

DEPARTMENT OF HEALTH

NO. R. 2183

24 June 2022

MENTAL HEALTH CARE ACT, 2002

REGULATIONS FOR LICENSING COMMUNITY MENTAL HEALTH DAY CARE AND RESIDENTIAL CARE FACILITIES FOR PEOPLE WITH MENTAL ILLNESS AND OR SEVERE OR PROFOUND INTELLECTUAL DISABILITY, 2022

The Minister of Health intends, in terms of section 66 of the Mental Health Care Act, 2002 (Act No. 17 of 2002) and after consultation with all the Members of the Executive Council, to make the Regulations in the Schedule.

Interested parties are invited to submit, within three months from the date of the publication of this Notice, written comments on the proposed Regulations or any representations they may wish to make in regard thereto, to the Director-General: Health, Private Bag X828, Pretoria 0001, (for the attention of the Directorate: Mental Health and Substance Abuse, at email (Evah.Mulutsi@health.gov.za)).



DR M.J PHAAHLA, MP
MINISTER OF HEALTH

DATE: 19/05/2022

SCHEDULE

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context otherwise indicates—

“**applicant**” means a person that applies for a license to provide a mental health service or operate a mental health day care or residential care facility to five or more people with mental illness and or severe or profound intellectual disability;

“**Community care**” means programmes and facilities for community care, treatment and rehabilitation for people with mental illness and or severe or profound intellectual disability;

“**facility**” means a building or structure which is ordinarily used in the course of providing mental health care, treatment and rehabilitation services and includes a mental health day care and residential care facility;

“**financial officer**” means an official who manages financial actions, including financial planning, management of financial risks, record keeping and financial reporting;

“**halfway house**” means a residential care facility for mental health care users who had either been cared for in their communities, or had been formerly treated in a psychiatric hospital or in a care and rehabilitation centre;

“**health establishment**” means health establishment as defined in section 1 of the National Health Act, 2006 (Act No. 61 of 2006);

“**HOD**” means the head of the relevant provincial department of health;

“**license**” means a license granted in terms of regulation 8;

“**licensing administrator**” means an official who performs all related tasks for processing applications for licenses including processing new applications, evaluating credential documentation against requirements and follow up with applicants;

“**manager**” means the person who is responsible for the day-to-day management of the relevant day care facility or residential facility;

“**day care facility**” means a facility that provides day care, treatment and rehabilitation services to five or more people with mental illness and or severe or profound intellectual disability;

“**residential care facility**” means a facility which provides residential care, treatment and rehabilitation services to five or more people with mental illness and or severe or profound intellectual disability; and

“**the Act**” means the Mental Health Care Act, 2002 (Act No. 17 of 2002).

Application of Regulations

2. These Regulations apply to everyday care and residential care facility which provides care, treatment and rehabilitation to five or more people with mental illness and or severe or profound intellectual disability.

Purpose of Regulations

3. The purpose of these Regulations is to regulate the licensing of day care or residential care facilities for people with mental illness and or severe or profound intellectual disability.

Eligibility to operate day care or residential care facility

4. (1) Any service which is not a designated psychiatric hospital or care and rehabilitation centre, but which provides residential or day-care facilities for five people or more with mental illness must in terms of the Act—

- (a) obtain a licence from the provincial department concerned to operate; and
- (b) be subjected to at least an annual audit by designated officials of the provincial department concerned.

(2) The conditions of a licence contemplated in subregulation (1) must be clearly stipulated by the provincial department concerned and must include—

- (a) the physical address of the relevant service;
- (b) the number of people to be accommodated;
- (c) whether such service is to be used for children, adults or geriatrics;
- (d) service requirements;
- (e) the duration of the licence; and
- (f) that the licence is not transferable.

Prohibition

5. (1) No person may establish or operate a day care or a residential care facility which provides care to five or more people with mental illness and or severe or profound intellectual disability without a license from the relevant provincial department of health.

(2) Any person who operates a day care or residential care facility in contravention of sub-regulation (1) is liable, upon conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both fine and such an imprisonment.

