



WORLD HEALTH ORGANIZATION

## WHO Checklist on Mental Health Legislation

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## Introduction and how to use this checklist

This checklist is a companion to the WHO *Resource Book on Mental Health, Human Rights and Legislation*. Its objectives are to: a) assist countries in reviewing the comprehensiveness and adequacy of existing mental health legislation; and b) help them in the process of drafting new law. This checklist can help countries assess whether key components are included in legislation, and ensure that the broad recommendations contained in the Resource Book are carefully examined and considered.

A *committee* to work through the checklist is recommended. While an individual in, for example, the ministry of health, may be able to complete the checklist, this has certain limitations. First, no single person is likely to have all the relevant information that a well selected team would have. Secondly, different individuals or representatives of different groups are likely to have differing views on various issues. An evaluation committee that allows critical debate and the development of a consensus is invaluable. Although countries should decide for themselves on the composition of the committee, it is advisable to include a legal practitioner familiar with the various national laws, the governmental mental health focal point, representatives of service user and family groups, and representatives of mental health professionals, NGOs and different government departments. It is recommended that the process be led and mediated by an independent human rights and/or legal expert.

This checklist should generally *not be utilized without thoroughly studying the Resource Book itself*. A number of important items included in the checklist are explained in the Resource Book, and the rationale and different options for legislation are discussed. The Resource Book emphasizes that countries should make their own decisions about various alternatives and ways of drafting legislation as well as about a number of content issues. The format of this checklist allows for such flexibility, and aims to encourage internal debate; it thus permits countries to make decisions based on their own unique situations.

The checklist covers issues from a broad perspective, and many of the provisions will need to be fleshed out or elaborated upon with respect to details and country specifications. Moreover, not all provisions will be equally relevant to all countries due to different social, economic, cultural and political factors. For example, not all countries will choose to have community treatment orders; not all countries have provision for “non-protesting patients”; and in most countries, sterilization of people with mental disorders will not be relevant. However, while each country in its evaluative process may determine that a particular provision is not relevant, this determination should be made part of the checklist exercise. All provisions in the checklist should be considered and discussed carefully before it is decided that one (or more) of the provisions is not relevant to a country’s particular context.

The Resource Book points out that countries may have laws that affect mental health in a single statute or in numerous different statutory laws relating to areas such as general health, employment, housing, discrimination and criminal justice. Moreover, some countries utilize regulations, orders and other mechanisms to complement a statutory act. It is therefore essential, when conducting this audit, to collect and collate all legal provisions pertaining to mental health, and to make decisions based on comprehensive information.

The Resource Book makes it clear that drawing up or changing mental health legislation is a “process”. Establishing what needs to be included in the legislation is an important element of that process, and this checklist can be a useful aid to achieving this goal. Nonetheless, the objective of drafting a law that can be implemented in a country must never be separated from the “content”, and must always be a central consideration.

## WHO Checklist on Mental Health Legislation

For each component included in the checklist, three questions need to be addressed: a) Has the issue been adequately covered in the legislation? b) Has it been covered, but not fully and comprehensively? c) Has it not been covered at all? If the response is either (b) or (c), the committee conducting the assessment must decide on the feasibility and local relevance of including the issue, leading to the drafting of locally appropriate legislation.

This checklist does not cover each and every issue that could or should be included in legislation. This does not mean that other items are unimportant and that countries should not pursue them; however, for the sake of simplicity and ease of use, the scope of this checklist has been limited.

| Legislative issue   | Extent to which covered in legislation (tick one)   | If (b), explain:<br>• Why it is not adequately covered<br>• What is missing or problematic about the existing provision<br><br>If (c), explain why it is not covered in current legislation<br>(Additional information may be added to new pages if required) | If (b) or (c), explain how/whether it is to be included in new legislation<br>(Additional information may be added to new pages if required) |
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| <b>A. Preamble and objectives</b><br><br>1) Does the legislation have a preamble which emphasizes:<br>a) the human rights of people with mental disorders?<br><br>b) the importance of accessible mental health services for all? | a) Adequately covered<br>b) Covered to some extent<br>c) Not covered at all<br><br><br>a)<br>b)<br>c)<br><br><br>a)<br>b)<br>c) |   |  |

