CONTENT

Bill for Introduction into the National Assembly—

The Mental Health Bill, 2014 ......................................................... 2523
THE MENTAL HEALTH BILL, 2014
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1—Short title.
2—Interpretation.
3—Objects and purposes of the Act.

PART II—ACCESS TO MENTAL HEALTH CARE

4—Cost, accessibility, etc. of health services.
5—Quality of health services.
6—Responsibility of national and county governments.
7—Counselling and aftercare services.
8—Promotion of community mental health care.
9—Mental health interventions in primary care.
10—Access to medication and psychosocial interventions.
11—Access to medical insurance.

PART III—DETERMINATION OF MENTAL ILLNESS

12.—Determination of mental illness.
13.—Principles for determination of mental illness.
14.—Determination by medical practitioner.

PART IV—RIGHTS OF PERSONS WITH MENTAL ILLNESS
AND DUTIES OF MENTAL HEALTH CARE PROVIDERS

15.—Right to mental health services.
16.—Protection from discrimination.
17.—Legal capacity.
18.—Consent to treatment.
19.—Access to information.
20.—Confidentiality of information.
21.—Disclosure of confidential information.
22.—Conditions at mental health care facilities.
23—Persons not to be subjected to forced labour.
24—Protection against abuse and cruel and degrading treatment.
25—Person to be informed of rights.
26—Rights of families and carers of persons with mental illness.
27—Best practices.
28—Right to representation.
29—Right to participate in treatment planning.

PART V—PROVISIONS ON ADMISSION AND TREATMENT
30—Voluntary admission.
31—Informed consent.
32—Involuntary admission.
33—Emergency admission and treatment.
34—Considerations for emergency cases.
35—Duration of emergency treatment.

PART VI—MENTALLY ILL OFFENDERS
36—Facilities for mentally ill offenders.

PART VII—SECLUSION AND RESTRAINT
37—Seclusion or restraint to be in accordance with the law.
38—Conditions for restraint or seclusion.

PART VIII—REVIEW, APPEALS, DISCHARGE AND TRANSFER OF PERSON WITH MENTAL ILLNESS
40—Appeals.
41—Discharge of person with mental illness.
42—Transfer of person with mental illness.

PART IX—CARE AND ADMINISTRATION OF PROPERTY OF PERSONS WITH MENTAL ILLNESS
43—Application for administration.
44—Receipt of evidence.
45—Order for administration.
46—Duties of a manager.
47—Inventory of property.
48—Penalty.
49—Removal of manager.

PART X—MENTAL HEALTH BOARD
50—Establishment of the Board.
51—Functions of the Board.
52—Membership of the Board.
53—Powers of the Board.
54—Conduct of business and affairs of the Board.
55—Delegation by the Board.
56—Remuneration of members of the Board.
57—Chief Executive Officer.
58—Staff.
59—The common seal of the Board.
60—Protection from personal liability.
61—Liability for damages.

PART XI—FINANCIAL PROVISIONS
62—Funds of the Board.
63—Financial year.
64—Annual estimates.
65—Accounts and audit.
66—Investment of funds.

PART XII—MISCELLANEOUS PROVISIONS
67—General penalty.
68—Repeal.

PART XIII—PROVISIONS ON DELEGATED POWERS
69—Regulations.

FIRST SCHEDULE—TRANSITIONAL PROVISIONS
SECOND SCHEDULE—PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD
THE MENTAL HEALTH BILL, 2014

A Bill for

AN ACT of Parliament to provide for the prevention of mental illnesses, care, treatment and rehabilitation of persons with mental illness; to provide for the procedures for admission, treatment and general management of persons with mental illness; to provide for the establishment of the Mental Health Board and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Mental Health Act, 2013.

2. In this Act, unless the context otherwise requires—

"Board" means the Mental Health Board established under section 50 of this Act;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to health;

"care treatment and rehabilitation" includes preventive and after care services such as counselling psychotherapy and vocational care;

"court" means the magistrate’s court;

"health care provider" means a person or institution duly licensed and accredited under the written law for the time being in force to provide health care services;

"least restrictive alternative" means health care environment involving minimum emotional, physical and social restraint during home, community or institutional-based care;

"medical practitioner" means a person registered under the Medical Practitioners and Dentists Act as a medical practitioner; Cap. 253.

"mental health care facility" means an institution,
whether private or public, duly licensed to provide mental health care services;

"mental health" means a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully and is able to make a contribution to his or her community;

"mental illness" means any illness or disorder of the mind;

"person with mental illness" means a person diagnosed as suffering from a mental illness;

"psychosocial interventions" include counselling, aftercare services and integration; and

"personal representative" means spouse, next of kin, partner, parent or guardian of the person with mental illness having legal capacity to make decisions on behalf of the person with mental illness.

3. The objects and purposes of this Act are to—

(a) promote the mental health and well being of all, including reducing the incidences of mental illness;

(b) co-ordinate the prevention of mental illness, access to mental health care, treatment and rehabilitation services to persons with mental illness;

(c) reduce the impact of mental illness, including the effects of stigma on individuals, family and the community;

(d) promote recovery from mental illnesses and enhance rehabilitation and integration of person with mental illness into the community;

(e) ensure that the rights of a person with mental illness are protected and safeguarded.
PART II—ACCESS TO MENTAL HEALTH SERVICES

4. (1) Mental health services shall be affordable, equitable and accessible to all.

