of Decision for Non-Disclosure of Information**
Receive and decide applications from a person with mental illness or their nominated representative against the decision of non-disclosure of information or medical records of such person [Section 25].

1.2.5. **Deficiency of Services**
Receive and decide complaints from a person with mental illness, or their nominated representative against the deficiency in provision of care, treatment and services in the MHE [Section 28].

1.2.6. **Inspection of Prisons**
Visit and inspect prisons and procure information from MO in charge of health services in prisons.

1.2.7. **Inspection/Inquiry for Violation of Rights**
Conduct an inspection or inquiry of a MHE in case of violation of rights of persons with mental illness and take appropriate action for protection of their rights.

1.2.8. **Additional Measures to Protect Rights**
Issue directions for measures to protect the rights of persons with mental illness under the MHCA.

2. Who Are the Members of the Mental Health Review Boards? [Section 74]

2.1. The SMHAs (in consultation with the State Government) will constitute the MHRBs after deciding the number, location and jurisdiction of the MHRBs. The Central Government will prescribe the constitution of the MHRBs for a district or a group of districts.

2.2. The Members of the MHRBs will consist of six members:

2.2.1. **Chairperson** who can be a *District Judge* or *retired District Judge* or *officer of the State Judicial Services* qualified to be appointed as District Judge.

2.2.2. Representative of the District Collector or District Magistrate or Deputy Commissioner of the district/s where the MHRB is to be constituted.

2.2.3. **Two Members** consisting of 1 Psychiatrist and 1 Medical Practitioner.

2.2.4. **Two Members** consisting of:

a. Persons with mental illness or caregivers; or
b. Persons representing organisations of persons with mental illness or caregivers; or
c. Persons representing NGOs working in mental health.

3. Procedure to Submit an Application to the MHRB [Section 77]

3.1. Every person with mental illness or their nominated representative or a representative of a registered NGO (with the consent of such person) can make an application to the MHRB for relief or redressal against:

3.1.1. A decision of the MHE which the applicant is aggrieved with.

3.1.2. Any violation of the rights of a person with mental illness or their nominated representative.

3.1.3. Any deficiency in mental healthcare or services provided.

3.2. There is no fee for filing an application.

3.3. The application should contain the following:

3.3.1. Name of the applicant;
3.3.2. Contact details of the applicant;
3.3.3. Details of the violation of rights;
3.3.4. Details of the MHE or place where such violation took place;
3.3.5. Redressal sought from the MHRB

3.4. The MHRB can also accept an oral application over telephone by a person admitted in a MHE in exceptional circumstances.

4. Proceedings before Mental Health Review Boards [Section 80]

4.1. **Time limit:** The MHRBs shall hear and dispose an application *within 90 days* of receiving the application unless a specific time period is mentioned for some applications.

4.2. **Timelines for Proceedings:** The specific timelines for different applications before the MHRB are:

S. NO.	APPLICATION BEFORE THE MHRB	TIMELINE FOR DISPOSAL
1.	Appointment of nominated representative under Section 14 (4) (d)	Within *7 days* from date of receipt
2.	Challenging admission of minor under Section 87	
3.	Challenging supported admission under Section 89 (10) or Section 89 (11)	

4.	Challenging supported admission under Section 90	Within *21 days* from the date of receipt of the application
5.	Any other application	Within *90 days* from the date of receipt of the application

4.3. **In-Camera Proceedings:** Proceedings of the MHRBs shall be *in camera,* will not be recorded and be open for the public. Persons other than those interested in the application may be allowed to attend the proceedings with the permission of (1) person with mental illness (2) Chairperson of the MHRB.

4.4. **Representation:** Parties to an application being heard before the MHRB can be represented by (1) themselves or (2) a counsel or (3) any other representative of their choice.

4.5. **Adjournments:** Normally, adjournments will not be granted for hearings.

4.6. **Place of Hearing:** Where an application concerns a person with mental illness in a MHE, the hearings and proceedings shall be conducted at the MHE where such person is admitted.

4.7. **Evidence:** Persons with mental illness may provide *oral evidence*.

4.8. **Witnesses:** The MHRB can ask for the attendance and testimony of witnesses as it finds appropriate.

4.9. **Documents for Inspection:** Parties can inspect documents relied upon by another party. Each party will have to provide copies of such documents to the other party.

4.10. **Quorum:** No meeting of the MHRB shall take place without the quorum of *3 members*.

4.11. **Decision:** Decisions of the MHRB shall be taken by:

4.11.1. Consensus, failing which;
4.11.2. By majority of votes of members present and voting;
4.11.3. In case of tie, Chairperson shall have second or casting vote to decide the matter.

4.12. **Written Decision:** The MHRB has to provide a copy of its decision *in writing* to the parties *within 5 days* of the completion of hearing.

4.13. **Penalty for Non-Compliance:** The penalty for not complying or wilfully neglecting the order or directions of the MHRB include:

4.13.1. Penalty up to *5 Lakh rupees* and;

4.13.2. Recommend the State Authority to cancel the registration of the MHE after giving it an opportunity of being heard.

4.14. **Conflict of Interest:** Any member of the MHRB involved in the case (directly or indirectly) will not sit on the MHRB during the hearings of that case.

4.15. **Judicial Proceedings in Respect of Indian Penal Code:** The proceedings before the MHRBs will be considered as "judicial proceedings" as understood in the Indian Penal code [under Section 193, 219 and 228], in the following situations and consequences:

4.15.1. **False or Fabricated Evidence:**

Anyone who gives false evidence, or fabricates false evidence for the purpose of the proceedings before the MHRBs, shall punished with imprisonment up to *seven years* with a fine.

4.15.2. **Illegal Decisions, Orders & Reports:**

If any member on the MHRBs, during proceedings, pronounces maliciously or corruptly a report, order or decision which is contrary to law shall punished with imprisonment up to *seven years* with a fine or both.

4.15.3. **Insult or Interruption to Board members**:

Insult or interruption caused to the chairperson or authorising member presiding over the proceedings of the MHRB can result in imprisonment up to six months or a fine or both.

4.16. For more details regarding the rules for functioning of the MHRBs, refer to **Chapter – V of the CMHA Regulations, 2020**.

5. Appeal to the High Court

5.1. Any party which is aggrieved by the decision of the MHRB can appeal to the High Court *within 30 days* from the date of the decision.

5.2. The High Court can entertain an appeal beyond 30 days if it feels there is sufficient cause for not appealing within the specified time period.

CHAPTER 6

Mental Health Establishments

1. What is a Mental Health Establishment? [Section 2 (1) (p)]

1.1 Mental Health Establishment [or "MHE"] refers to a health establishment meant for care of persons with mental illness where such persons are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation.

1.2 MHEs include the following:

1.2.1 hospitals meant for the treatment and care of persons with mental illness;

1.2.2 general hospitals and general nursing homes where persons with mental illness are admitted;

1.2.3 half-way homes and sheltered accommodations which are required to be registered with the CMHA and SMHAs.

1.3 MHEs exclude informal spaces such as a family residential places where a person with mental illness resides with friends or relatives.

1.4 A MHE may be established, owned, controlled or maintained by:

1.4.1 Central Government or State Government
1.4.2 Local Authority
1.4.3 Public Trust or Private Trust
1.4.4 Corporation
1.4.5 Co-operative Society
1.4.6 Organisation
1.4.7 Any other entity or person

2. What is the Procedure for Registration of Mental Health Establishments? [Section 65 and Section 66]

2.1 All MHEs must register with the CMHA if they are under the control of the Central Government or with the SMHA if they are under the control of the State Government.

2.2 The CMHA and SMHAs will establish different categories of MHEs and prescribe minimum standards for each category. The minimum standards will be based on the following:

2.2.1 Minimum standards of facilities and services as specified by regulations made by the CMHA and SMHAs;
2.2.2 Minimum qualifications for personnel engaged in such establishments;
2.2.3 Provisions of maintenance of records and reporting as may be specified;
2.2.4 Any other conditions as specified by the authorities.

What is the procedure of registration for health establishments which are registered under other laws?

MHEs which have already been registered under the Clinical Establishments (Registration and Regulation) Act, 2010 or any other law in force, have to submit an application along with proof of registration to the relevant authority for provisional registration. Subsequently they will have to provide proof of registration along with an undertaking and evidence of complying with the minimum standards prescribed by the CMHA or SMHAs.

2.3 MHEs which already exist on the date of the commencement of the MHCA (but are not registered) must first apply for **provisional registration** until the minimum standards are notified.

2.4 After the minimum standards are notified, MHEs will have to apply for *permanent registration.*

A. Provisional Registration [Rule 11 and 12, CMHA/MHRB Rules 2018 and SMHA Rules 2018]

2.5 The MHE will submit an application with the prescribed fee for **provisional registration to** the relevant Authority *within 6 months* from the date that the Authority is constituted. The application can be submitted:

2.5.1 In person; or
2.5.2 By post; or
2.5.3 Online

2.6 The application for provisional registration must be according to **Form-B** prescribed in **CMHA/MHRB Rules, 2018** or **Form B** prescribed in the **SMHA Rules, 2018.** A fee of rupees twenty thousand must be submitted through a demand draft in favour of the Chairperson of the CMHA or SMHA.

2.7 The Authority will then issue a **provisional certificate of registration** *within 10 days* of receiving the application which shall be valid for *12 months* from the date of issue and renewable thereafter.

2.8 In case of renewal of provisional registration, the MHE shall submit application for renewal *within 30 days* before expiry of the validity of the certificate.