Application procedure

6. (1) An application for a license to operate a day care or a residential care facility must be made by completing the form provided for in **Annexure A** obtainable from the provincial department of health.

(2) An application contemplated in sub-regulation (1) must be submitted to the HOD.

(3) The completed form must be accompanied by certified copies of the following:

- (a) registration documents for the entity;
- (b) a zoning or re-zoning certificate issued by the local municipality where applicable;
- (c) a certificate of occupation certifying that the building meets all building regulation requirements issued by the local authority in terms of the National

Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) and the national building regulations made thereunder;

- (d) a certificate of acceptability issued by Municipal Health Services;
- (e) a health certificate in relation to minimum health requirements issued by Municipal Health Services in terms of the National Environmental Health Norms and Standards for Premises and Acceptable Monitoring Standards for Environmental Health Practitioners contained in General Notice 1229 published in *Gazette* No. 39561 of 24 December of 2015;
- (f) a health care risk waste management agreement or arrangement in terms of the National Environmental Health Norms and Standards for Premises and Acceptable Monitoring Standards for Environmental Health Practitioners contained in General Notice 1229 published in *Gazette* No. 39561 of 24 December of 2015;
- (g) a certificate of compliance in terms of the electrical requirements.
- (h) a clearance certificate for water supply if it is not a municipal water supply;
- (i) a proposed activity or psychosocial rehabilitation programme;
- (j) a maintenance plan for the facility;
- (k) evidence-based protocols for care, treatment and rehabilitation services;
- (l) dietary plan approved by dietician or a nutritionist where the facility provides meals for the mental health care users;
- (m) standard operating procedures and policy for the management of risks of infectious diseases including the reporting of notifiable diseases;
- (n) a proposed staff establishment for the facility;
- (o) a business plan;
- (p) proof of ownership of property or lease agreement;

- (q) a fire clearance certificate;
- (r) emergency and disaster plan;
- (s) approved building plan; and
- (t) tax clearance.

Handling of application

7. (1) The HOD must, within 30 days of receipt of the application, constitute an inspection team to inspect a facility that applied to operate or establish a mental health day care or residential care facility.

(2) The inspection team must include—

- (a) a minimum of two registered mental health practitioners, one of which must be an occupational therapist and another being a psychiatric nurse, a medical officer or a psychiatrist;
- (b) a dietician;
- (c) a social worker;
- (d) an environmental health practitioner;
- (e) a financial officer; and
- (f) a licensing administrator or administrative officer.

(3) The inspection team must conduct the physical inspection of the facility in respect of which the application for a license is made.

(4) Where the application is incomplete or has insufficient information the HOD must inform the applicant in writing that the application will be considered only when all the requirements of the application have been met.

(5) The HOD must appoint an Adjudication Panel consisting of not less than five officials from the Department to consider the application and make recommendations to the HOD.

(6) The Adjudication Panel must include designated officials from the province responsible for:

- (a) Mental health;
- (b) Quality assurance;
- (c) Risk management;
- (d) Infrastructure;
- (e) Financial management; and
- (f) Legal practitioner.

Granting or refusal of license

8. (1) The HOD must, within 30 days after receiving the recommendation from the Adjudication Panel, issue or refuse to issue a license to the applicant.

(2) If the application is approved, the HOD must issue a license, valid for 12 months in the form provided for in **Annexure B**.

(3) A license granted in term of subsection (2) is not transferrable,

(4) If the licensee ceases to operate or unable to continue to operate, the licensee must surrender the license to the HOD who may re-issue a license after being satisfied that the new applicant or the new place complies with the requirements for licensing.

(5) The HOD must, if he or she refuses to issue a license to an applicant, provide reasons for the refusal in writing and must advise the applicant of his or her rights to appeal the decision to the Member of the Executive Council for health in the relevant province.