   (2) The national and county governments shall ensure that there is adequate funding for mental health services to meet requirements for staffing, facilities, medication, equipment and other interventions to ensure the highest attainable quality in provision of mental health services as required under this Act.

5. Mental health services shall be of the highest quality possible and shall be provided in a manner that—

   (a) preserves the dignity of the person with mental illness;

   (b) takes into consideration and allows for treatment options which helps a person with mental illness to cope by himself or herself with the mental health illness affecting him or her;

   (c) provide relevant clinical and non-clinical care aimed at reducing the impact of the mental illness and improving the quality of life of the person with mental illness.

6. (1) The national and county governments shall determine and co-ordinate the implementation of their health policies and measures in a manner that—

   (a) ensures the provision of mental health care and treatment at health establishments at the community, primary, secondary and tertiary levels;

   (b) promotes the provision of community-based care and treatment;

   (c) ensures that adequate funding is allocated to mental health care;
(d) promotes the rights of persons with mental illness; and

(e) promotes and improves the mental health status of the people.

(2) In the provision of mental health care, priority shall be granted to community health and primary mental health care and treatment as opposed to institutionalization of the person with mental illness, having regard to the mental health condition of the person with mental illness, economic and social status of the community.

(3) Where a person with mental illness has been discharged from a mental health care facility, efforts shall be made towards re-integration of the person into the community and specialized and personalized after-care services required to enable the person with mental illness live a decent and dignified life outside the facility.

7. A person with mental illness has the right to appropriate physical and mental medical care and treatment, as well as counselling, rehabilitation and after care support necessary to help the person with mental illness recover from the illness.

8. (1) The national and county governments shall ensure that community mental health is promoted by—

(a) providing appropriate resources, facilities, services, personnel and programmes to allow persons with mental illness to be attended to at the community level; and

(b) ensuring that there exists a supportive environment that facilitates access to care and treatment and other necessary after care and supportive services.

(2) Community mental health services shall undertake the provision of—

(a) outpatient services to persons with mental illness clinics in health centres and general hospitals;
(b) rehabilitation and after-care services for persons with mental illness after discharge from a mental health facility;

(c) supervised home care and support for persons with mental illness; and

(d) services for the promotion of mental health.

9. (1) Mental health interventions in primary care shall—

(a) be comprehensive, ranging from prevention to early intervention through treatment and continuing care and prevention of relapse;

(b) target the populations that are at different levels of risk including children, women, youth, elderly persons, refugees and those affected by catastrophic incidences and emergencies.

(c) include education, awareness and training on mental health promotion and interventions.

(2) The families and carers of persons with mental illness shall be accorded support necessary to promote their mental well-being.

10. (1) A mental health facility shall have access to the same level of resources as any other health establishment, and in particular—

(a) qualified medical practitioners, including psychiatrists, psychologists, psychiatric nurses, counsellors, psychotherapists and other qualified professional staff in sufficient numbers, and with adequate space to provide each person with mental illness with privacy and a programme of appropriate therapy;

(b) diagnostic and therapeutic equipment;

(c) adequate, regular and comprehensive treatment, including supplies of medication; and
(d) appropriate professional care.

(3) The Board shall liaise with the Cabinet Secretary responsible for education to integrate into the syllabus instructions relating to mental health, including instructions on prevention, treatment, rehabilitation and other general information on mental health and related illnesses.

11. (1) A person with mental illness shall not be discriminated against or subject to unfair treatment in obtaining adequate health insurance for the care and treatment of physical and mental health problems from public and private health insurance providers.

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

PART III—DETERMINATION OF MENTAL ILLNESS

12. A determination that a person has a mental illness shall be made in accordance with the provisions of this Act and the regulations made under the Act.

13. (1) A determination of mental illness shall not be made on the basis of political, economic or social status or membership in a cultural, racial or religious group, or for any other reason not directly relevant to the mental health status of a person.

(2) A family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall not be a determining factor in the diagnosis of mental illness.

(3) A background of past treatment or hospitalization as a person with mental illness shall not of itself justify any present or future determination of mental illness.

14. A determination as to whether a person is suffering from mental illness shall be made by at least two
accredited health practitioners with at least three years experience on matters related to mental health.

**PART IV—RIGHTS OF PERSONS WITH MENTAL ILLNESS AND DUTIES OF MENTAL HEALTH SERVICE PROVIDERS**

15.  (1) Every person has the right to the highest attainable standard of health.

(2) A person with mental illness shall be treated in a humane and dignified manner, and shall have his or her privacy respected.

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

16.  (1) A person shall not be discriminated against on the ground that he or she is suffering from mental illness as provided for in Article 27 of the Constitution.

(2) The will and preference of a person with mental illness shall be respected and be the primary consideration as far as is ascertainable.

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

17.  (1) Persons with mental illness have a right to recognition as persons before the law and shall enjoy legal capacity on an equal basis with others in all aspects of life.

(2) The Government shall take appropriate measures to provide access by persons with mental illness to the support they may require in exercising their legal capacity.