B. Permanent Registration

2.9 Once the minimum standards for different categories of MHEs are notified, the MHE shall submit to the CMHA or SMHA, an application along with the prescribed fee for **permanent certificate of registration** *within 6 months* of the minimum standards being notified. The application for MHEs under the control of the Central Government should be prepared according to the format in **Form C of the CMHA Regulations, 2020.**

2.10 The MHE's application for **permanent registration** should enclose:

2.10.1 An undertaking stating that minimum standards have been fulfilled; and

2.10.2 Evidence that minimum standards have been complied with.

2.11 After receiving application for **permanent certificate of registration**, the Authority shall give public notice and display the same on its website for *30 days* for filing of objections. The format for filing such objections is provided in **Form D of the CMHA, Regulations, 2020.**

2.12 The objections shall be communicated by the relevant Authority to the MHE for response within the time period specified by the Authority. The MHE shall reply to the objections by submitting evidence of compliance with minimum standards within the time period specified.

2.13 The Authority shall *within 45 days* from the date of filing objections pass an order:

2.13.1 If satisfied that the MHE has fulfilled minimum standards grant **permanent certificate of registration**; or

2.13.2 If not satisfied, reject the application after recording reasons for the same.

2.14 If the application is rejected, the MHE shall be given a period of *6 months* for rectification of deficiencies and apply afresh for a registration.

2.15 If the Authority does not communicate the objections received against the MHE or does not pass an order within 45 days from date of filing objections, then the registration shall be deemed to be granted. The Authority shall provide a **permanent certificate of registration.**

2.16 The rules for permanent registration of MHEs under the control of the Central Government and minimum standards are also provided in **Chapter – IV of the CMHA Regulations, 2020.**

C. Appeals [Section 69]

2.17 A MHE may file an appeal against an order of the relevant Authority in the High Court of India for:

2.17.1 Refusing to grant registration; or

2.17.2 Refusing to renew registration; or

2.17.3 Cancellation of registration

2.18 The appeal must be filed *within* 30 days from the date that the order was made. If there is a delay then the High Court may consider the appeal if the MHE can prove that it has a sufficient cause for the delay.

3. Audits of Mental Health Establishments [Section 67]

A. What is the Procedure for Conducting an Audit? [Rule 21, CMHA/MHRB Rules 2018 and Rule 17, SMHA Rules 2018]

3.1 All registered MHEs will be audited every three years to ensure that they are complying with the minimum standards for registration. The audit will be conducted by the CMHA or SMHAs depending on where the MHE is registered.

3.2 The audit team shall include one or more of the following individuals:

3.2.1 a representative of the District Collector or District Commissioner of the district where the mental health establishment is situated;
3.2.2 a representative of the State Human Rights Commission of the State where the mental health establishment is situated;
3.2.3 a Psychiatrist who is in Government service;
3.2.4 a Psychiatrist who is in private practice;
3.2.5 a mental health professional who is not a psychiatrist;
3.2.6 a representative of a non-governmental organization working in the area of mental health;
3.2.7 representatives of the caregivers of persons with mental illness or organizations representing caregivers; and
3.2.8 representatives of the persons who have or have had mental illness

3.3 The MHE will have to pay a fee of rupees ten thousand to the CMHA or SMHA for the audit.

3.4 Based on the findings of the audit, the Authority can issue a show cause notice to the MHE to explain why its registration should not be cancelled if it is satisfied that:

3.4.1 The MHE has failed to maintain the minimum standards

3.4.2 Person or persons in charge of the management of the MHE have been convicted of an offence under the MHCA

3.4.3 The MHE has violated the rights of any person with mental illness.

3.5 After issuing the show cause notice, the relevant Authority will give a *reasonable opportunity* to the MHE to respond to the notice. If it is satisfied that the situations in Section 67 (3) are applicable, then it shall pass an order:

3.5.1 Cancelling the registration of the MHE; and

3.5.2 Restraining the MHE from carrying on operations if there is imminent danger to the health and safety of persons admitted in the MHE.

3.6 The order of the relevant Authority cancelling registration and restraining of MHE will take effect immediately:

3.6.1 On the expiry of the period for filing an appeal; or
3.6.2 From the date that the appeal has been dismissed.

B. Appeal [Section 69]

3.7 A MHE may file an appeal against the order of cancellation of registration with the High Court of India *within* 30 days from the date that the order was made. If the appeal is filed after 30 days, then the High Court may consider the appeal if the MHE proves it has a sufficient cause for the delay.

4. Inspection, Inquiry and Search of Mental Health Establishments [Section 68]

4.1 MHEs may be subject to *inspection* and*, inquiry* if there is a reason to suspect that:

4.1.1 The MHE is not complying with the minimum standards for health facilities and mental health services; or

4.1.2 The MHE is violating the rights of persons with mental illness admitted there; or

4.1.3 It is suspected that the MHE is operating without a registration.

4.2 An inspection or inquiry of a MHE can be initiated if:

4.2.1 The relevant Authority feels on its own that the MHE is not complying with minimum standards; or

4.2.2 Any person has filed a complaint against the MHE

4.3 The inspection or inquiry will be conducted by one or more of the following persons:

4.3.1 a Psychiatrist in Government service;
4.3.2 a Psychiatrist in private practice;
4.3.3 a mental health professional who is not a psychiatrist;
4.3.4 a representative of a non-governmental organization working in the area of mental health;
4.3.5 a police officer in charge of the police station under whose jurisdiction, the mental health establishment is situated;
4.3.6 a representative of the District Collector or District Commissioner of the district where the mental health establishment is situated.

4.4 The MHE has the right to be *represented* and put forth its opinion during the process.

4.5 The relevant Authority after conducting the inspection or inquiry can:

4.5.1 Order the MHE to make necessary changes within a specified period. The MHE will have to comply with the order; and

4.5.2 Order cancellation of registration if the relevant Authority feels that the MHE has not complied with the order.

4.6 The premises of a MHE can be entered and searched by the relevant Authority or any person who is authorized- if it is suspected that the MHE is operating without a registration. During the search the Authority/authorized person may require original documents relating to registration. It is obligatory for the MO/MHP in charge to provide the required documents.

4.7 Within two days of the search a written report must be provided to the Chairperson of the CMHA or SMHA as the case may be.

5. Certificates, Fees and Register of Mental Health Establishments [Section 70]

5.1 The certificate of registration should be displayed in such a place in the MHE that it is visible to everyone.

5.2 The certificate of registration is valid in case of change of ownership. However, the change of ownership must be communicated to the relevant Authority *within one month* from date of such change.

5.3 A duplicate certificate can be obtained if the original is lost, mutilated or destroyed by paying a fee of rupees two thousand by demand draft in favour of the Chairperson of the CMHA/SMHA as the case may be.

5.4 If the category of the MHE changes, the certificate will have to be surrendered, and a new application will have to be submitted for grant of certificate of registration.

6. Duty to Display Information about Mental Health Review Boards [Section 72]

6.1 Every MHE has to display on its website, and such a place in the MHE that is visible to everyone, contact details, address and telephone members of the MHRB.

6.2 Every MHE should provide persons with mental illness, nominated representatives and caregivers required forms to the apply to the MHRB.

6.3 Every MHE has to give free access to make telephone calls to the MHRB for review of admissions.

CHAPTER 7

Admissions, Treatment & Discharge

I. Independent Admissions [Section 85 and Section 86]

A. Who is an Independent Patient?

1.1. An independent patient is a person with mental illness seeking admission in a MHE. Such person has the capacity to make decisions regarding his or her mental healthcare and treatment and requires *minimal support* in making decisions.

1.2. Minors cannot admit themselves as independent patients.

B. What is the Procedure for Independent Admission?

1.3. All admissions in a MHE should be independent admissions to the extent possible.

1.4. Any person who considers themselves to have a mental illness and wishes to be admitted to a MHE for treatment can submit a request to the MO/MHP in charge.

1.5. The application for *independent admission* can be made in the format of **Form C** as per **Rule 8 of the MHCA Rules, 2018.**

i. Criteria for Independent Admission:

1.6. On receiving the request from the person, the MO/MHP in charge will have to assess the following before admitting the person:

1.6.1. **Mental Illness**

a. A determination of mental illness will have to be made first in accordance with Section 3 (1) and accepted medical standards such as ICD.

b. If the person is diagnosed with mental illness, then an assessment will be made whether such person has a mental illness which is of a *severity* requiring admission.

1.6.2. **Benefit of Treatment**
An assessment of whether the person is *likely to benefit* from admission and treatment;

1.6.3. **Free Will**

a. Whether the request for admission is made of their own free will and without duress or undue influence.

b. The person should have made the request on their own without being forced, influenced or mislead.

1.6.4. **Capacity**

a. Whether the person has capacity to make decisions regarding their mental healthcare and treatment and understands the nature and purpose of admission.

b. Capacity to make decisions on other issues related to the person is not relevant.

1.6.5. **Minimum Support**
The person requires minimum support for making decisions.

A person will be deemed unable to understand the purpose of admission if:

a. The person is unable to understand the purpose, nature and likely effects of proposed treatment or not accepting treatment; or
b. The person requires a very high level of support **approaching 100% support** in making decisions.

1.7. A person may be admitted as independent patient based on his or her *own* request. The consent or presence of a nominated representative, relative or caregiver is *not* required if the person has the capacity to make decisions.

1.8. The MO/MHP in charge will have to ensure that all the criteria for admission are fulfilled before making an independent admission. The assessment and consent should be documented in the medical records.

ii. When Admission Not Required:

1.9. The MO/MHP in charge cannot admit a person *solely on the ground* that the person is homeless, cannot live with the family, or has been excluded or segregated from the community.