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| <p>2) Does the legislation specify that the purpose and objectives to be achieved include:</p> <ul style="list-style-type: none"> <li>a) non-discrimination against people with mental disorders?</li> <li>b) promotion and protection of the rights of people with mental disorders?</li> <li>c) improved access to mental health services?</li> <li>d) a community-based approach?</li> </ul> | <ul style="list-style-type: none"> <li>a)</li> <li>b)</li> <li>c)</li> </ul><br><ul style="list-style-type: none"> <li>a)</li> <li>b)</li> <li>c)</li> </ul><br><ul style="list-style-type: none"> <li>a)</li> <li>b)</li> <li>c)</li> </ul><br><ul style="list-style-type: none"> <li>a)</li> <li>b)</li> <li>c)</li> </ul> |  |  |
| <p><b>B. Definitions</b></p> <p>1) Is there a clear definition of mental disorder/mental illness/mental disability/mental incapacity?</p>   | <ul style="list-style-type: none"> <li>a)</li> <li>b)</li> <li>c)</li> </ul>   |  |  |

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| <p>2) Is it evident from the legislation why the particular term (above) has been chosen?</p>   | <p>a)<br/>b)<br/>c)</p> |  |  |
| <p>3) Is the legislation clear on whether or not mental retardation/intellectual disability, personality disorders and substance abuse are being covered in the legislation?</p>          | <p>a)<br/>b)<br/>c)</p> |  |  |
| <p>4) Are all key terms in the legislation clearly defined?</p>   | <p>a)<br/>b)<br/>c)</p> |  |  |
| <p>5) Are all the key terms used consistently throughout the legislation (i.e. not interchanged with other terms with similar meanings)?</p>  | <p>a)<br/>b)<br/>c)</p> |  |  |
| <p>6) Are all "interpretable" terms (i.e. terms that may have several possible interpretations or meanings or may be ambiguous in terms of their meaning) in the legislation defined?</p> | <p>a)<br/>b)<br/>c)</p> |  |  |

| C. Access to mental health care   |                |  |  |
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| 1) Does the legislation make provision for the financing of mental health services?   | a)<br>b)<br>c) |  |  |
| 2) Does the legislation state that mental health services should be provided on an equal basis with physical health care?                           | a)<br>b)<br>c) |  |  |
| 3) Does the legislation ensure allocation of resources to underserved populations and specify that these services should be culturally appropriate? | a)<br>b)<br>c) |  |  |
| 4) Does the legislation promote mental health within primary health care?   | a)<br>b)<br>c) |  |  |
| 5) Does the legislation promote access to psychotropic drugs?   | a)<br>b)<br>c) |  |  |
| 6) Does the legislation promote a psychosocial, rehabilitative approach?  | a)<br>b)<br>c) |  |  |
| 7) Does the legislation promote access to health insurance in the private and public health sector for people with mental disorders?                | a)<br>b)<br>c) |  |  |

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| <p>8) Does the legislation promote community care and deinstitutionalization?</p>   | <p>a)<br/>b)<br/>c)</p>   |  |  |
| <p><b>D. Rights of users of mental health services</b></p> <p>1) Does the legislation include the rights to respect, dignity and to be treated in a humane way?</p> <p>2) Is the right to patients' confidentiality regarding information about themselves, their illness and treatment included?</p> <p>a) Are there sanctions and penalties for people who contravene patients' confidentiality?</p> <p>b) Does the legislation lay down exceptional circumstances when confidentiality may be legally breached?</p> <p>c) Does the legislation allow patients and their personal representatives the right to ask for judicial review of, or appeal against, decisions to release information?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |

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| <p>3) Does the legislation provide patients free and full access to information about themselves (including access to their clinical records)?</p> <p>a) Are circumstances in which such access can be denied outlined?</p> <p>b) Does the legislation allow patients and their personal representatives the right to ask for judicial review of, or appeal against, decisions to withhold information?</p> | <p>a)</p> <p>b)</p> <p>c)</p>                               |  |  |
| <p>4) Does the law specify the right to be protected from cruel, inhuman and degrading treatment?</p>   | <p>a)</p> <p>b)</p> <p>c)</p>                               |  |  |
| <p>5) Does the legislation set out the minimal conditions to be maintained in mental health facilities for a safe, therapeutic and hygienic environment?</p>  | <p>a)</p> <p>b)</p> <p>c)</p>                               |  |  |
| <p>6) Does the law insist on the privacy of people with mental disorders?</p> <p>a) Is the law clear on minimal levels of privacy to be respected?</p>  | <p>a)</p> <p>b)</p> <p>c)</p> <p>a)</p> <p>b)</p> <p>c)</p> |  |  |