(3) The court may make a determination, upon application, whether a person has legal capacity.

(4) Where a determination is made under subsection (1) that a person lacks legal capacity, the court shall appoint a personal representative to manage his or her affairs.
18. (1) Every health care provider shall, where the person with mental illness is capable of making an informed decision on the need for treatment, inform the person with mental illness of his or her right to choose an appropriate treatment of his or her own choice, and obtain written consent prior to administering any treatment.

(2) Where a person with mental illness is incapable of making an informed decision on the need for treatment, such consent must be sought and obtained from the personal representative as appointed under this Act, unless the treatment is provided under section 33.

19. (1) Every person with mental illness or their representative is entitled to access full information regarding his or her mental and other health status, clinical records and other related information maintained by mental health care facilities and service providers in accordance with Article 35 of the Constitution.

(2) Any representations made by a person with mental illness or his or her representative shall, on request, form part of that person’s records.

20. (1) All information obtained in the context of care and treatment of a person with mental illness is confidential.

(2) A person or a mental health care facility may not disclose any confidential information, except under circumstances enumerated under section 21.

21. A person or mental health care facility may disclose confidential information relating to a person with mental illness where such disclosure—

(a) is required by law or ordered by a court;

(b) is in the public interest;

(c) is necessary to prevent the likelihood of serious harm to the person with mental illness or to others;
22. (1) The environment and living conditions at a mental health care facility shall be as close as possible to those of the normal life of persons of similar age as those housed in the facility and in particular shall include—

(a) facilities for recreation and leisure activities;

(b) facilities for education and religious practice;

(c) facilities for communication;

(d) facilities suited to the social and cultural background of a person with mental illness, and for appropriate vocational rehabilitation measures to promote reintegration of the person in the community, including vocational guidance, counselling and placement;

(e) facilities necessary to ensure that the privacy and dignity of a person with mental illness is protected as required by this Act.

(2) Every mental health care facility shall be inspected by the Board at least once every six months to ensure that the conditions, treatment and care of persons with mental illness comply with the provisions of this Act and any other relevant written law.

23. (1) A person with mental illness shall not be subjected to forced labour, whether within or outside a mental health care facility.

(2) Every person with mental illness in a mental health care facility has the right to receive remuneration for any work done, similar to that payable to a person without mental illness.

24. (1) Every person, body, organization or mental health care facility providing care and treatment to a person with mental illness shall take steps to ensure that—
(a) persons with mental illness are protected from exploitation, abuse, or any cruel and degrading treatment;

(b) persons with mental illness are not subjected to any forced labour; and

(c) care and treatment services are not used as punishment or for the convenience of other people.

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

(3) A person who commits an offence under this section is liable, upon conviction, to imprisonment for a term not exceeding three years or a fine not exceeding three hundred thousand shillings, or both.

25. (1) A person with mental illness shall be informed of his or her rights under the law by the health service provider attending to him or her, in a form and language which the person understands, which information shall include an explanation of those rights and how to exercise them.

(2) Where the person with mental illness does not understand such information or does not have mental capacity for such understanding, the rights shall be communicated to the representative of that person.

26. (1) In making a decision under this Act concerning the care or treatment of a person with mental illness, including a decision to make an admission order in relation to a person, the will and preference of that person shall be the principal consideration with due regard being given to the interests of other persons who may be at risk of serious harm.

(2) Where it is proposed to make a recommendation or an admission order in respect of a person with mental illness, or to administer treatment to such person under this Act, the person shall, so far as is reasonably practicable, be notified of, the proposal and be entitled to make
representations in relation to it, either in person or through a representative, and before deciding the matter, due consideration shall be given to any representations duly made under this subsection.

(3) In making a decision under this Act concerning the care or treatment of a person with mental illness, including a decision to make an admission order, due regard shall be given to the need to respect the right of the person to dignity, integrity and privacy.

27. (1) A person with mental illness is entitled to choose and appoint a representative of his or her own choice.

(2) A person with mental illness is entitled to, where necessary, the services of a support person who shall be made available free of charge.

(3) A person with mental illness or his or her representative has the right to produce at any hearing independent medical reports or any other oral or written reports or any other evidence that is relevant to his or her mental health status.

(4) A person with mental illness or his or her personal representative has the right to attend, participate and be heard in any hearing.

28. (1) A person with mental illness has a right to participate in the formulation of his or her treatment plans.

(2) Where a person with mental illness is incapable of exercising the right under subsection (1) due to his or her mental illness a personal representative may participate in the formulation of treatment plans.

PART V—PROVISIONS ON ADMISSION AND TREATMENT

29. A person who presents himself or herself voluntarily to a mental health care facility for treatment or admission shall be entitled to receive appropriate care and treatment or to be referred to an appropriate mental health care facility.
30. (1) No mental health care, treatment or admission shall be accorded to a person with mental illness without the person’s informed consent or that of his or her representative.

(2) In order for consent to be valid under this section, it shall satisfy the following conditions—

(a) the person with mental illness or his or her representative shall be competent to give the consent;

(b) consent shall be given freely without threats or improper inducements;

(c) there shall be appropriate and adequate disclosure of all relevant information relating to treatment, including information on the kind, purpose, likely duration, effects and expected benefits of the treatment;

(d) choices, where available, shall be given to the person with mental illness;

(e) consent shall be documented in the person’s records.