1.10. If the MO/MHP in charge finds that admission is *not required*, yet the person is in mental distress which is not severe, then such person should be referred to appropriate facilities provided by the State Government for their care, treatment or rehabilitation.

C. What are the Guidelines for Treating Independent Patients?

1.11. An independent patient cannot be given treatment without their *informed consent*.

1.12. The MO/MHP or Psychiatrist in charge of treatment shall inform the independent patient of the risks, benefits and alternatives involved to the proposed treatment, and only if the patient consents, provide him or her with the treatment.

1.13. If the person does not want to consent to a particular option of treatment, an alternative can be provided after discussing with the patient.

1.14. Informed consent should be documented in the medical notes/records.

2. Discharge of Independent Patient [Section 88]

2.1. An independent patient should be discharged if they make a request for the same.

2.2. An independent patient does not require the consent of the MO/MHP in charge to be get discharged.

2.3. The independent patient must write an application for discharge in **Form G** as per **Rule 8 of the MHCA Rules, 2018.**

A. When Discharge Can be Prevented for Assessment of Independent Patient

i. Prevention of Discharge:

2.4. The MHP in charge can prevent the discharge of the independent patient for *24 hours* to assess whether they need to be admitted as a supported patient under Section 89.

2.5. The MHP can prevent discharge if they are of the *opinion* that the independent patient:

2.5.1. **High Support**
Is unable to understand the nature and purpose of their decisions and requires *substantial* or *very high support* from the nominated representative; or

2.5.2. **Bodily Harm to Self**
Has recently threatened or attempted or is threatening or attempting to cause bodily harm to the self; or

2.5.3. **Bodily Harm to Other**
Has recently behaved or is behaving violently towards another person or causing them to fear bodily harm to the self; or

2.5.4. **Inability to Care for Self**
Has recently shown or is showing an inability to care for the self to a degree that places the person at a risk to themselves.

ii. Assessment for Supported Admission:

2.6. Assessment of the independent patient will be done as per provisions of Section 89 for supported admission.

2.7. The MO/MHP in charge will admit the person as *supported patient* if supported admission is *required* as per Section 89.

2.8. If supported admission is *not required*, the MO/MHP in charge will release the independent patient within 24 hours or after completing assessment for supported admission under Section 89- whichever is earlier.

B. Discharge Planning

2.9. The discharge plan refers to how a person with mental illness will be treated when they are discharged from the MHE into the community or a different MHE, or if another psychiatrist will be responsible for the person's care and treatment.

2.10. The Psychiatrist responsible for the care and treatment of a person admitted in the MHE shall at the time of discharge **prepare a discharge plan** for how the person will be treated after discharge.

2.11. The Psychiatrist shall prepare the plan after **consulting** the person with mental illness, the nominated representative, family member, caregiver with whom such person shall reside after discharge, or the new psychiatrist who is responsible for the person's care and treatment.

2.12. The discharge plan should consist of all details relating to the treatment, duration, medicines and services required for care and treatment of the person in future. The Psychiatrist should explain the plan, with a copy provided to the person with mental illness, the nominated representative, family member, caregiver and the psychiatrist who will be responsible for the person's care and treatment.

3. Supported Admission Upto 30 Days [Section 89]

A. Who is a Supported Patient?

3.1. A *supported patient* is a person with mental illness who requires admission and *very high support* from the nominated representative in making decisions regarding their mental healthcare and treatment.

B. What is the Procedure for Supported Admission Upto 30 Days?

3.2. The nominated representative of the person with mental illness will submit an application for supported admission to the MO/MHP in charge.

3.3. The application must be made in **Form E** as per **Rule 8 of the MHCA Rules, 2018.**

3.4. The person with mental illness will be **independently examined** by 1 Psychiatrist and 1 MHP/Medical Practitioner *on the day of admission* or in the *preceding 7 days*. Examination may be done based on information provided by any relevant persons such as the nominated representative, family members, caregivers, or others about the person with mental illness.

i. Criteria for Supported Admission

3.5. Based on the examination and information provided, both the psychiatrist and MHP/Medical Practitioner will have to *independently* conclude that the person has a mental illness of such severity that:

3.5.1. **Capacity**
The person is unable to make decisions regarding their mental healthcare and treatment and needs high support from the nominated representative to make such decisions; and

3.5.2. **Bodily Harm to Self**
The person has recently threatened/attempted or is threatening/attempting to cause bodily harm to the self; or

3.5.3. **Bodily Harm to Other**
The person has recently behaved or is behaving violently towards someone else and has caused/causing them to fear bodily harm from such person; or

3.5.4. **Inability to Care for Self**
The person has recently shown or is showing an inability to care for the self to such an extent that the person is at risk of harm to themselves.

3.5.5. **Least Restrictive Care Option**
After taking into account the advance directive (if any) it is certified that admission to the MHE is the least restrictive care option for the person with mental illness.

ii. Report Admission to the MHRB:

3.6. The MO/MHP in charge will have to report a supported admission to the MHRB:

3.6.1. If it is a woman or a minor *within 3 days* of the admission; or

3.6.2. If it is a man, *within 7 days* of the admission.

iii. Procedure upon Expiry of 30 Days Time Period:

3.7. Supported admission under Section 89 is limited to a period of *30 days* or earlier.

3.8. The MO/MHP in charge will have to keep the supported patient under on-going review.

3.9. If the MO/MHP in charge during the review finds that the patient doesn't meet the criteria in Section 89 at any time during the 30 days, then:

3.9.1. The MO/MHP in charge shall discharge the patient; or

3.9.2. Continue admission as *independent patient* if the criteria under Section 86 are satisfied and inform the patient of his or her rights as an independent patient and the right to leave the MHE.

3.10. At the expiry of 30 days, the MO/MHP in charge or the Psychiatrist in charge of treatment will assess the situation of the patient and:

3.10.1. **Discharge**
Discharge the patient if they do not meet the criteria under Section 89; or

3.10.2. **Supported Admission Beyond 30 Days**
If the patient requires admission beyond 30 days based on the provisions of Section 90, then continue admission as a *supported patient* beyond 30 days in accordance with Section 90; or

3.10.3. **Continued Admission as Independent Patient**
If the patient requires admission but does not meet the criteria in Section 90, continue admission as *independent patient* if the patient satisfies the criteria for independent patient in Section 86. Further the MO/MHP in charge will have to inform the

independent patient of his or her rights as such a patient including the right to leave the MHE.

C. What is the Procedure for Re-Admission?

3.11. A supported patient discharged can be re-admitted only *after 7 days* from the date of discharge.

3.12. If the re-admission is to be done *within 7 days* from the date of discharge, the MO/MHP in charge will ensure re-admission in accordance with Section 90.

D. What are the Guidelines for Treating Supported Patients?

3.13. The Psychiatrist in charge has to provide treatment to a *supported patient* after:

3.13.1. **Advance Directive**
Taking into consideration the advance directive of the patient and providing treatment accordingly.

3.13.2. **Informed Consent of Patient**
Taking the informed consent of the patient *with the support* of the nominated representative for the treatment. Patients will have to be provided with the treatment plan, along with the risks, benefits and alternatives of following the treatment plan and the implications of not following it.

3.13.3. **Temporary Consent of Nominated Representative**
If the patient requires near 100% support, then the MO/MHP in charge or the Psychiatrist in charge of treatment has to take the *temporary consent* of the nominated representative till the patient can provide consent with support.

3.13.4. **Record Temporary Consent of Nominated Representative**
Temporary consent has to be recorded in the medical records by the MO/MHP in charge.

3.13.5. **Review of Patient's Capacity to Consent**
The MO/MHP in charge or Psychiatrist in charge of the treatment has to review the capacity of the patient to give consent *every 7 days*. Assessment of capacity should be regularly documented in the medical records.

E. How Can the Decision for Supported Admission be Challenged?

3.14. An application for reviewing the decision of the MO/MHP in charge for supported admission can be made to the MHRB by:

3.14.1. Supported patient admitted in the MHE; or

3.14.2. Nominated representative of the supported patient; or

3.14.3. Representative of a registered NGO with consent of the supported patient.

3.15. The MHRB shall review the decision and give its findings *within 7 days* of receipt of the request. The decision of the MHRB will be binding on both the parties. The MO/MHP in charge will have to ensure compliance accordingly.

F. Discharge Planning

3.16. The discharge plan refers to how a person will be treated when they are discharged from the MHE into the community or a different MHE, or if another psychiatrist will be responsible for the person's care and treatment.

3.17. The Psychiatrist responsible for the care and treatment of a person admitted in the MHE shall at the time of discharge prepare a plan for how the person will be treated after discharge.

3.18. The Psychiatrist shall prepare the plan after consulting the person with mental illness, the nominated representative, family member, caregiver with whom such person shall reside after discharge, or the new psychiatrist who is responsible for the person's care and treatment.

3.19. The discharge plan should consist of all the treatment, duration, medicines and services required for care and treatment of the person in future. The Psychiatrist should explain the plan, with a copy provided to the person with mental illness, the nominated representative, family member, caregiver and the psychiatrist who will be responsible for the person's care and treatment.

4. Continued Supported Admission Beyond 30 Days [Section 90]

A. Who is a Continued Supported Patient?

4.1. A *continued supported patient* admitted beyond 30 days includes the following:

4.1.1. A patient who is already in supported admission and requires continued supported admission beyond 30 days; or

4.1.2. A supported patient discharged under Section 89 but requires re-admission *within 7 days* of discharge.

B. What is the Procedure for Supported Admission Beyond 30 Days?

4.2. The nominated representative of the person with mental illness will submit an application for supported admission beyond 30 days to the MO/MHP in charge.