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| <p>7) Does the legislation outlaw forced or inadequately remunerated labour within mental health institutions?</p> <p>8) Does the law make provision for:</p> <ul style="list-style-type: none"> <li>• educational activities,</li> <li>• vocational training,</li> <li>• leisure and recreational activities, and</li> <li>• religious or cultural needs of people with mental disorders?</li> </ul> <p>9) Are the health authorities compelled by the law to inform patients of their rights?</p> <p>10) Does legislation ensure that users of mental health services are involved in mental health policy, legislation development and service planning?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
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| <p><b>E. Rights of families or other carers</b></p> <p>1) Does the law entitle families or other primary carers to information about the person with a mental disorder (unless the patient refuses the divulging of such information)?</p> <p>a)<br/>b)<br/>c)</p> <p>2) Are family members or other primary carers encouraged to become involved in the formulation and implementation of the patient's individualized treatment plan?</p> <p>a)<br/>b)<br/>c)</p> <p>3) Do families or other primary carers have the right to appeal involuntary admission and treatment decisions?</p> <p>a)<br/>b)<br/>c)</p> <p>4) Do families or other primary carers have the right to apply for the discharge of mentally ill offenders?</p> <p>a)<br/>b)<br/>c)</p> <p>5) Does legislation ensure that family members or other carers are involved in the development of mental health policy, legislation and service planning?</p> <p>a)<br/>b)<br/>c)</p> | <p><b>F. Competence, capacity and guardianship</b></p> <p>1) Does legislation make provision for the management of the affairs of people with mental disorders if they are unable to do so?</p> <p>a)<br/>b)<br/>c)</p> |  |  |
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| <p>2) Does the law define “competence” and “capacity”?</p> <p>3) Does the law lay down a procedure and criteria for determining a person's incapacity/incompetence with respect to issues such as treatment decisions, selection of a substitute decision-maker, making financial decisions?</p> <p>4) Are procedures laid down for appeals against decisions of incapacity/incompetence, and for periodic reviews of decisions?</p> <p>5) Does the law lay down procedures for the appointment, duration, duties and responsibilities of a guardian to act on behalf of a patient?</p> <p>6) Does the law determine a process for establishing in which areas a guardian may take decisions on behalf of a patient?</p> <p>7) Does the law make provision for a systematic review of the need for a guardian?</p> <p>8) Does the law make provision for a patient to appeal against the appointment of a guardian?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
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| <p><b>G. Voluntary admission and treatment</b></p>   | <p>1) Does the law promote voluntary admission and treatment as a preferred alternative to involuntary admission and treatment?</p> | <p>a)<br/>b)<br/>c)</p> |  |  |
| <p>2) Does the law state that all voluntary patients can only be treated after obtaining informed consent?</p>   | <p>a)<br/>b)<br/>c)</p>   |                         |  |  |
| <p>3) Does the law state that people admitted as voluntary mental health users should be cared for in a way that is equitable with patients with physical health problems?</p>                     | <p>a)<br/>b)<br/>c)</p>   |                         |  |  |
| <p>4) Does the law state that voluntary admission and treatment also implies the right to voluntary discharge/refusal of treatment?</p>  | <p>a)<br/>b)<br/>c)</p>   |                         |  |  |
| <p>5) Does the law state that voluntary patients should be informed at the time of admission that they may only be denied the right to leave if they meet the conditions for involuntary care?</p> | <p>a)<br/>b)<br/>c)</p>   |                         |  |  |

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| <p><b>H. Non-protesting patients</b></p> <p>1) Does the law make provision for patients who are incapable of making informed decisions about admission or treatment; but who do not refuse admission or treatment?</p> <p>2) Are the conditions under which a non-protesting patient may be admitted and treated specified?</p> <p>3) Does the law state that if users admitted or treated under this provision object to their admission or treatment they must be discharged or treatment stopped unless the criteria for involuntary admission are met?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
| <p><b>I. Involuntary admission (when separate from treatment) and involuntary treatment (where admission and treatment are combined)</b></p> <p>1) Does the law state that involuntary admission may only be allowed if:</p> <p>a) there is evidence of mental disorder of specified severity? and;</p>  | <p>a)<br/>b)<br/>c)</p>   |  |  |