31. (1) A person may be admitted involuntarily to a mental health care facility as a person with mental illness, or, having been admitted voluntarily as a person with mental illness, be retained involuntarily as a person with mental illness in the mental health care facility, if two accredited health practitioners determine, in accordance with this Act, that the person has a mental illness or disorder and considers that—

(a) because of mental illness or disorder, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or

(b) any restrictions must be based on the person’s needs, be genuinely justified and be the result of rights-based procedures and combined with effective safeguards.
(2) A mental health care facility may receive an involuntarily admitted person with mental illness, only if the facility has been designated to do so by law and only for the duration necessary to stabilize the person with mental illness, and provide mental health care services to him or her.

(3) The following factors shall be considered in cases of involuntary admission—

(a) there is evidence of a mental illness of a specified severity;

(b) there is likelihood of immediate or imminent harm to the person with mental illness or others, and a deterioration of the person’s condition if treatment or admission or both are not given;

(c) the treatment can only be given by way of admission to the health facility.

(d) Inquire on the maximum time that a person can be involuntary admitted

32. An emergency admission or treatment of a person with mental illness shall be administered where there is immediate and imminent danger to the health and safety of the person with mental illness or other people, and the nature of such immediate and imminent danger is such that there need to be urgent care and treatment to stabilize the person with mental illness.

33. (1) For any case to be considered an emergency, there shall first be shown that the time required to comply with substantive procedures would cause delay and lead to harm to the person with mental illness or to other people.

(2) Where the requirements in subsection (1) have been satisfied, the person with mental illness may be admitted to the health facility or be given treatment based on the assessment carried out by a qualified medical practitioner or other accredited mental health practitioner.

34. (1) Emergency admission or treatment shall not be prolonged for duration longer than necessary to stabilize the person with mental illness and in any case, shall not be
prolonged beyond a period of seventy-two hours, and shall be allowed only to the extent that it is necessary to treat the person with mental illness.

(2) Emergency treatment shall not include—

(a) depot neuroleptics;
(b) electroconvulsive therapy;
(c) sterilization;
(d) psychosurgery or other irreversible treatment.

(3) Procedures for emergency treatment or admission or both may be initiated immediately by a spouse, next of kin, partner, parent or guardian and authorized by a qualified medical practitioner if it is assessed that the person with mental illness is likely to require care beyond the stipulated time limit for emergency treatment.

(4) The family of the person with mental illness or their representative shall be immediately informed of the emergency procedures undertaken.

(5) A person with mental illness, his or her family or representative have the right to appeal against emergency admission or treatment to the Board.

(6) The Cabinet Secretary may, on the recommendations of the Board, make regulations on emergency treatment and admission.

PART VI—MENTALLY ILL OFFENDERS

35. (1) Whenever a medical practitioner is of the opinion that a prisoner or a remandee is mentally ill, the practitioner may, by order under his or her hand in the form prescribed, direct that such prisoner be removed to a mental health facility within the prison or outside the prison and be treated while under detention.

(2) Where a prisoner or remandee transferred to a mental health facility pursuant to subsection (1) is, in the opinion of the person in charge of such mental health facility, no longer mentally ill, the person in charge of the mental health facility shall inform the officer in charge of the prison from which the prisoner was removed, and the
prisoner shall then be delivered into the custody of the officer of that prison if still liable to be confined in prison, and if not so liable, shall be released.

(3) The period during which the prisoner has been detained in the mental health facility under this section shall be recorded as part of the prisoner’s term of imprisonment.

(4) An accused person with mental illness shall be entitled to have their criminal cases expedited and given priority over other cases.

(5) The Director of Public Prosecutions and other state officers shall expedite the process of granting mentally ill offenders within the criminal justice system the necessary authorizations and examinations and at no cost.

(6) Mentally ill offenders shall be provided mental health care and treatment by the government.

(7) There shall be special cells for mentally ill prisoners within which they shall be held separately from the rest of the prisoners or other persons with mental illness, and receive mental health care and treatment of the same quality and with the same frequency as other persons with mental illness.

(8) Mentally ill prisoners with severe mental illness may be transferred to a mental health care facility where they can receive appropriate treatment and care.

PART VII—SECLUSION AND RESTRAINT

36. (1) A person with mental illness shall not be physically restrained or secluded except in accordance with the law and the set procedures.

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

(3) Physical restraint or seclusion shall not be prolonged beyond the period which is strictly necessary to
administer treatment to the person with mental illness necessary to allow him or her to co-habit peacefully with other users within the facility, his or her family or with members of the community.

(4) All instances of physical restraint or seclusion, their reasons, nature and extent shall be recorded in the person's medical records.

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

(6) A representative of the person with mental illness shall be given prompt notice of the restraint or seclusion of the person with mental illness.

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

37. (1) Where a person with mental illness is physically restrained or secluded, a health care practitioner shall—

(a) ensure the mental health care facility has adequate facilities to safeguard the safety of that person;

(b) ensure the restraint or seclusion is not used as a punishment to the person with mental illness or for the convenience of the staff of the health facility.