4.3. The application must be made in **Form F** as per **Rule 8 of the MHCA Rules, 2018**.

4.4. The person with mental illness will be **independently examined** by 2 Psychiatrists in the *preceding 7 days* based on information provided by any relevant persons such as the nominated representative, family members, caregivers, or others about such person.

i. Criteria for Continued Support Admission:

4.5. Based on the independent examination and information provided, both psychiatrists will have to *independently* conclude that the person has a mental illness of such severity that:

4.5.1. **Capacity**
The person is unable to make decisions regarding their mental healthcare and treatment and needs very high support from the nominated representative to make such decisions; and

4.5.2. **Bodily Harm to Self**
The person has recently threatened/attempted or is threatening/attempting to cause bodily harm to the self; or

4.5.3. **Bodily Harm to Other**
The person has recently behaved or is behaving violently towards someone else and has caused/causing them to fear bodily harm from such person; or

4.5.4. **Inability to Care for Self**
The person has recently shown or is showing an inability to care for himself to such an extent that the person is at risk of harm to themselves.

4.5.5. **Least Restrictive Care Option**
After taking into account the advance directive (if any) it is certified that admission to the MHE is the least restrictive care option for the person with mental illness.

ii. Permission of MHRB to Admit or Re-Admit:

4.6. The MO/MHP in charge has to report all admissions or re-admissions under Section 90 to the MHRB *within 7 days* of such admission or re-admission.

4.7. The MHRB will *within 21 days* from date of admission or re-admission permit the same or order discharge after examining:

4.7.1. Need for institutional care; and

4.7.2. Whether such care cannot be provided in less restrictive settings; and

4.7.3. Whether lack of community-based services where the patient resides is the only ground for admission or re-admission.

> A person with mental illness cannot be admitted or re-admitted as a supported patient beyond 30 days on the ground of non-existence of community-based services where the person with mental illness resides

iii. Community-Based Treatment Plan:

4.8. The MHRB may ask the MO or Psychiatrist in charge of treatment of the supported patient to submit a plan for community-based treatment to the MHRB. The plan should include progress made or likely to be made towards realising the plan.

4.9. The MO or Psychiatrist in charge of treatment of the supported patient shall prepare a community-based treatment plan, and regularly review the condition of the patient in accordance with the plan.

4.10. The plan should be prepared keeping in mind the community that the supported patient resides in, the services available in the community, the cultural context, availability of resources, and facilities provided by the Central or State Government for treatment and care in the community.

iv. Procedure upon expiry of 90 days period:

4.11. Supported admission of the patient under Section 90 is limited to a period of *90 days* in the first instance.

4.12. The MO/MHP in charge will have to keep the supported under on-going review.

4.13. If the MO/MHP in charge during the review finds that the patient doesn't meet the criteria in Section 90 at any time during the 90 days, then:

4.13.1. The MO/MHP in charge shall discharge the patient after informing the person and the nominated representative accordingly; or

4.13.2. Continue admission as *independent patient* in accordance with Section 86 if the patient wishes the same. And inform such patient of their rights as an independent patient including the right to leave the MHE.

C. What is the Procedure for Continued Supported Admission Beyond 90 days?

4.14. After the expiry of 90 days, the MO/MHP in charge or the Psychiatrist in charge of treatment will assess the situation of the patient and:

4.14.1. **Discharge**
Discharge the patient if he or she does not meet the criteria under Section 90; or

4.14.2. **Supported Admission Beyond 90 Days**

a. If the patient requires supported admission beyond 90 days, then the admission can be extended for *another 120 days* in accordance with the procedure in Section 90 (1) to Section 90 (7).

b. If the MHRB refuses to permit the admission or re-admission or after the expiry of *120 days* or the patient doesn't satisfy the criteria under Section 90 (1), then such patient should be discharged after informing them and the nominated representative.

4.14.3. **Supported Admission Beyond 120 Days**

a. If the patient requires supported admission beyond the expiry of 120 days, then the admission can be extended for *another 180 days each time* in accordance with the procedure in Section 90 (1) to Section 90 (7).

b. If the MHRB refuses to permit the admission or re-admission or after the expiry of *180 days each time* or the patient doesn't satisfy the criteria under Section 90 (1), then such patient should be discharged after informing him or her and the nominated representative.

4.14.4. **Admission as Independent Patient:**

If the MO/MHP in charge or Psychiatrist in charge of the treatment feels that the patient requires admission but not under Section 90 (1), the patient can continue as *independent patient* if the criteria in Section 86 are met with. Such person will have to be informed of their rights as an independent patient or their right to leave the MHE.

This applies to all cases of admission or re-admission under Section 90.

D. What are the Guidelines for Treating Continued Supported Patients?

4.15. The Psychiatrist in charge of treatment has to provide treatment to a *supported patient* after:

4.15.1. **Advance Directive:**
Taking into consideration the advance directive of the patient and providing treatment accordingly.

4.15.2. **Informed Consent of Patient:**
Taking the informed consent of the patient with the support of the nominated representative for the treatment. Patient will have to be provided with the treatment plan, along with the risks, benefits and alternatives of following the treatment plan and the implications of not following it.

4.15.3. **Temporary Consent of Nominated Representative:**
If the patient requires near 100% support, then the MO/MHP in charge of the MHE or the Psychiatrist in charge of treatment has to take the *temporary consent* of the nominated representative for the treatment plan till such time that the patient can provide consent with support.

4.15.4. **Record Temporary Consent of Nominated Representative:**
In the case of temporary consent taken from nominated representative, consent has to be recorded in the medical records by the MO/MHP in charge.

4.15.5. **Review of Patient's Capacity to Consent:**
The MO/MHP in charge or Psychiatrist in charge of the treatment has to review the capacity of the patient to give consent *every 14 days.* Assessment should be recorded regularly in the patient's medical records.

E. How Can the Decision for Continued Supported Admission be Challenged?

4.16. An application for reviewing the decision of the MO/MHP in charge for supported admission can be made to the MHRB by:

4.16.1. Supported patient admitted in the MHE; or

4.16.2. nominated representative of the supported patient; or

4.16.3. Representative of a registered NGO with consent of the supported patient.

4.17. The MHRB shall review the decision and give its decision which will be binding on both the parties. The MO/MHP in charge will have to ensure compliance with the decision accordingly.

F. Discharge Planning

4.18. The discharge plan refers to how a person will be treated when they are discharged from the MHE into the community or a different MHE, or if another psychiatrist will be responsible for the person's care and treatment.

4.19. The Psychiatrist responsible for the care and treatment of a person admitted in the MHE shall at the time of discharge prepare a plan for how the person will be treated after discharge.

4.20. The Psychiatrist shall prepare the plan after consulting the person with mental illness, the nominated representative, family member, caregiver with whom such person shall reside after discharge, or the new psychiatrist who is responsible for the person's care and treatment.

4.21. The discharge plan should consist of all the treatment, duration, medicines and services required for care and treatment of the person in future. The Psychiatrist should explain the plan, with a copy provided to the person with mental illness, the nominated representative, family member, caregiver and the psychiatrist who will be responsible for the person's care and treatment.

5. Admission of Minors [Section 87]

A. What is the Procedure for Admission of Minors?

5.1. Nominated representative of the minor will submit an application to the MO/MHP in charge.

5.2. The application must be made in **Form D** as per **Rule 8 of the MHCA Rules, 2018.**

5.3. The minor will be **independently examined** by 2 Psychiatrists, **or** 1 psychiatrist and 1 MHP **or** 1 Psychiatrist and 1 Medical Practitioner on the day of the admission or *in the preceding 7 days*.

i. Criteria for Admission:

5.4. Based on the independent examination and information provided by the nominated representative, family members or any other relevant individual, both the Psychiatirst and MHP or MP must *independently conclude* that:

5.4.1. **Severity of Mental Illness**
The minor has a mental illness of severity requiring admission; and

5.4.2. **Best Interests and Wishes of the Minor**

Admission is in the best interests of the minor with regard to health, well-being or safety taking into account the wishes of the minor which are ascertainable and the reasons for reaching such a decision; and

5.4.3. **Mental Healthcare Needs**
Mental healthcare needs of the minor cannot be fulfilled unless admitted; and

5.4.4. **Failure of Community-Based Alternatives**
Community-based alternatives have failed or are demonstrably unsuitable for the minor's needs.

ii. Procedure to Inform the MHRB:

5.5. The MO/MHP in charge shall report admission of a minor to the MHRB *within 72 hours* of the admission.

5.6. The MO/MHP in charge shall report to the MHRB if the admission of the minor continues for a period of *30 days*.

5.7. The MHRB will carry out a mandatory review *within 7 days* of being informed of all admissions continuing *beyond 30 days* and *every 30 days* thereafter.

5.8. The MHRB has the right to:

5.8.1. Visit the minor and interview him or her; and

5.8.2. Review the medical records.

B. What are the Guidelines for Treating Admitted Minors?

5.9. Treatment Plan and Informed Consent of Nominated Representative

5.9.1. The MO/MHP in charge or Psychiatrist in charge of treatment of the minor will provide treatment to the minor only with the *informed consent* of the nominated representative.

5.9.2. The MO/MHP in charge or Psychiatrist in charge of treatment of the minor shall prepare a treatment plan for the minor.

5.9.3. The nominated representative will be informed of all the risks, benefits and alternatives to the treatment, and implications of not following treatment for the minor.