Cancellation of license

9. (1) A license granted to a licensee may be cancelled by the HOD, if the:-

- (a) license holder fails to comply with any condition subject to which the license is granted;
- (b) relevant mental health day care facility or residential care facility is not maintained in accordance with the Norms and Standards Regulations Applicable to Different Health Establishments published in *Gazette* No. 41419, Notice No. 67 of 02 February 2018;
- (c) licensee is convicted of an offence and sentenced to 12 months imprisonment with an option of a fine;
- (d) licensee becomes insolvent; or
- (e) licensee relocates the mental health day care or residential care facility to another facility.

(2) Before the HOD cancels the license, the HOD must give notice in writing to the licensee of the intended cancellation.

(3) The notice referred to in sub-regulation (2) must set out the reasons for the intended cancellation and inform the licensee to furnish reasons within 30 days why the license should not be cancelled.

(4) If the HOD cancels a license, the HOD must give notice in writing to the licensee that the license has been cancelled and that the day care or residential care facility must be closed down on or before the date specified in that notice.

(5) If the license is cancelled, the HOD must assume administrative responsibility for the mental health care users who are in the facility concerned until the users are transferred to another suitable facility.

(6) The HOD must transfer the mental health care users concerned to another facility on or before the date contemplated in sub-regulation (4).

Appeal procedure

10. (1) The relevant Member of the Executive Council for health must constitute an appeal committee consisting of people not involved in the licensing process to adjudicate on appeals received in terms of Regulation 5 and 9 above and make recommendations to the MEC.

(2) a license holder whose license has been cancelled by the HOD, may lodge an appeal with the Member of the Executive Council for health of the relevant province within 14 days after receipt of the notice from the HOD.

(3) The Member of the Executive Council for health concerned must within 90 days of receipt of the appeal from the applicant, uphold or dismiss the appeal.

Renewal of license

11. The HOD must annually assess or cause to be assessed all community mental health facilities ninety (90) days before expiry of the current license and renew the license of the facility if satisfied that the facility still meets applicable licensing requirements.

Termination of operations

12. (1) A license holder who decides to terminate the operation of the facility must inform the HOD in writing 90 days prior to the intended termination.

(2) Upon cancellation of the license, the HOD must give notice in writing to the license holder that the license has been cancelled and that the facility in respect of which the license is cancelled, must be closed down on or before the date specified in that notice.

(3) Upon cancellation of the license, the HOD must ensure that all mental health care users are transferred and placed in an alternative suitable facility with immediate effect.

Compliance, monitoring and reporting

13. (1) The licensee must compile and keep daily statistics.

(2) The licensee must submit a detailed monthly report to the provincial department of health before or on the seventh day of the following month which include, the number of—

- (a) admissions;
- (b) vacancies;
- (c) discharges;
- (d) transfers;
- (e) deaths;
- (f) abscondment; and
- (g) adverse event.

(3) The facility manager must report to the provincial department of health adverse events immediately and submit a report on the incident within 24 hours.

Norms and standards

14. All mental health day care and residential care facilities must comply with the Norms and Standards Regulations Applicable to Different Categories of Health Establishments published in *Gazette* No. 41419, Notice No. 67 of 02 February 2018.

Rights of mental health care users

15. All rights of mental health care users in accordance with the requirements of the Act and National Health Act, 2003 (Act No. 61 of 2003) must be upheld.

Mental health care user accommodation and infrastructure

16. (1) Accommodation must meet minimum space as contemplated in the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) and South African National Standards, part S.

(2) The rooms for mental health care users must be cleaned daily and kept hygienic and free from offensive odours in terms of National Environmental Health Norms and Standards for Premises for Acceptable Monitoring Standards for Environmental Health Practitioners, Notice 229 of 2015 *Gazette* No. 39561 of 03 December 2015.

(3) A mental health care user's room may not be used to accommodate children, adolescents and adults together except users who are functionally dependent and accommodated in facilities that provide assisted or supported living.

(4) A mental health care user's room may not accommodate both males and females together in the room except users who are functionally dependent and accommodated in facilities that provide total care.