(2) Restraint and seclusion shall be used as a last resort and the necessary treatment shall be availed.

PART VIII—REVIEW, APPEALS, DISCHARGE AND TRANSFER OF PERSON WITH MENTAL ILLNESS

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

(a) the nature of the illness;

(b) the need for care and treatment;

(c) the type of care and treatment provided;

(d) the need for referral, transfer or discharge; and

(e) any other matters related to the mental health status of the person with mental illness.

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

(a) the person with mental illness;

(b) the mental health care practitioner in charge of managing the person with mental illness;

(c) a personal representative of the person with mental illness;

(d) the mental health care practitioner in charge of the facility;

(e) any other person upon proof of the nature of their interest; or

(f) the Board.

(3) The procedure for review shall be as prescribed under the Regulations to this Act.

39. (1) Any decision made under review shall be subject to appeal in the first instance to the health practitioner in charge of the facility, and further to the Board.

(2) A person with mental illness or his or her representative who is not satisfied with the decision of the Board on appeal may appeal further to the High Court.
40. A person with mental illness shall be discharged where—

(a) the mental health care practitioner in charge of managing the person makes a decision to discharge the person as a result of a review;

(b) the person can no longer receive any other or further treatment from a mental health care facility and appropriate efforts are being made towards re-integration of the person into the community, and for specialized and personalized after-care service.

41. (1) Where a mental health care practitioner is of the opinion that it would be for the benefit of a person with mental illness admitted in a mental health care facility, or that it is necessary for the purpose of obtaining special treatment for such person, the person may be transferred to another mental health care facility after obtaining consent from—

(a) the person with mental illness; or

(b) the representative of the person with mental illness; or

(c) the other mental health care facility where the person with mental illness is being transferred to.

(2) A person with mental illness in a health facility other than a mental health care facility may be transferred from the health facility to a mental health care facility.

PART IX—CARE AND ADMINISTRATION OF PROPERTY OF PERSONS WITH MENTAL ILLNESS

42. (1) An application for an order for the management and administration of the estate of a person with mental illness may be made to the court by a parent, spouse or child who has attained the age of eighteen years, friend, relative or any interested person under whose care or charge the person with mental illness is.
(2) An application under subsection (1) shall be accompanied by an affidavit setting out the grounds upon which it is made and shall give full particulars as to the property and relatives of the person to whom it relates.

(3) Where the application relates to a person duly admitted as a person with mental illness, the application shall be accompanied by a certified true copy of the appropriate admission or treatment and particulars in respect of that person.

(4) The notice of the application shall, unless the court considers its service impracticable, inexpedient or would be ineffectual, be served upon the person in respect of whom the application is made in such manner as the court may direct.

(5) The court may direct that a copy of such notice be served upon any relative of the person with a mental illness or upon any other person to whom in the opinion of the court notice of the application should be given.

(6) The court may require the person in relation to whom an application is made to attend at a place and time as it may appoint for the purpose of being personally examined by the court, or by a registered medical practitioner or any other person as the court may desire in order to have a report of the mental capacity and condition of such person.

43. (1) The court shall receive evidence on affidavit or otherwise and consider any report submitted to it under the provisions of this Act as to the mental capacity of the person to whom the application relates as may be produced before it.

(2) The court may, in any proceedings under this Act, make inquiries into the properties belonging to a person alleged to be suffering from a mental illness.

44. (1) The court may make such order as it finds necessary for the administration and management of the estate of any person with mental illness, for the purpose of making provision for the person's maintenance and that of
members of his immediate family who are dependent upon him or her, and for the payment of his or her debts.

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

(3) The court shall, by notice in the Gazette, inform the public of the appointment of a person as the manager of the estate of a person who is suffering from mental illness and may allow any person to lodge an objection to the appointment.

(4) A manager appointed under subsection (3) shall act in accordance with the directions of the court, and shall exercise powers for the management of the estate as may be expressly conferred upon him or her, either specifically or generally, by any order or direction of the court or any other relevant written law.

(5) A manager shall not, without express permission of the court, mortgage, charge, or transfer any immovable property or lease that property for a term exceeding three years.

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

(2) Notwithstanding subsection (1), a manager shall not, without special permission of the court—

(a) mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;

(b) lease any such property for a term exceeding five years; or,

(c) invest in any securities other than those authorized under the Trustee Act.
(3) A manager shall not invest any funds or property belonging to the estate of which he or she is a manager, in any company or undertaking in which he or she has an interest, nor on the purchase of immovable property under the authority of section 4(1) (d) of the Trustee Act without prior consent of the court.

(4) A manager shall perform his or her duties responsibly taking into account the will and preference of the estate of the person who is suffering from mental illness.

(5) Every conveyance or other instrument made in pursuant to an order of the court shall be valid and have effect as if it were made by the person, being of sound mind and in respect of whose estate the order is made.

46. (1) Every person appointed to be a manager of the estate of a person with mental illness under this Part shall, within six months of the date of his or her appointment, deliver to the court and to the Public Trustee an inventory of the property belonging to the person in respect of whose estate he or she has been appointed manager and all sums of money, goods and effects as he or she receives on account of the estate, together with a statement of debts owed by or due to such person, in the prescribed form.