5.10. Suitable Environment in Wards

5.10.1. The admitted minor should be accommodated separately from adults in an environment which is suitable to the minor's age and developmental needs.

5.11. Attendants for Admitted Minor

5.11.1. The nominated representative or attendant appointed by the nominated representative should stay with the minor throughout the duration of the admission. The MO/MHP in charge should provide for arrangements to accommodate the nominated representative or attendant with the minor in the same space.

5.11.2. For minor girls admitted, if the nominated representative is a male, a female attendant should be appointed by the nominated representative to stay with the minor girl throughout the duration of admission.

C. Discharge Planning for Minor

5.12. If the nominated representative doesn't support the admission or requests discharge, and communicates the same, then MO/MHP in charge will discharge the minor.

5.13. The discharge plan refers to how a minor will be treated when they are discharged from the MHE into the community or a different MHE, or if another psychiatrist will be responsible for the minor's care and treatment.

5.14. The Psychiatrist responsible for the care and treatment of a minor admitted in the MHE shall at the time of discharge prepare a plan for how the minor will be treated after discharge.

5.15. The Psychiatrist shall prepare the plan after consulting the minor, the nominated representative, family member, caregiver with whom such minor shall reside after discharge, or the new psychiatrist who is responsible for the minor's care and treatment.

5.16. The discharge plan should consist of all the treatment, duration, medicines and services required for care and treatment of the minor in future. The Psychiatrist should explain the plan, with a copy provided to the nominated representative, family member, caregiver and the psychiatrist who will be responsible for the minor's care and treatment.

6. Emergency Treatment [Section 94]

6.1. Emergency treatment includes any medical treatment including treatment for mental illness, or transportation of person with mental illness to the nearest MHE.

6.2. *Any registered medical practitioner* can provide emergency treatment *anywhere* only when it is necessary to prevent:

6.2.1. Death or irreversible harm to the person; or

6.2.2. Person with mental illness inflicting harm to the self or others;

6.2.3. Causing serious damage to property belonging to the self or others due to behaviour flowing directly from mental illness.

6.3. If the nominated represenattive is available, then the medical practitioner must take *informed consent* of the nominated representative.

6.4. Emergency treatment may be provided at a health establishment or in the community.

6.5. Electro-Convulsive Therapy (ECT) cannot be used as a form of emergency treatment.

6.6. The MO or psychiatrist can provide emergency treatment only for whichever is earlier:

6.6.1. Till a period of *72 hours*; or

6.6.2. Till the person with mental illness has been assessed at the MHE; and

6.6.3. During disasters or emergency declared by the Government, *upto 7 days*.

7. Prohibited Procedures [Section 95]

7.1. The following treatments are prohibited:

7.1.1. ECT without muscle relaxants and anaesthesia;

7.1.2. ECT for minors. If the Psychiatrist in charge of treatment believes that the minor requires ECT, then the Psychiatrist can apply the same only after:

a. Appling to the MHRB to seek its permission and receiving an approval from the MHRB; and

b. Obtaining *informed consent* of the legal guardian by providing all the necessary information regarding the risks, benefits, alternatives to such treatment, and implications of not following it.

7.1.3. Sterilisation of men and women as treatment for mental illness;

7.1.4. Chaining in whatever form.

8. Restrictions on Psycho-Surgery [Section 96]

8.1. The rules of psychosurgery are also laid down in **Chapter – VI of the CMHA Regulations, 2020.** A MO/MHP in charge or Psychiatrist in charge of treatment of a person with mental illness can perform psycho-surgery according to the following procedure:

8.1.1. **Informed Consent of Patient**
Obtain and document *informed consent* of the person on whom the psycho-surgery is being performed afer providing all the information regarding the detailed procedure, risks, benefits and alternative treatments, long term management plan and the implications of not undergoing the surgery.

8.1.2. **Apply to MHRB**

Apply to the MHRB and obtain approval to perform the surgery as planned.

9. Restraints & Seclusion [Section 97]

i. Criteria for Using Restraints:

9.1. Seclusion and solitary confinement cannot be used for any person with mental illness.

9.2. Physical restraints may be used only when:

9.2.1. It is the only means available to prevent imminent and immediate harm to person concerned or others;

9.2.2. The Psychiatrist in charge of the person's treatment has authorised it after exhausting all possible methods. All other methods available

should be exhausted before physically restraining a person with mental illness;

9.2.3. Physical restraints are used for a period no longer than absolutely necessary to prevent immediate risk of significant harm.

9.3. Restraint cannot be used as punishment, deterrent or on grounds of shortage of staff.

ii. Procedure in Case of Using Physical Restraints:

9.4. **Record in Medical Notes**
The MO/MHP in charge or Psychiatrist in charge of person's treatment will have to record in the person's medical notes the (1) method (2) nature (3) justification for imposition (4) duration of restraint, as soon as possible.

9.5. **Inform Nominated Representative**:
The nominated representative will have to be informed *within 24 hours* of every instance of restraint by the MO/MHP in charge or Psychiatrist in charge of the person's treatment.

9.6. **Safe Space for Restrained Patient**
The person under restraint should be placed in a place where he or she cannot harm the self.

9.7. **Ongoing Supervision**
The medical personnel will keep such person under regular ongoing supervision to assess whether use of restraint is required or not.

9.8. **Monthly Report to the MHRB**
The MO/MHP in charge will submit a report of all instances of restraint every month to the MHRB. The report should be submitted as per the format in **Form E of the CMHA Regulations, 2020.**

9.9. The MHRB can order the MHE to stop using restraints if it believes the MHE is not following the provisions of this section.

9.10. The rules for using physical restraints can be found in **Chapter – VI of the CMHA Regulations, 2020.**

10. Leave of Absence [Section 91 & Section 92]

10.1. **Leave of Absence:** A person with mental illness admitted as *independent patient* or *supported patient* can be granted permission to be absent from the MHE.

10.2. **Application for Leave:** The application for leave of absence must be made by the nominated representative in **Form I** as per **Rule 9 of the MHCA Rules, 2018.**

10.3. **Permission for Leave:** Permission will be granted by the MO/MHP in charge or Psychiatrist in charge of treatment.

10.4. **Conditions for Leave:** The MO/MHP in charge or Psychiatrist in charge of treatment while giving permission will lay down conditions, and duration for which the patient can be absent, as considered necessary.

The conditions can be determined by the medical personnel keeping in mind the condition and status of the patient and should be guided by the best interests of the patient, as well as, the patient's will and preferences.

10.5. **Leave for Prisoners:** If a prisoner with mental illness admitted under Section 103, absents without leave or discharge, then the MO/MHP in charge should file a report with the police authorities.

10.6. **Report of Unauthorised Absence:** In case a prisoner with mental illness is absent without leave or discharge the MO/MHP in charge of the MHE should apply to a police officer for taking the prisoner into protection according to **Form J** as per **Rule 9 of the MHCA Rules, 2018.**

11. Transfer of Persons with Mental Illness [Section 93]

11.1. Persons with mental illness admitted as *independent patients, supported patients* or *prisoners with mental illness* can be transferred from MHE to another.

11.2. Transfer can take place only on a special or general order passed by the MHRB.

11.3. Transfer may take place to:

11.3.1. Another MHE within the State; or

11.3.2. Another MHE in any other State with consent of the CMHA.

11.4. The MHCA does not provide the reasons for transfer. However, the MO/MHP in charge shall inform the person with mental illness and their nominated

representative if the person is being transferred, along with reasons for the same.

11.5. The State Government can through a general or special order direct the removal of a prisoner with mental illness from place where he or she is detained to another MHE. The prisoner can also be transferred to a place of safe custody within the State or any other State (with the consent of the State Government).

12. Research by Mental Health Professionals [Section 99]

A. Persons Who Can Give Free and Informed Consent

12.1. MHPs conducting research will have to obtain *free and informed consent* from all persons with illness interviewed or involved in psychological, physical, chemical or medicinal interventions.

12.2. Such persons will have to be informed of all the risks, benefits and alternatives for consenting to participate in any research intervention.

12.3. The person with mental illness may withdraw consent at any point during the research.

B. Persons Who Cannot Give Free and Informed Consent

12.4. For persons with mental illness, who cannot give free and informed consent, but are not resisting participation, the MHPs will have to:

12.4.1. Take the *informed consent* of the nominated representative after informing them of all the risks, benefits implications, and other related information regarding participating in the research; and

12.4.2. After obtaining consent from nominated representative, apply to the concerned State Authority for permission to conduct research with such persons.

12.5. The SMHA will allow the research to proceed if it is satisfied that the proposed research:

12.5.1. Cannot be performed on persons who are capacble of giving free and informed consent;
12.5.2. Is necessary to promote the mental health of the population represented by the person;

12.5.3. Has a purpose to obtain knowledge relevant to the particular mental health needs of the persons with mental illness;

12.5.4. Has provisions for full disclosure of the interests of persons and organisations conducting the proposed research is made and there is no conflict of interest; and

12.5.5. Follows all national and international guidelines and regulations and ethical approval has been obtained from the institutional ethics committee where the research is to be conducted.

12.6. The nominated representative may withdraw consent at any point during the research.

12.7. For research-based study of case notes of a person who cannot give informed consent permission from SMHA is not required as long as anonymity of the person is maintained.

WHAT SHOULD MENTAL HEALTH PROFESSIONALS DO?