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| <p>b) there is serious likelihood of harm to self or others and/or substantial likelihood of serious deterioration in the patient's condition if treatment is not given? and;</p> <p>c) admission is for a therapeutic purpose?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> | <p>2) Does the law state that two accredited mental health care practitioners must certify that the criteria for involuntary admission have been met?</p> <p>3) Does the law insist on accreditation of a facility before it can admit involuntary patients?</p> <p>4) Is the principle of the least restrictive environment applied to involuntary admissions?</p> <p>5) Does the law make provision for an independent authority (e.g. review body or tribunal) to authorize all involuntary admissions?</p> <p>6) Are speedy time frames laid down within which the independent authority must make a decision?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |
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| <p>7) Does the law insist that patients, families and legal representatives be informed of the reasons for admission and of their rights of appeal?</p> <p>8) Does the law provide for a right to appeal an involuntary admission?</p> <p>9) Does the law include a provision for time-bound periodic reviews of involuntary (and long-term "voluntary") admission by an independent authority?</p> <p>10) Does the law specify that patients must be discharged from involuntary admission as soon as they no longer fulfill the criteria for involuntary admission?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
| <p><b>J. Involuntary treatment (when separate from involuntary admission)</b></p> <p>1) Does the law set out the criteria that must be met for involuntary treatment, including:</p> <ul style="list-style-type: none"> <li>• Patient suffers from a mental disorder?</li> </ul>  | <p>a)<br/>b)<br/>c)</p>   |  |  |

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| <ul style="list-style-type: none"> <li>• Patient lacks the capacity to make informed treatment decisions?</li> <li>• Treatment is necessary to bring about an improvement in the patient's condition, and/or restore the capacity to make treatment decisions, and/or prevent serious deterioration, and/or prevent injury or harm to self or others?</li> </ul> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
| <p>2) Does the law ensure that a treatment plan is proposed by an accredited practitioner with expertise and knowledge to provide the treatment?</p>   | <p>a)<br/>b)<br/>c)</p>                         |  |  |
| <p>3) Does the law make provision for a second practitioner to agree on the treatment plan?</p>  | <p>a)<br/>b)<br/>c)</p>                         |  |  |
| <p>4) Has an independent body been set up to authorize involuntary treatment?</p>  | <p>a)<br/>b)<br/>c)</p>                         |  |  |
| <p>5) Does the law ensure that treatment is for a limited time period only?</p>  | <p>a)<br/>b)<br/>c)</p>                         |  |  |

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| <p>6) Does the law provide for a right to appeal involuntary treatment?</p> <p>7) Are there speedy, time-bound, periodic reviews of involuntary treatment in the legislation?</p>  | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p>                         |  |  |
| <p><b>K. Proxy consent for treatment</b></p> <p>1) Does the law provide for a person to consent to treatment on a patient's behalf if that patient has been found incapable of consenting?</p> <p>2) Is the patient given the right to appeal a treatment decision to which a proxy consent has been given ?</p> <p>3) Does the law provide for use of "advance directives" and, if so, is the term clearly defined?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
| <p><b>L. Involuntary treatment in community settings</b></p> <p>1) Does the law provide for involuntary treatment in the community as a "less restrictive" alternative to an inpatient mental health facility?</p>   | <p>a)<br/>b)<br/>c)</p>   |  |  |

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| <p>2) Are all the criteria and safeguards required for involuntary inpatient treatment also included for involuntary community-based treatment?</p> <p>a)<br/>b)<br/>c)</p>  |  |  |  |
| <p><b>M. Emergency situations</b></p> <p>1) Are the criteria for emergency admission/treatment limited to situations where there is a high probability of immediate and imminent danger or harm to self and/or others?</p> <p>2) Is there a clear procedure in the law for admission and treatment in emergency situations?</p> <p>3) Does the law allow any qualified and accredited medical or mental health practitioner to admit and treat emergency cases?</p> <p>4) Does the law specify a time limit for emergency admission (usually no longer than 72 hours)?</p> <p>5) Does the law specify the need to initiate procedures for involuntary admission and treatment, if needed, as soon as possible after the emergency situation has ended?</p> <p>a)<br/>b)<br/>c)</p> |  |  |  |

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| <p>6) Are treatments such as ECT, psychosurgery and sterilization, as well as participation in clinical or experimental trials outlawed for people held as emergency cases?</p> <p>7) Do patients, family members and personal representatives have the right to appeal against emergency admission/treatment?</p>  | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p>                         |  |  |
| <p><b>N. Determinations of mental disorder</b></p> <p>1) Does the legislation:</p> <p>a) Define the level of skills required to determine mental disorder?</p> <p>b) Specify the categories of professionals who may assess a person to determine the existence of a mental disorder?</p> <p>2) Is the accreditation of practitioners codified in law and does this ensure that accreditation is operated by an independent body?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |

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| <p><b>O. Special treatments</b></p> <p>1) Does the law prohibit sterilization as a treatment for mental disorder?</p> <p>a) Does the law specify that the mere fact of having a mental disorder should not be a reason for sterilization or abortion without informed consent?</p> <p>2) Does the law require informed consent for major medical and surgical procedures on persons with a mental disorder?</p> <p>a) Does the law allow medical and surgical procedures without informed consent, if waiting for informed consent would put the patient's life at risk?</p> <p>b) In cases where inability to consent is likely to be long term, does the law allow authorization for medical and surgical procedures from an independent review body or by proxy consent of a guardian?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
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| <p>3) Are psychosurgery and other irreversible treatments outlawed on involuntary patients?</p> <p>a) Is there an independent body that makes sure there is indeed informed consent for psychosurgery or other irreversible treatments on involuntary patients?</p> <p>4) Does the law specify the need for informed consent when using ECT?</p> <p>5) Does the law prohibit the use of unmodified ECT?</p> <p>6) Does the law prohibit the use of ECT in minors?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
| <p><b>P. Seclusion and restraint</b></p> <p>1) Does the law state that seclusion and restraint should only be utilized in exceptional cases to prevent immediate or imminent harm to self or others?</p> <p>2) Does the law state that seclusion and restraint should never be used as a means of punishment or for the convenience of staff?</p>   | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p>   |  |  |

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| <p>3) Does the law specify a restricted maximum time period for which seclusion and restraints can be used?</p> <p>4) Does the law ensure that one period of seclusion and restraint is not followed immediately by another?</p> <p>5) Does the law encourage the development of appropriate structural and human resource requirements that minimize the need to use seclusion and restraints in mental health facilities?</p> <p>6) Does the law lay down adequate procedures for the use of seclusion and restraints, including:</p> <ul style="list-style-type: none"> <li>• who should authorize it,</li> <li>• that the facility should be accredited,</li> <li>• that the reasons and duration of each incident be recorded in a database and made available to a review board, and</li> <li>• that family members/carers and personal representatives be immediately informed when the patient is subject to seclusion and/or restraint?</li> </ul> | <p>a)</p> <p>b)</p> <p>c)</p> <p>a)</p> <p>b)</p> <p>c)</p> <p>a)</p> <p>b)</p> <p>c)</p> <p>a)</p> <p>b)</p> <p>c)</p> |  |  |
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| <p><b>Q. Clinical and experimental research</b></p> <p>1) Does the law state that informed consent must be obtained for participation in clinical or experimental research from both voluntary and involuntary patients who have the ability to consent?</p> <p>2) Where a person is unable to give informed consent (and where a decision has been made that research can be conducted):</p> <p>a) Does the law ensure that proxy consent is obtained from either the legally appointed guardian or family member, or from an independent authority constituted for this purpose?</p> <p>b) Does the law state that the research cannot be conducted if the same research could be conducted on people capable of consenting, and that the research is necessary to promote the health of the individual and that of the population represented?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
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| <p><b>R. Oversight and review mechanisms</b></p> <p>1) Does the law set up a judicial or quasi-judicial body to review processes related to involuntary admission or treatment and other restrictions of rights?</p> <p>a) Does the above body:</p> <p>(i) Assess each involuntary admission/ treatment?</p> <p>(ii) Entertain appeals against involuntary admission and/or involuntary treatment?</p> <p>(iii) Review the cases of patients admitted on an involuntary basis (and long-term voluntary patients)?</p> <p>(iv) Regularly monitor patients receiving treatment against their will?</p> <p>(v) Authorize or prohibit intrusive and irreversible treatments (such as psychosurgery and ECT)?</p> | <p>a)</p> <p>b)</p> <p>c)</p> <p>a)</p> <p>b)</p> <p>c)</p> <p>a)</p> <p>b)</p> <p>c)</p> <p>a)</p> <p>b)</p> <p>c)</p> <p>a)</p> <p>b)</p> <p>c)</p> <p>a)</p> <p>b)</p> <p>c)</p> |  |  |
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| <p>b) Does the composition of this body include an experienced legal practitioner and an experienced health care practitioner, and a “wise person” reflecting the “community” perspective?</p> <p>c) Does the law allow for appeal of this body’s decisions to a higher court?</p> <p>2) Does the law set up a regulatory and oversight body to protect the rights of people with mental disorders within and outside mental health facilities?</p> <p>a) Does the above body:</p> <p>(i) Conduct regular inspections of mental health facilities?</p> <p>(ii) Provide guidance on minimizing intrusive treatments?</p> <p>(iii) Maintain statistics; on, for example, the use of intrusive and irreversible treatments, seclusion and restraints?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
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| <p>(iv) Maintain registers of accredited facilities and professionals?</p> <p>(v) Report and make recommendations directly to the appropriate government minister?</p> <p>(vi) Publish findings on a regular basis?</p> <p>b) Does the composition of the body include professionals (in mental health, legal, social work), representatives of users of mental health facilities, members representing families of people with mental disorders, advocates and lay persons?</p> <p>c) Is this body's authority clearly stated in the legislation?</p> <p>a) Does the legislation outline procedures for submissions, investigations and resolutions of complaints?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
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| <p>b) Does the law stipulate:</p> <ul style="list-style-type: none"> <li>• the time period from the occurrence of the incident within which the complaint should be made?</li> <li>• a maximum time period within which the complaint should be responded to, by whom and how?</li> <li>• the right of patients to choose and appoint a personal representative and/or legal counsel to represent them in any appeals or complaints procedures?</li> <li>• the right of patients to an interpreter during the proceedings, if necessary?</li> <li>• The right of patients and their counsel to access copies of their medical records and any other relevant reports and documents during the complaints or appeals procedures?</li> </ul> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
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| <ul style="list-style-type: none"> <li>the right of patients and their counsel to attend and participate in complaints and appeals procedures?</li> </ul>   | <p>a)<br/>b)<br/>c)</p>   |  |  |
| <p><b>S. Police responsibilities</b></p> <p>1) Does the law place restrictions on the activities of the police to ensure that persons with mental disorders are protected against unlawful arrest and detention, and are directed towards the appropriate health care services?</p> <p>2) Does the legislation allow family members, carers or health professionals to obtain police assistance in situations where a patient is highly aggressive or is showing out-of-control behaviour?</p> <p>3) Does the law allow for persons arrested for criminal acts, and in police custody, to be promptly assessed for mental disorder if there is suspicion of mental disorder?</p> <p>4) Does the law make provision for the police to assist in taking a person to a mental health facility who has been involuntarily admitted to the facility?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |

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| <p>5) Does the legislation make provision for the police to find an involuntarily committed person who has absconded and return him/her to the mental health facility?</p>   | <p>a)<br/>b)<br/>c)</p>   |  |  |
| <p><b>T. Mentally ill offenders</b></p> <p>1) Does the legislation allow for diverting an alleged offender with a mental disorder to the mental health system in lieu of prosecuting him/her, taking into account the gravity of the offence, the person's psychiatric history, mental health state at the time of the offence, the likelihood of detriment to the person's health and the community's interest in prosecution?</p> <p>2) Does the law make adequate provision for people who are not fit to stand trial to be assessed, and for charges to be dropped or stayed while they undergo treatment?</p> <p>a) Are people undergoing such treatment given the same rights in the law as other involuntarily admitted persons, including the right to judicial review by an independent body?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |

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| <p>3) Does the law allow for people who are found by the courts to be “not responsible due to mental disability” to be treated in a mental health facility and to be discharged once their mental disorder sufficiently improves?</p> | <p>a)<br/>b)<br/>c)</p> |  |  |
| <p>4) Does the law allow, at the sentencing stage, for persons with mental disorders to be given probation or hospital orders, rather than being sentenced to prison?</p>   | <p>a)<br/>b)<br/>c)</p> |  |  |
| <p>5) Does the law allow for the transfer of a convicted prisoner to a mental health facility if he/she becomes mentally ill while serving a sentence?</p>  | <p>a)<br/>b)<br/>c)</p> |  |  |
| <p>a) Does the law prohibit keeping a prisoner in the mental health facility for longer than the sentence, unless involuntary admission procedures are followed?</p>  | <p>a)<br/>b)<br/>c)</p> |  |  |
| <p>6) Does the legislation provide for secure mental health facilities for mentally ill offenders?</p>  | <p>a)<br/>b)<br/>c)</p> |  |  |