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

(3) An interested person who does not fall in the category of persons mentioned in subsection (2) above may, on payment of such fee as may be prescribed, make an application to the court to inspect and obtain a copy of any such inventory, statement or account delivered to the court and to the Public Trustee pursuant to subsection (1).

(4) The Public Trustee shall report annually to the Cabinet Secretary and the Board on all accounts delivered to him or her under subsection (1).
(5) Where any person, by petition to the court, impugns the accuracy of any inventory or statement or of any annual account made under this section, the court may summon the manager and inquire summarily into the matter, and make such order as it considers proper, or may refer the petition to a magistrate having jurisdiction in the place where the property belonging to the estate concerned is situated, for inquiry and report, and upon receipt of the magistrate's report, the court may make such order as it considers necessary.

**47.** (1) A manager who contravenes the provisions of this Part shall be liable, upon conviction, to imprisonment for a term not exceeding three years or a fine not exceeding five hundred thousand Kenya shillings, or to both.

(2) Any property of a person who is mentally which is lost due to maladministration of his or her estate shall be a civil debt recoverable summarily.

**48.** The court may, on its own motion or upon application, for any sufficient cause, remove any manager or guardian appointed by it under this Part, and may appoint any other fit person in his or her place, and may make such order as it considers necessary to ensure that the person removed transfers the property under his or her care, and of which he or she was manager, to his or her successor, and accounts to the successor for all money received or disbursed by him or her in connection with the property.

**PART X—MENTAL HEALTH BOARD**

**49.** (1) There is established a board to be known as the Mental Health Board.

(2) The Board is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
The Mental Health Bill, 2014

(c) borrowing money or making investments;

(d) entering into contracts; and

(e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The Board shall be the successor to the Board known as the Kenya Board of Mental Health existing immediately before the commencement of this Act, and subject to this Act, all rights, obligations, assets and liabilities of that Board existing at the commencement of this Act shall be automatically and fully transferred to the Board and any reference to the Kenya Board of Mental Health in any contract or document shall, for all purposes, be deemed to be a reference to the Board established under subsection (1).

(4) The provisions of the First Schedule shall apply upon the commencement of this Act.

50. The functions of the Board shall be to—

(a) advise and make recommendations to the national and county governments on the state of mental health and mental health care facilities;

(b) approve the establishment of mental health facilities;

(c) inspect mental health facilities to ensure that they meet the prescribed standards;

(d) receive and investigate any matter referred to it by a person with mental illness or relative or any representative of a person with mental illness concerning the treatment of the person with mental illness at a mental health facility and where necessary to take, or recommend to the Cabinet Secretary, any remedial action;

(e) initiate and organize community or family-based programmes aimed at promoting mental health and prevent incidences of mental illness;
(f) perform such other functions as may be conferred upon it this Act or any other written law or may be necessary in the carrying out of the Board’s functions.

51. (1) The Board shall consist of—

(a) the Director of Mental Health or his or her appointed representatives;

(b) the Director of Medical Services or his or her appointed representatives;

(c) four representatives with specialization and experience on mental health nominated by each of the following bodies and appointed by the Cabinet Secretary—

(i) representative body of psychiatrists;

(ii) representative body of psychologists;

(iii) representative body of counsellors;

(iv) representative body of nurses

(d) one person nominated by a user organization representing persons who are mentally ill;

(e) one person nominated by Kenya National Commission on Human Rights and appointed by the Cabinet Secretary;

(f) the Chief Executive Officer.

(2) In appointing the members of the Board under subsection (1)(c), (d) and (e), the Cabinet Secretary shall take into consideration gender balance and diversity in qualifications of persons being appointed.

(3) The members of the Board shall, at their first meeting, elect a chairperson from amongst the members of the Board appointed under subsection (1)(c), (d) and (e).
(3) A person shall not be appointed as a member of the Board if such person—

(a) has been convicted of an offence by a court of competent jurisdiction and sentenced to imprisonment for a term of six months or more;

(b) is adjudged bankrupt or has entered into a composition, scheme or arrangement with his or her creditors;

(c) is disqualified under the provisions of any other written law from appointment as such.

(5) A member of the Board other than an ex-officio member shall hold office for a period of three years, but shall be eligible for re-appointment for a further and final term of three years.

(6) A member of the Board, other than an ex officio member, may—

(a) at any time resign from office by notice in writing to the chairperson;

(b) be removed from office if the member—

(i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(v) is incapable of performing his or her duties
52. The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

(a) enter into contracts;

(b) manage, control and administer its assets in such manner and for such purposes as best promote the purpose for which it is established;

(c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;

(d) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

(e) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which it is established;

(f) open such banking accounts for its funds as may be necessary;

(g) invest any of its funds not immediately required for its purposes;

(h) undertake any activity necessary for the fulfilment of any of its functions.

53. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule.

(2) Except as provided in the Second Schedule, the Board may regulate its own procedure.

54. The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions or duties under this Act or under any other written law.
55. The remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission.

56. (1) There shall be a Chief Executive of the Board who shall be appointed by the Board through a competitive process.

(2) The Chief Executive Officer shall hold office for a term of five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment.