- ✓ Sensitise and train all medical personnel/staff in complying with the procedures, compliances and regulations under the MHCA for admissions, treatment, discharge and prohibited procedures.
- ✓ Prepare protocols for admissions, treatment, discharge and prohibited procedures based on the provisions of the MHCA.
- ✓ Record and document all decisions taken regarding admissions, treatment and discharge in the medical notes/records of the person with mental illness.
- ✓ Inform persons with mental illness and their nominated representatives of their rights at the stage of admission.
- ✓ Disclose all information necessary to make decisions regarding mental healthcare and treatment in the MHE in a manner which is easily understood by the person with mental illness and/or their nominated representative.
- ✓ Document informed consent of the person with mental illness and/or their nominated representatives at the time of admission and each stage of treatment.

CHAPTER 8

Miscellaneous

1. Homeless & Wandering Persons Under Protection of Police Authorities [Section 100]

The MHCA places duties on law enforcement officials for taking into protection homeless and wandering persons who are suspected of having a mental illness.

1.1. **Duty of Police Officers**

The officer-in-charge of a police station has a duty to take into protection:

1.1.1. Any person who is wandering within the limits of the police station and who the police officer believes has a mental illness and is incapable of taking care of themselves

1.1.2. The officer believes is a risk to the self or any other due to a mental illness. Such person or their nominated representative should be informed of the grounds for being taken into protection.

1.2. **Assessment of a Homeless or Wandering Person**

The officer will send such person to the nearest public health establishment *within 24 hours* for assessment of the person's healthcare needs. Such person cannot be detained in a lock up or prison.

1.3. **Assessment According to Provisions of MHCA**

The MO in charge of the public health establishment will have to arrange for the assessment of the person and their needs. The same will be done in accordance with the provisions of the MHCA. The MO/MHP in charge will have to assess whether such a person has a mental illness of a nature or degree which requires admission. If yes, the person shall be admitted as per the provisions of admission in the MHCA.

1.4. **If Admission Not Required**

If person doesn't require admission, then the MO/MHP in charge will have to inform the police officer of the assessment. Such person will be taken to their residence by the police officer. If the person is homeless, they shall be taken to a government establishment for homeless persons.

1.5. **Lodge FIR**

For persons homeless, or found wandering in the community, a FIR for missing person should be lodged at the concerned police station by the Police officer who finds the person. The officer shall trace the family and inform them of the location of such person. If a homeless or wandering person approaches the MHE directly, the MHE will have to report the same to the nearest police station.

2. Report to Magistrate about Ill-treatment or Neglect [Section 101 and Section 102]

A. Duty to Report to Police Officer or Magistrate

2.1. If the officer-in-charge of a police station believes that a person with mental illness is being **neglected or ill-treated**, they should report the same to the Magistrate that has jurisdiction over the area the person resides.

2.2. Any person who feels that a person with mental illness is being neglected or ill-treated will report the same to officer-in-charge of the police station that has jurisdiction over the area the person resides.

2.3. Based on the report from a police officer or any other person the Magistrate may call the person with mental illness to be produced before them and pass an order under Section 102.

B. Magistrate's Order under Section 102

2.4. When a person who may have a mental illness is brought before a magistrate, the magistrate may order:

2.4.1. That the person with mental illness be sent to a public mental health establishment for assessment and treatment (if necessary) as per provisions of the MHCA.

a. The MO/MHP in charge will have to conduct assessment of such person as per provisions of the MHCA.

b. If admission is *required*, person will be admitted according to the provisions of the MHCA.

c. If admission *not required,* such person will be released and referred to appropriate Government services or organisations for rehabilitation.

2.4.2. Authorise admission of such person in a MHE for *not more than 10 days* for assessment by the MO/MHP in charge.

a. The person is admitted in the MHE for a period of 10 days for assessment.

b. The MO/MHP in charge will assess such person as per provisions of the MHCA within 10 days.

c. After assessment, the MO/MHP in charge will submit a report to the Magistrate.

d. If admission is *required*, person will be admitted and treated according to the provisions of the MHCA.

e. If admission is *not required*, such person will be discharged.

2.5. The MO/MHP in charge will submit a report to the Magistrate regarding assessment and suggested course of action as per the MHCA.

3. Prisoners with Mental Illness [Section 103 & Rule 10, 11 of MHCA Rules]

3.1. The Central or State Governments will set up a MHE in at least one prison in a State or Union territory for treatment and care of prisoners with mental illness. The MHE will be registered with the CMHA/SMHA and should be in accordance with the *minimum standards* prescribed in the **Schedule** of the **MHCA Rules, 2018.**

3.2. A prisoner with mental illness can be admitted for treatment and care into a MHE as per any of the following laws:

3.2.1. Section 30, Prisoners Act, 1900

3.2.2. Section 144, Air Force Act, 1950

3.2.3. Section 145, Army Act, 1950

3.2.4. Section 143 or Section 144, Nay Act, 1957

3.2.5. Section 330 or Section 335 of the Criminal Procedure Code, 1973

3.3. A prisoner should be transferred to the psychiatric ward in the medical wing of a prison.

3.4. If there is no psychiatric ward in the medical wing of a prison, the prisoner may be admitted to a MHE with the prior permission of the MHRB.

3.5. The Central Government or the State Government (as the case maybe) will prescribe the method and procedure for transfer of a prisoner with mental illness.

3.6. MOs of a prison or jail will have to send a quarterly report to the MHRB. This report should certify that there are no prisoners with mental illness in the prison or jail.

3.7. The MHRB can visit the prison or jail and inquire why a prisoner with mental illness has not been transferred for treatment to a MHE.

3.8. If a prisoner with mental illness is detained in a MHE, then the MO in charge has to submit a special report *every 6 months* to the concerned authority (under whom the prisoner has been detailed). The report must include an assessment of the mental and physical condition of such person.

4. Persons in Custodial Institutions [Section 104 & Rule 7 of MCHA Rules, 2018]

4.1. The MHCA does not define a custodial institution. However, a custodial institution could include a place where any person can be kept in lawful custody. This includes beggars' homes, orphanages, women's protection homes and children homes.

4.2. If any person residing in a state-run custodial institution appears to have a mental illness, they should be taken to the nearest MHE run or funded by the Government. The person-in-charge of the state-run custodial institution will be responsible for the same.

4.3. The MO/MHP in charge will assess such person and provide treatment and care according to the provisions of the MHCA.

5. Expert Opinion for Judicial Processes [Section 105]

5.1. If during a judicial process in a court of law, proof of mental illness of person involved in the case is presented or challenged by a party, then the court can refer the same to the MHRB for its expert opinion on whether the person has a mental illness.

5.2. The MHRB will examine the person alleged to have a mental illness by itself or set up a committee of experts for the same. The MHRB will then submit its opinion to the court.

6. Restrictions on Mental Health Professionals [Section 106]

6.1. Mental Health Professionals or Medical Practitioners cannot discharge any duty or perform a function which the MHCA does not Authorise.

For example: A mental health professional cannot advise a person with mental illness about decisions such person must make in their personal matters such as buying or selling property, entering into contracts, etc.

6.2. Medicines or treatment which are not authorised by the field of profession of such MHP or MP cannot be recommended.

For example: A clinical psychologist cannot administer medicines to a person with mental illness, or an ayurvedic/homeopathy/naturopathy doctor cannot prescribe allopathic medicines to a person with mental ullness.

7. Suicide [Section 115]

7.1. Any person who does a suicide act will be presumed to be under severe stress (unless proved otherwise). Such person will not be tried and punished under Section 309, Indian Penal Code,1860.

7.2. The Central or State Government will have to provide care, treatment and rehabilitation to a person who has attempted suicide under severe stress.

8. Offences and Penalties [Section 107]

8.1. **Penalty for Non-Registration of MHE**

8.1.1. Penalties will be decided by an order of the SMHA.

8.1.2. A person who carries on a MHE without registration is liable to a penalty:

a. Between **Rs. 5000** to **Rs. 50,000** for the *first time*.
b. Between **Rs. 50, 000** and **Rs. 2,00,000** for the *second time*.
c. Between **Rs. 2,00,000** and **Rs. 5,00,000** for *every subsequent time*.

Such person shall be the owner or person in charge of running the MHE.

8.1.3. Any MHP who serves in a non-registered MHE will liable to a penalty extending to **Rs. 25,000.**

8.1.4. If any person does pay the penalty, the SMHA will forward the penalty order to the Collector of the district where such person owns property, resides,

carries forward business or where the MHE is located. The collector will recover the penalty from such person as a land revenue arrear.

8.2. **Punishment for Contravening Provisions/ Regulations of the MHCA**

8.2.1. Any person who has a duty and responsibility under the MHCA will be punished for contravening any of the provisions or regulations.

8.2.2. The punishments will be accordingly:

a. Imprisonment for a term up to **6 months** and/or a fine up to **Rs. 10, 000** for the first time.

b. Imprisonment for a term up to **2 years** and/or a fine between **Rs. 50, 000** to **Rs. 5,00,000** for *every subsequent time*.

8.3. **Offences by Companies**

8.3.1. A company is a body incorporated under law and includes a firm or association of individuals.

8.3.2. If a company has committed an offence, then the following will be presumed to be guilt and liable:

a. The Company; and

b. The person in-charge and responsible for the conduct of the company at the time of the offence. However, ~~if~~ such persons are not liable to punishment if they prove that the offence was committed without their knowledge or they exercised due-diligence to prevent the offence.

8.3.3. Any director, manager, secretary, or officer of the Company who has consented, connived, or contributed (even through neglect) to an offence committed by the Company will be held liable and punished.