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| <p><b>U. Discrimination</b></p> <p>1) Does the law include provisions aimed at stopping discrimination against people with mental disorders?</p>  |  | <p>a)<br/>b)<br/>c)</p>   |  |
| <p><b>V. Housing</b></p> <p>1) Does the law ensure non-discrimination of people with mental disorders in the allocation of housing?</p> <p>2) Does the law make provision for housing of people with mental disorders in state housing schemes or through subsidized housing?</p> <p>3) Does the legislation make provision for housing in halfway homes and long-stay, supported homes for people with mental disorders?</p> |  | <p>a)<br/>b)<br/>c)<br/><br/>a)<br/>b)<br/>c)<br/><br/>a)<br/>b)<br/>c)</p> |  |
| <p><b>W. Employment</b></p> <p>1) Does the law make provision for the protection of persons with mental disorders from discrimination and exploitation in the work place?</p>   |  | <p>a)<br/>b)<br/>c)</p>   |  |

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| <p>2) Does the law provide for “reasonable accommodation” for employees with mental disorders, for example by providing for a degree of flexibility in working hours to enable those employees to seek mental health treatment?</p> <p>3) Does the law provide for equal employment opportunities for people with mental disorders?</p> <p>4) Does the law make provision for the establishment of vocational rehabilitation programmes and other programmes that provide jobs and employment in the community for people with mental disorders?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
| <p><b>X. Social security</b></p> <p>1) Does legislation provide for disability grants and pensions for people with mental disabilities?</p> <p>2) Does the law provide for disability grants and pensions for people with mental disorders at similar rates as those for people with physical disabilities?</p>  | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p>                         |  |  |

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| <p><b>Y. Civil issues</b></p> <p>1) Does the law uphold the rights of people with mental disorders to the full range of civil, political, economic, social and cultural rights to which all people are entitled?</p>  | <p>a)<br/>b)<br/>c)</p>   |  |  |
| <p><b>Z. Protection of vulnerable groups</b></p> <p><b>Protection of minors</b></p> <p>1) Does the law limit the involuntary placement of minors in mental health facilities to instances where all feasible community alternatives have been tried?</p> <p>2) If minors are placed in mental health facilities, does the legislation stipulate that</p> <p>a) they should have a separate living area from adults?</p> <p>b) that the environment is age-appropriate and takes into consideration the developmental needs of minors?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |

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| <p>3) Does the law ensure that all minors have an adult to represent them in all matters affecting them, including consenting to treatment?</p> <p>4) Does the law stipulate the need to take the opinions of minors into consideration on all issues affecting them (including consent to treatment), depending on their age and maturity?</p> <p>5) Does legislation ban all irreversible treatments for children?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
| <p><b>Protection of women</b></p> <p>1) Does legislation allow women with mental disorders equal rights with men in all matters relating to civil, political, economic, social and cultural rights?</p> <p>2) Does the law ensure that women in mental health facilities:</p> <p>a) have adequate privacy?</p> <p>b) are provided with separate sleeping facilities from men?</p>  | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p>                         |  |  |

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| <p>3) Does legislation state that women with mental disorders should receive equal mental health treatment and care as men, including access to mental health services and care in the community, and in relation to voluntary and involuntary admission and treatment?</p>   | <p>a)<br/>b)<br/>c)</p>   |  |  |
| <p><b>Protection of minorities</b></p> <p>1) Does legislation specifically state that persons with mental disorders should not be discriminated against on the grounds of race, colour, language, religion, political or other opinions, national, ethnic or social origin, legal or social status?</p> <p>2) Does the legislation provide for a review body to monitor involuntary admission and treatment of minorities and ensure non-discrimination on all matters?</p> <p>3) Does the law stipulate that refugees and asylum seekers are entitled to the same mental health treatment as other citizens of the host country?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |

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| <p><b>AZ. Offences and penalties</b></p> <p>1) Does the law have a section dealing with offences and appropriate penalties?</p> <p>2) Does the law provide appropriate sanctions against individuals who violate any of the rights of patients as established in the law?</p> | <p>a)<br/>b)<br/>c)</p> <p>a)<br/>b)<br/>c)</p> |  |  |
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**Annex 2. Summary of the major provisions and international instruments related to the rights of people with mental disorders**