(3) The Chief Executive Officer shall be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board.

(4) The Chief Executive Officer shall—

(a) subject to the direction of the Board, be responsible for the day to day management of the Board;

(b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Board;

(c) be the secretary of the Board.

57. The Board may appoint such officers, agents and other staff as are necessary for the proper and efficient discharge of its functions under this Act, upon such terms and conditions of service as the Board may determine.

58. (1) The common seal of the Board shall be kept in the custody of the Chief Executive Officer or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

(2) The common seal of the Board, when affixed to a document and duly authenticated, shall be judicially and
officially noticed, and unless the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Board shall be authenticated by the signature of the chairperson of the Board and the Chief Executive Officer.

(4) The Board shall, in the absence of either the chairperson or the Chief Executive Officer, in any particular matter, nominate one member of the Board to authenticate the seal of the Board on behalf of either the chairperson or the Chief Executive Officer.

59. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Board shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Board under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that such act was done bona fide, be paid out of the general funds of the Board, unless such expenses are recovered by him in such suit or prosecution.

60. The provisions of section 60 shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

PART XI—FINANCIAL PROVISIONS

61. (1) The funds of the Board shall consist of—

(a) donations, grants, loans or gifts made to the Board and approved by the Cabinet Secretary and the Cabinet Secretary for the time being responsible for matters relating to finance; and
2.5.5-+ The Mental Health Bill, 2014

(b) such fees, monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any written law.

(2) There shall be paid out of the funds of the Board any expenditure incurred by the Board in the exercise of its powers or the performance of its functions under this Act.

62. The financial year of the Board shall be the period of twelve months ending on the thirtieth June in each year.

63. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of its revenue and expenditure for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Board for the financial year and in particular, the estimates shall provide for the—

(a) payment of the salaries, allowances and other charges in respect of members and staff of the Board;

(b) payment of pensions, gratuities and other charges in respect of members and staff of the Board;

(c) proper maintenance of the buildings and grounds of the Board;

(d) maintenance, repair and replacement of the equipment and other property of the Board; and

(e) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to
which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorisation of the Board given with prior written approval of the Cabinet Secretary.

64. (1) The Board shall cause to be kept proper books and records of accounts of its income, expenditure and assets.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General, its accounts together with—
(a) a statement of the income and expenditure of the Board during that year; and
(b) a balance sheet of the Board on the last day of that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003.

65. (1) The Board may invest any of its funds in securities in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

(2) The Board may place on deposit, with such bank or banks as it may determine, any moneys not immediately required for its purposes, as it may determine.

PART XII—MISCELLANEOUS PROVISIONS

66. A person who commits an offence under this Act for which no penalty is prescribed shall be liable, on conviction, to imprisonment for a term not exceeding five years or a fine not exceeding five hundred thousand shillings, or both.
67. The Mental Health Act is repealed.

PART XIII- PROVISIONS ON DELEGATED POWERS

68. (1) The Cabinet Secretary may, on the recommendation of the Board, make regulations generally for the better carrying into effect the provisions of this Act in compliance with the principles and standards set under this Act.

(2) Without prejudice to the generality of the foregoing, regulations made under subsection (1) may—

(a) prescribe anything required by this Act to be prescribed;

(b) provide for the setting of quality standards and norms for care, treatment and rehabilitation of person with mental illness;

(c) provide for matters related to the rights and responsibilities of person with mental illness in mental health facilities;

(d) prescribe the forms to be used under this Act;

(e) prescribe the forms and procedures to be used in the authorization and licensing of mental health institutions and the conditions to be attached under such authorization or licence;

(f) provide for accreditation of mental health practitioners as well as mental health facilities.

FIRST SCHEDULE

TRANSITIONAL PROVISIONS

1. In this Schedule—

“appointed day” means the day on which this Act comes into force;
"assets" include all property movable or immovable and all estates, easements and rights whether equitable or legal in, over or out of property, choses-in-action, money or goodwill of the former institutions whether situated in Kenya or elsewhere;

"former Board" means the Board known as the Kenya Board of Mental Health existing immediately before the commencement of this Act;

"liabilities" means liabilities, debts, charges, duties and obligations of every description, whether present or future, actual or contingent, and whether to be observed or performed in Kenya or elsewhere; and

"rights" means all rights, powers, privileges and immunities whether actual, contingent or prospective, whether observed or performed in Kenya or elsewhere.

2. (1) On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before such day were vested in the former Board shall, by virtue of this paragraph, vest in the Board.

(2) On the appointed day, all rights, powers and liabilities, which immediately before such day were vested in, imposed on or enforceable against the former Board, shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Board.

(3) If, on the appointed day, any suit, appeal, arbitration or other proceedings of whatever nature and wheresoever instituted in relation to the business of the former Board which is, by virtue of this paragraph, transferred to the Board, shall not abate, be discontinued or be in any way prejudicially affected by reason of such transfer of the business of the former Board or of anything contained in this Act, and any suit, appeal arbitration or other proceedings shall be continued, and enforced by or against the Board.

(4) In the case of assets and liabilities arising under any loans which vest in the Board on the appointed day, the Board may enter into such arrangements or agreements
over such rights and liabilities with the Government or any other third party.