9. Rule Making Power of Central Government [Section 121 (3)]

S. NO.	SUBJECT AREAS FOR RULES
1.	Qualifications relating to Clinical Psychologists under Section 2 (1) (f)
2.	Qualifications relating to Psychiatric Social Workers under Section 2 (1) (x)

3.	Manner of Nomination of members of CMHA under Section 34 (2)
4.	Salaries and Allowances and other terms of conditions of Chairperson and other members of CMHA under Section 35 (3)
5.	Procedure for Registration including fees of MHEs under Section 43 (2)
6.	Manner of Nomination of members of SMHA under Section 46 (2)
7.	Salaries and Allowances and other terms of conditions of Chairperson and other members of SMHA under Section 47 (3)
8.	Procedure for Registration including fees of MHEs under Section 55 (2)
9.	Accounts, relevant records and annual statement of accounts under Section 59 (1)
10.	Form in and time within which annual report will be prepared under Section 60
11.	Accounts, relevant records and annual statement of accounts under Section 63 (1)
12.	Form in and time within which annual report will be prepared under Section 64
13.	Manner of Constitution of the MHRB by the SMHA for a district or group of districts in a State under Section 73 (3)
14.	Other disqualifications of chairperson or members of the MHRB under Section 74 (2) (e)
15.	Any other matter which is required to be specified by rules

10. Rule Making Power of State Government [Section 121 (4)]

S. NO.	SUBJECT AREAS FOR RULES
1.	Manner of proof of mental healthcare and treatment under Section 4 (1)
2.	Provision of half-way homes sheltered accommodation and supported accommodation under Section 18 (4) (b)
3.	Hospitals and community-based rehabilitation establishment and services under Section 18 (4) (d)
4.	Based medical records of which access is to be given to a person with mental illness under Section 25 (1)
5.	Custodial institutions under Section 27 (2)
6.	Form of application to be submitted by the MHE with the undertaking that the mental health establishment fulfils the minimum standards, specified by the Authority under Explanation to Section 65 (2)
7.	Form of certificate of registration under Section 65 (3)
8.	Form of application, the details, and fees under Section 66 (1)
9.	Form of certificate of provisional registration containing particulars and information under Section 66 (4)
10.	Fees for renewal of registration under Section 66 (11)
11.	Person or persons, representatives of local community for conducting an audit of the registered MHEs under Section 67 (1) and fees to be charged by the Authority for conducting audit under Section 67 (2)

12.	Person or persons for conducting inspection or inquiry of the MHE under Section 68 (1)
13.	Manner to enter and search MHE operating without registration under Section 68 (6)
14.	Fees for issuing a duplicate certificate under Section 70 (2)
15.	Form and manner in which the Authority shall maintain a digital format and register of MHEs, particulars of certificate of registration in a separate register under Section 71
16.	Constitution of the MHRBs under Section 73 (3)
17.	Honorarium, allowances and terms and conditions of service of chairperson and other members of the MHRB under Section 75 (3)
18.	Method, modalities and procedure for transfer of prisoners under Section 103 (2)
19.	Standard and procedure to which the CMHA or SMHA shall confirm under Section 103 (7)
20.	Form for furnishing periodical information under Section 110
21.	Any other matter which requires to be specified by rules

Annexures

APPLICATIONS, COMPLIANCES AND PROCEDURES CHECKLIST

A. List of Applications in the Mental Healthcare Act, 2017

Application Type	Submitted By	Submitted To	Section	Template/ Format
Review, alter, modify or cancel advance directive	MHP/Caregiver /Relative	Mental Health Review Board	Section 11	N/A
Temporary nominated representative	Representatives of organizations	Medical Officer/MHP in charge and Mental Health Review Board (within 7 days)	Section 14 (5)	N/A
Revocation of legal guardian as nominated representative of a minor	MHP/anyone acting in the best interest of the minor	Mental Health Review Board	Section 15 (2)	N/A
Revocation, alteration, etc., of nominated representative by Board	Person with mental illness, relatives, doctor in charge	Mental Health Review Board	Section 16	N/A
Redressal/Relief for violations of the Act/decisions of the MHE	Person with mental illness, nominated representative, representative of NGO (with consent of person)	Mental Health Review Board	Section 77	Section 77(3)
Admission of a minor	Nominated representative of the minor	Medical officer of the MHE	Section 87	Form D the MHCA Rules, 2018
Challenging admission of a minor	Nominated representative, relatives, caregivers	Mental Health Review Board (within 7 days)	Section 80	N/A
Challenging supported admission	Nominated representative, relatives, caregivers	Mental Health Review Board (within 7 days)	Section 80	N/A

B. List of Applications in the Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018

Application Type	Submitted By	Submitted To	Rule Number	Template /Format
Reimbursement of the intermediary costs of treatment at mental health establishment	Persons with mental illness	Chief Medical Officer/officer in-charge of the Directorate of Health Services of that State Government	Rule 5 (2)	N/A
Access to copy of basic medical records	Persons with mental illness /nominated representative	Medical Officer/MHP in charge	Rule (2)	Form A
Providing copy of basic medical records	Medical Officer/MHP in charge	Persons with mental illness /nominated representative	Rules 6 (3)	Form B *within 15 days of request.
Request for admission as an independent patient	Any person who considers themselves to have a mental illness (above the age of 18)	Medical Officer/MHP in charge	Rule 8	Form C
Admission of a minor	Nominated Representative	Medical Officer/MHP in charge	Rule 8	Form D
Admission of a person with mental illness who needs high support (Under section 89 of the MHCA)	Nominated Representative	Medical Officer/MHP in charge	Rule 8	Form E
Continued admission a person with mental illness,with high support needs (Under section 90 of the MHCA)	Nominated Representative	Medical Officer/MHP in charge	Rule 8	Form F
Discharge from a mental health establishment	Independent patient; Minor who turned 18 during his stay at a mental health establishment (Section 87 of the MHCA)	Medical Officer/MHP in charge	Rule 8	Form G

Discharge of a minor	Nominated Representative	Medical Officer/MHP in charge	Rule 8	Form H
Grant leave of absence	Nominated Representative	Medical Officer/MHP in charge	Rule 9	Form I
Request for taking into protection of a prisoner charge of such mental with mental illness found to be health establishment absent from a mental health establishment without leave or discharge	Medical Officer/MHP in charge	Police Officer in Charge	Rule 9	Form J

C. List of Applications in the Mental Healthcare (State Mental Health Authority) Rules, 2018

Application Type	Submitted By	Submitted To	Rule Number	Template /Format
Posts of non-official members of State Authority	SMHA	Public	Rule 6	Open advertisement in newspapers
Provisional registration of mental health establishment	Medical Officer/MHP in charge of MHE	SMHA	Rule 11	N/A
Permanent registration of mental health establishment	Medical Officer/MHP in charge of MHE	SMHA (within 30 days of provisional registration)	Rule 12	Form B

D. List of Applications in the Mental Healthcare (Central Mental Health Authority/Mental Health Review Board) Rules, 2018

Application Type	Submitted By	Submitted To	Rule Number	Template/ Format
Invitation of application for nomination as non-official members of Central Authority.	CMHA	Public	Rule 6	Open advertisement in newspapers
Provisional registration of mental health establishment	Medical Officer/MHP in charge of MHE	CMHA	Rule 11	N/A
Permanent registration of mental health establishment	Medical Officer/MHP in charge of MHE	CMHA	Rule 12	Form B
Appointment of chairperson and members of Board	SMHA	Public	Rule 18	Open advertisement in newspapers

E. List of Applications in the Mental Healthcare (Central Mental Health Authority) Regulations, 2020

Application Type	Submitted By	Submitted To	Regulation Number	Template / Format
Form for making, amending/ revoking and cancelling advance directive	Person with mental illness	Mental Health Review Board	Regulation 3	Form A
Basic Medical Records	MHP in charge of treatment of the person	Maintained as records in the MHCA	Regulation 12	Form B
Application for permanent registration of a central mental health establishment	Medical Officer/MHP in charge of MHE	CMHA	Regulation 14	Form C

Filing objections against grant of permanent registration to a central mental health establishment	Any individual	CMHA	Regulation 15	Form D
Physical Restraint Monitoring and Reporting Form	MHP in charge of treatment of the person	MHRB	Regulation 18	Form E

LIST OF COMPLIANCES & PROCEDURES UNDER THE MHCA							
S. No.	**Actionable Point**	**Section Number**	**Person making request/application**	**Application required, or format prescribed**	**Person/Authority to whom request made/application submitted**	**Timeline**	**Procedure in Summary *Please refer to the original provisions of the MHCA for the complete procedure.**
1.	Writing an Advance Directive	Section 6	Any adult individual	N/A	MHRB	N/A	An advance directive can be written by any individual on a piece of paper with a signature/thumb impression in accordance with the regulations specified by the CMHA.
2.	Registering an Advance Directive	Section 7/12	Person who has written the advance directive	N/A	MHRB	N/A	Subject to regulations of the CMHA.
3.	Review/Alter/ Modify/Cancel an Advance Directive	Section 8	MHP/ Nominated representative, relative or caregiver who does not desire to follow the advance directive	N/A	MHRB	N/A	The MHRB will conduct a hearing of all concerned parties to either review/alter /modify or cancel the advance directive based on the criteria specified in Section 11 (2).
4.	Appointment of nominated representative	Section 14	Any adult individual	Made in writing on paper with signature/thumb impression	N/A	N/A	The nominated representative must give consent to the MHP to discharge duties. Where no nominated representative has been appointed the persons mentioned in Section 14(4) will be deemed to be appointed in order of precedence.