User health records

17. (1) The facility must open a file for every user for official purposes only which include:

- (a) name and surname;
- (b) age and gender;
- (c) recent photo;

- (d) copy of identity document;
- (e) physical address;
- (f) next of kin details;
- (g) medical history and diagnosis;
- (h) current treatment intervention;
- (i) discharge or referral summary from the referring hospital or other facility; or
- (j) periodic reviews and reports in terms of Section 30 and Section 37 of the Act where applicable.

(2) All records must be stored in a fireproof room within the facility where necessary

(3) All documents and records relating to the governance of the facility must be kept in terms of National Archives and Record Service Act, 1996 (Act No. 43 of 1996).

Policies

18. The facility must obtain, develop, keep and have available the following policies, which include but not limited to—

- (a) management of complaints and alleged abuses;
- (b) all aspects of sexual activity;
- (c) prevention and control of infections;
- (d) occupational health and safety;
- (e) visitation;
- (f) communication;
- (g) control of firearms, dangerous weapons and illegal substances;

- (h) management of chronic and acute medical and psychiatric conditions;
- (i) management of mental health care users' assets;
- (j) smoking;
- (k) fees and tariffs;
- (l) management of disruptive and dangerous behavior;
- (m) management of medicines and medical supplies;
- (n) management of adverse events;
- (o) managing abscondment
- (p) managing notifiable diseases;
- (q) transfer; and
- (r) Security.

Clinical care and treatment

19. The licensee must ensure that-

- (a) admissions of users are carried out according to the procedures of the Act;
- (b) physical examinations are carried out in all users admitted in the facility by authorized and qualified personnel;
- (c) regular vital signs are recorded in user's file;
- (d) records of the history, initial clinical assessment and diagnosis of the users when they presented at the health establishment must be available and completed prior to or within 48hrs of admission;

- (e) record of the signature, name, qualification and subsequent assessments and intervention conducted by any healthcare provider is available in the user's file;
- (f) details of the user's care plan, daily treatment interventions and accounts of the user's response to treatment is recorded in the user's files by a registered professional;
- (g) user's clinical records are protected and comply with the legal and statutory requirements for record keeping;
- (h) periodic reviews of users in terms of Section 30 and Section 37 of the Act are conducted after every 6 months and reports are available in user's files;
- (i) psychiatric medication is reviewed every six months by an authorised mental health care practitioner who is designated to provide medication and review psychiatric treatment
- (j) there is a system in place to prevent users from accessing dangerous materials, weapons or drugs;
- (k) there is a register for recording users that have been secluded or restrained as prescribed;
- (l) the level of medical, nursing and allied professional intervention needed for each user and the source or place of this intervention (i.e. local hospital, local clinic, NGO facility doctor, visiting doctor, NGO facility nurse, visiting nurse, NGO facility allied professional and/or visiting allied professional) is clearly indicated in the individualised management plan.

Psychosocial rehabilitation

20. (1) The facility must provide psychosocial rehabilitation programmes that must include, but not limited to:

- (a) stimulation;
- (b) activities of daily living;
- (c) cognitive enhancement;
- (d) psycho-motor skills improvement;
- (e) reality orientation;
- (f) personal safety and security awareness;
- (g) community re-integration;
- (h) pre-vocational and life skills training;
- (i) optimal mobility training;
- (j) psychosocial needs; and
- (k) leisure and social skills training.

(2) The licensee must ensure that-

- (a) there is a daily attendance register for all programmes.
- (b) there is evidence of all rehabilitation intervention and progress reports recorded in each users file.
- (c) all therapeutic tools and equipment are available, maintained and stored appropriately.
- (d) tables and chairs are adequate for the number of users in the facility.
- (e) there is availability of appropriate assistive devices for all users in need of such.

- (f) all staff are trained in the correct use of assistive devices and a record is kept for the training done.
- (g) facility has an (SLA) Service Level Agreement with a local health facility for repairs of assistive devices.
- (h) there is access to community outreach rehabilitation services (Occupational Therapy, Physiotherapy and Speech Therapy and Audiology).
- (i) there is quarterly multi-disciplinary team visits and reports are compiled.
- (j) there are records of visits conducted by the multi-disciplinary team and copies or summary of the quarterly reports are available.
- (k) there is evidence of an annual rehabilitation in-service training based on the training needs.