3. Any reference in any written law or in any document or instrument to the former Board shall, on and after the appointed day, be construed to be a reference to the Board.

4. Any proceedings pending immediately before the appointed day to which the former Board was a party shall be continued as if the Board was a party thereto in lieu of the former Board.

5. Every agreement, deed, bond or other instrument to which the former Board was a party or which affected the former Board and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Board were a party thereto or affected thereby instead of the former Board and as if for every reference (whether express or implied) therein to the former Board there were substituted in respect of anything to be done on or after the appointed day.

6. The administrative decisions made by the former Board or by the Cabinet Secretary which are in force immediately before the appointed day shall, on or after such day, have force as if they were directions made by the Board or the Cabinet Secretary under this Act.

7. (1) Any person who, at the commencement of this Act, is a member of staff of the former Board shall, on the appointed day, become a member of staff of the Board on the same or improved terms and conditions of service as may be specified by the Cabinet Secretary.

(2) Notwithstanding subparagraph (1), a member of staff of the former Board may retire on the basis of abolition of office in accordance with the existing regulations.

8. (1) Where on the appointed day—

(a) any disciplinary proceedings against any member
of staff of the former Board are in the course of being heard or instituted, or have been heard or investigated by the former Board but no order or decision has been made thereon;

(b) any such member of staff is interdicted or suspended,

the Board shall—

(i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and

(ii) in the case of paragraph (b), deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him or her, including the completion of disciplinary proceedings that have been commenced against that member of staff.

(2) Where on the appointed day, any penalty, other than dismissal, has been imposed on any member of staff of the former Board pursuant to disciplinary proceedings against him or her and the penalty has not been, or remains to be, serviced by such member of staff, he or she shall, on his or her transfer to the Board, serve or continue to serve such penalty to its full as if it had been imposed by the Board.

(1) A member of staff of the former Board who becomes a member of staff of the Board shall continue to be governed by the existing Government pension scheme.

(2) Where any person whose services are transferred to the Board is, on the appointed day, a member of any statutory voluntary pension scheme or provident fund, the person shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if he or she had not been so transferred, and for purposes of the regulations governing those schemes or funds, service with the Board shall be deemed to be service in the former Board.
SECOND SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

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

(4) The quorum for the conduct of the business of the Board shall be five members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

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

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before
the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) Notwithstanding subparagraph (1), if the majority of members of the Board present in a meeting are of the opinion that the experience or expertise of a member referred to in subparagraph (1) is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

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

(4) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

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

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.
MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide a legal framework for the care, treatment and rehabilitation of persons with mental illness. It seeks to establish procedures for admission, treatment and overall management of persons with mental illness.

Part I contains preliminary provisions.

Part II contains provisions relating to access to mental health care. It among other things require that such care be affordable, equitable and accessible to all. Similarly, it spells out the responsibilities of the national and county governments regarding provision of mental health care.

Part III contains provisions on the determination of mental illness, and lays down the principles to be followed in making that determination.

Part IV contains provisions relating to the rights of persons with mental illness, and the duties of mental health care provides. The objective of this Part is to ensure that persons with mental illness are treated with dignity and respect due to them as human beings, and that mental health care providers carry out their duties in a manner consistent with the objectives sought to be achieved by this Bill.

Part V contains provisions relating to the admission and treatment of persons with mental illness.

PART VI provides for mentally ill offenders and stipulates how they should be dealt with under the criminal justice system.

PART VII contains provisions on the seclusion and restraint of persons with mental illness.

PART VIII provides for the review, appeal, discharge and transfer of persons with mental illness.

PART IX provides for the care and administration of the property of persons with mental illness. This is intended to ensure that such property does not go to waste on account of the illness of such person.
PART X contains provisions on the establishment, powers and functions of the Mental Health Board as the body responsible for the coordination of mental health care activities in Kenya.

PART XI contains financial provisions relating to the Board.

PART XII contains miscellaneous provisions.

PART XIII Provisions on Delegated Powers

This Bill once enacted will confer on a number of bodies and persons authority to make provisions having the force of law in Kenya in terms of Article 94 (6) of the Constitution of Kenya. 2010.

The Cabinet Secretary for the time being responsible for matters relating to health for instance is given authority by section 69 of this Act to make regulations on the recommendation of the Board. The purpose and objectives of making these regulations include the following:

(a) provide for the setting of quality standards and norms for care, treatment and rehabilitation of person with mental illness;

(b) provide for matters related to the rights and responsibilities of person with mental illness in mental health facilities;
(c) prescribe the forms to be used under this Act;

(d) prescribe the forms and procedures to be used in the authorization and licensing of mental health institutions and the conditions to be attached under such authorization or licence;

(e) provide for accreditation of mental health practitioners as well as mental health facilities.

Limits of the Delegated Authority

(f) The regulations made under this Act by the Cabinet Secretary will be limited to bringing into effect provisions of this Act and will therefore affect the quality standards and norms for care, treatment rehabilitation and rights and responsibilities of persons
with mental illness including accreditation of mental health practitioners as well as mental health facilities.

This Bill is a Bill concerning county governments.

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 26th November, 2013.

JOSEPH LEKUTON,
Member of the National Assembly.