5.	Application for revocation of nominated representative of minor	Section 15	MHP or person acting in best interest of the minor	N/A	MHRB	N/A	The applicant has to provide evidence to the MHRB that the legal guardian is not acting in the best interests of the minor.
6.	Application for revocation, alteration, etc., of nominated representative by the MHRB	Section 16	Person with mental illness/relative/MHP	N/A	MHRB	N/A	Application must be submitted to the MHRB to revoke/change /modify the person appointed as the nominated representative. The MHRB may make the decision to revoke/change/modify the person appointed as nominated representative.
7.	Right to Information	Section 22	Person with mental illness/Nominated Representative	N/A	MO/MHP in charge	N/A	Persons with mental illness have the right to information with respect to the grounds of their admission, treatment and other matters related to their mental healthcare under the MHCA.
8.	Right to access to basic medical records	Section 25	Person with mental illness/Nominated Representative	Rule 6 (2) & Form A of MHCA Rules, 2018	MO/MHP in Charge & MHRB	N/A	An application must be filed to the medical personnel for accessing medical records. If medical records are not provided to the person with mental illness, an application can be filed before the MHRB.

9.	Right to make complaints about deficiencies in services	Section 28	Person with mental illness/Nominated Representative	N/A	1. MHP/Medical Officer; 2. If not satisfied, then MHRB; 3. If not satisfied, then CMHA/ SMHA	N/A	A complaint may be filed for deficiency in services provided by a MHE or for violation of rights of a person with mental illness. Authorities are bound to respond to the complainant. The complainant may also approach for judicial remedies under any other law.
10.	Procedure for registration, inspection and inquiry of mental health establishments	Section 66	MHP/ Medical Officer in charge	Section 66(1) of the MHCA and Rule 11 of SMHA Rules/ Rule 11 of the CMHA/MHRB Rules	CMHA/SMHA	1. Submitting application- within 6 months of constitution of CMHA/SMHA 2. Renewal of provisional registration- within 30 days before expiry of validity of certificate of provisional registration 3. Apply for permanent registration-within 6 months of standards being notified.	1. Application may be submitted by post or in person along with fee of Rs.20,000 in the form of demand draft. 2. Authority will issue certificate of provisional registration. 3. Apply for permanent registration after minimum standards for categories of MHEs are notified. 4. Provisional registration will be valid for a period of 12 months. Renew provisional registration before expiry of validity of certificate.
11.	MHE submits evidence for compliance with minimum standards specified by CMHA	Section 66	MHP/ Medical Officer in charge	N/A	CMHA/SMHA	N/A	1. The MHE will submit evidence that it is complying with the minimum standards specified by the authority. 2. Authority shall give public notice and display the same on its website for filing objections 3. The Authority shall, communicate the objections, if any, to the MHE for its response.

12.	Appeal to High Court against order of Authority.	Section 69	MHP/ Medical Officer in charge	N/A	High Court of the concerned state	30 days	Any MHE aggrieved by an order of the CMHA/SMHA refusing to grant registration or renewal of registration or cancellation of registration, may, within a period of thirty days from such order, prefer an appeal to the High Court in the State.
13.	Duty of mental health establishment to display information.	Section 72	Mental Health Establishment	N/A	N/A	N/A	Every mental health establishment shall display within the establishment at conspicuous place (including on its website), the contact details including address and telephone numbers of the MHRB
14.	Application for admission of person with mental illness as independent patient in MHE	Section 86	Person with mental illness	Rule 8 & Form C of MHCA Rules, 2018	Medical Officer/MHP in charge	N/A	Person, who is not a minor, they have an mental illness may request the MHP/Medical officer in charge to be admitted as an independent patient.
15.	Examination of person for independent admission	Section 86	N/A	N/A	MO/MHP in charge	N/A	MO/MHP in charge must satisfy criteria as specified in Section 86 (2) for examination and admission of person as independent patient.
16.	Application for admission of minors	Section 87	Legal guardian of minor	Rule 8 & Form D of MHCA Rules, 2018	MO/MHP in charge	N/A	Legal guardian of the minor may apply for admission of minor.

17.	Examination of minor for admission	Section 87	MO/MHP in charge	N/A	2 Psychiatrists or 1 Psychiatrist and 1 MHP or 1 Psychiatrist and 1 MP	One day of admission or preceding 7 days	Criteria for admission as specified in Section 87 (3) must be satisfied independently by the medical personnel examining the minor.
18.	Discharge of independent patients	Section 88	Independent patient	Rule 8 and Form G of MHCA Rules, 2018	MO/MHP in charge	N/A	1. A request for discharge can be made by the person with mental illness. 2. The MHP/Medical Officer will assess if they are ready for discharge. 3. If discharged, patient will be given treatment plan. 4. If not discharged they will be readmitted.
19.	Application for supported admission up to 30 days	Section 89	Nominated representative of person with mental illness	Rule 8 and Form E of the MHCA Rules, 2018	MO/MHP in charge	In case of independent patient-within 24 hours from request for discharge	An application can be submitted by the nominated representative or the MHP may assess the patient within 24 hours at the time of discharge.
20.	Examination of patient for supported admission up to 30 days	Section 89	MO/MHP in charge	N/A	1 Psychiatrist/1 MHP or MP	On day of admission or in the preceding 7 days	Criteria for admission as specified in Section 89 (1) must be satisfied independently by medical personnel examining the minor.
21.	Inform MHRB about supported admission	Section 89 (9)	MO/MHP in charge	N/A	MHRB	Within 3 days or admission of woman/minor and within 7 days for admission of any person other than woman/minor	Inform the MHRB about admission.

22.	Discharge of supported patient (up to 30 days)	Section 89 (3) and Section 89 (4)	Patient or nominated representative	N/A	MO/MHP in charge	At the end of 30 days or before	If the patient doesn't meet the criteria under Section 89 and does not require admission as independent patient/continued supported admission, then the patient should be discharged.
23.	Application to challenge decision of admission under Section 89	Section 89 (10)	Supported patient admitted/Nominated Representative/Representative of NGO with consent of patient	N/A	MHRB	N/A	The decision of the medical personnel to admit the patient can be challenged or reviewed by the MHRB. The MHRB shall give its decision within 7 days from date of application for review.
24.	Application for continued supported admission up to 90 days (or more)	Section 90	Nominated Representative	Rule 8 & Form F of MHCA Rules	MO/MHP in charge	1. In case supported admission within 30 days of supported admission getting over 2. In case of re-admission after discharge under Section 89, within 7 days of such discharge	1.Nominated representative submits application for continuing support admission. 2. After initial 90 days, nominated representative applies for continued support admission for another 180 days. 3. After 180 days, nominated representative submits application for continued support admission for another 180 days. Repeated after every 180 days.
25.	Examination for continued supported admission up to 90 days (or more)	Section 90	MO/MHP in charge	N/A	2 Psychiatrists	In preceding 7 days of admission	Criteria for admission specified in Section 90 (2) to be satisfied independently by both psychiatrists. After 90 days and subsequently every 180 days procedure under Section 90 repeated.

26.	Inform MHRB about continued supported admission	Section 90 (3)	MO/MHP in charge	N/A	MHRB	Within 7 days or admission or re-admission	Report admissions/re-admissions to the MHRB. The MHRB shall examine within 21 days and decide whether person should be admitted/re-admitted or discharged.
27.	Discharge of supported patient (up to 90 days or more)	Section 90 (10) and Section 90 (15)	Supported Patient or Nominated Representative	N/A	MO/MHP in charge	At the end of 90 days/180days or before	If the patient doesn't meet the criteria under Section 90 and does not require admission as independent patient/continued supported admission, then the patient should be discharged.
28.	Application to challenge decision of admission under Section 90	Section 90 (14)	Supported patient admitted/Nominated Representative/Representative of NGO with consent of patient	N/A	MHRB	N/A	The decision of the medical personnel to admit the patient can be challenged or reviewed by the MHRB.
29.	Leave of Absence	Section 91	Nominated Representative/Person with mental Illness	Rule 9 & Form I of MHCA Rules, 2018	MO/MHP in charge	N/A	1. Request for leave of absence can be made to the MHP/Medical Officer in charge 2. This can be reviewed by the medical personnel in charge who can permit /not permit a leave of absence. This will come with specified conditions and duration.
30.	Absence of prisoner with mental illness without leave/discharge	Section 92	MO/MHP in charge	Rule 9 & Form J of MHCA Rules, 2018	Police officer in police station which has jurisdiction	N/A	1. The missing prisoner with mental illness will be notified to the police officer of the area by the MHP/Medical Officer. 2. The Police officer will take the person with mental illness into

							protective custody and then returned to the MHE.
31.	Transfer of persons with mental illness from one MHE to another.	Section 93	Nominated Representative, persons with mental illness or MO/MHP in charge	N/A	MHRB within the state and CMHA to another state	N/A	A person with mental illness may be transferred to another MHE subject to an order by the MHRB for a transfer within the state or consent of the CMHA for transfer to another state after informing such person or the nominated representative of the reasons for transfer.
32.	Discharge Planning	Section 98	MO/MHP in charge	N/A	Nominated Representative/Person with mental illness/Outpatient psychiatrist in charge of post-discharge care	At the time of discharge	Upon all discharges/transfer the patient will be given a treatment and care plan post-discharge.
33.	Consent for research with persons with mental illness	Section 99	Researcher in charge of the study	N/A	Persons with mental illness or Nominated representative/ SMHA	Before conducting research	1. Receive informed consent from the participant. 2. Permission to conduct research must be obtained from SMHA 3. Nominated representative may give consent on behalf of a participant, after authorization from the SMHA