Repeal of laws

21. Regulation 43 of the General Regulations, government No. R.1467 published in government gazette No. 27117 dated 15 December 2004 as amended by General Regulations: Amendment government No. 1590 published in government gazette No. 40515 dated 23 December 2016, is hereby repealed.

Short title and commencement

22. (1) These Regulations are called the Regulations for Licensing Community Mental Health Day Care and Residential Care Facilities for People with Mental Illness and or Severe or Profound Intellectual Disability, 2022.

(2) These Regulations comes into effect 18 months after the date of publication.

ANNEXURE A



health

Department:
Health
REPUBLIC OF SOUTH AFRICA

**APPLICATION FORM FOR LICENSING COMMUNITY
MENTAL HEALTH DAY CARE AND RESIDENTIAL CARE
FACILITIES FOR PEOPLE WITH MENTAL ILLNESS AND
OR SEVERE OR PROFOUND INTELLECTUAL DISABILITY**

1. PARTICULARS OF THE APPLICANT			
Name of Day-care/ Residential/ Half way house:			
Name of the APPLICANT			
Identity number:			
Physical address:			
Postal address:			
2. Name of the PERSON/BODY/ORGANIZATION TO MANAGE THE FACILITY:			
Physical address:			
Postal address:			
Telephone number:		Cell number:	
Fax number:		Email:	
NPO Registration Number:			
3. Background and history of organization			
4. Purpose of the service			

8. SUPPORTING DOCUMENTS: The following documents must accompany the application: Please tick checklist	
Registration documents as a legal person in terms of the South African law or NPO/NGO	
Valid zoning or re-zoning certificate	
Certificate of occupancy	
Certificate of compliance	
Certificate of acceptability for food handling	
Health certificate	
Health care risk waste contract	
Erected or converted building, written proof that building plans have been approved	
Clearance certificates for water supply (if not supplied by municipality)	
Proposed activity or psychosocial rehabilitation programme	
Facility maintenance plan	
Fire certificate	
Clinical protocol for care, treatment and rehabilitation	
Dietary plan approved by the Dietician	
Standard Operating Procedure/policy for management of risks	
Proposed staff establishment for the facility	
Copy of business plan with costing for proposed activities	
Proof of lease agreement/ ownership of property	
Approved building plan	
Bank account details and 3 months bank statement	
Valid tax clearance certificate or exemption letter from SARS	
Proof of screening against National Register for Sex offenders contemplated in Section 42(2) of the Criminal Law (sexual offences and related matters) Amendment Act.2007 (Act No.32 of 2007)	
9. GENERAL REMARKS BY THE APPLICANT IN SUPPORT OF THE APPLICATION:	

SUBMITTED BY:

PRINT NAME:

SIGNATURE:

DATE:

RECEIVED BY:

PRINT NAME:

SIGNATURE:

DATE:

ANNEXURE B



health

Department:
Health
REPUBLIC OF SOUTH AFRICA

LICENSE CERTIFICATE FOR COMMUNITY MENTAL HEALTH DAY CARE AND RESIDENTIAL CARE FACILITIES FOR PEOPLE WITH MENTAL ILLNESS AND OR SEVERE OR PROFOUND INTELLECTUAL DISABILITY

It is hereby certified that:

Name of Facility	
Physical address	
Postal address	

Is licensed in terms of Mental Health Care Act No 17 of 2002, to provide the following mental health care services to people with Mental Illness and or Severe or Profound Intellectual Disability

Type of Facility and Level of Care	Number of Mental Health Care Users	
	Child and adolescents (less than or equal to 18 years of age)	Adults (over 18 years of age)
Residential		
Day Care		

Signed at.....

this.....day of.....20.....

Head of Department

Certification number:

The duration of this license is valid for one year

This certificate is not transferable and must be renewed annually based on monitoring and evaluation reports