| Key human rights related to mental health   | Instruments safeguarding the human right  |
|---|---|
| <p>People with mental disorders are entitled to the enjoyment and protection of their fundamental human rights.</p> | <ul style="list-style-type: none"> <li>• International Covenant on Economic, Social and Cultural Rights (ICESCR)</li> <li>• International Covenant on Civil and Political Rights (ICCPR)</li> <li>• UN Declaration of Human Rights</li> <li>• African (Banjul) Charter on Human and Peoples' Rights</li> <li>• Convention for the Protection of Human Rights and Fundamental Freedoms</li> <li>• American Declaration of the Rights and Duties of Man</li> <li>• American Convention on Human Rights</li> <li>• UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (MI Principles)</li> <li>• Standard Rules on Equalization of Opportunities for Persons with Disabilities</li> <li>• Declaration of Caracas</li> <li>• Recommendation of the Inter-American Commission on Human Rights for the Promotion and Protection of the Rights of the Mentally Ill</li> </ul> |
| <p>Right to the highest attainable standard of health care – including mental health</p>                            | <ul style="list-style-type: none"> <li>• International Covenant on Economic, Social and Cultural Rights (ICESCR)</li> <li>• African (Banjul) Charter on Human and Peoples' Rights</li> <li>• UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (MI Principles)</li> <li>• Standard Rules on Equalization of Opportunities for Persons with Disabilities</li> <li>• European Social Charter</li> <li>• Declaration of Caracas</li> <li>• International Convention on the Elimination of All Forms of Racial Discrimination</li> <li>• Convention on the Elimination of All Forms of Discrimination Against Women</li> <li>• Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights</li> </ul>  |
| <p>Protection against discrimination</p>  | <ul style="list-style-type: none"> <li>• International Covenant on Economic, Social and Cultural Rights (ICESCR)</li> <li>• International Covenant on Civil and Political Rights (ICCPR)</li> </ul>   |

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|  | <ul style="list-style-type: none"> <li>• Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities</li> <li>• UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (MI Principles)</li> <li>• Standard Rules on Equalization of Opportunities for Persons with Disabilities</li> <li>• Recommendation of the Inter-American Commission on Human Rights for the Promotion and Protection of the Rights of the Mentally Ill</li> <li>• Convention on the Elimination of All Forms of Discrimination Against Women</li> </ul>  |
| <p>Children with mental disabilities have the right to enjoy a full and decent life</p>                                      | <ul style="list-style-type: none"> <li>• UN Convention on the Rights of the Child</li> <li>• The Salamanca Statement and Framework for Action on Special Needs Education</li> <li>• UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (MI Principles)</li> </ul>   |
| <p>People with mental disorders should be protected against torture, cruel, inhuman or degrading treatment or punishment</p> | <ul style="list-style-type: none"> <li>• UN Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</li> <li>• African (Banjul) Charter on Human and Peoples' Rights</li> <li>• UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (MI Principles)</li> <li>• Declaration of Caracas</li> <li>• International Covenant on Civil and Political Rights (ICCPR)</li> <li>• European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</li> <li>• Recommendation of the Inter-American Commission on Human Rights for the Promotion and Protection of the Mentally Ill</li> </ul> |
| <p>Standards for involuntary care and treatment</p>  | <ul style="list-style-type: none"> <li>• UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (MI Principles)</li> <li>• Council of Europe Recommendation 1235 on Psychiatry and Human Rights</li> <li>• Declaration of Caracas</li> <li>• World Psychiatric Association's Declaration of Madrid</li> </ul>   |

## Annex 3.

# United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care

Adopted by General Assembly resolution 46/119 of 17 December 1991

### *Application*

These Principles shall be applied without discrimination of any kind such as on grounds of disability, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, legal or social status, age, property or birth.

### *Definitions*

In these Principles:

"Counsel" means a legal or other qualified representative;

"Independent authority" means a competent and independent authority prescribed by domestic law;

"Mental health care" includes analysis and diagnosis of a person's mental condition, and treatment, care and rehabilitation for a mental illness or suspected mental illness;

"Mental health facility" means any establishment, or any unit of an establishment, which as its primary function provides mental health care;

"Mental health practitioner" means a medical doctor, clinical psychologist, nurse, social worker or other appropriately trained and qualified person with specific skills relevant to mental health care;

"Patient" means a person receiving mental health care and includes all persons who are admitted to a mental health facility;

"Personal representative" means a person charged by law with the duty of representing a patient's interests in any specified respect or of exercising specified rights on the patient's behalf, and includes the parent or legal guardian of a minor unless otherwise provided by domestic law;

"The review body" means the body established in accordance with Principle 17 to review the involuntary admission or retention of a patient in a mental health facility.

### *General limitation clause*

The exercise of the rights set forth in these Principles may be subject only to such limitations as are prescribed by law and are necessary to protect the health or safety of the person concerned or of others, or otherwise to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

### *Principle 1*

#### *Fundamental freedoms and basic rights*

1. All persons have the right to the best available mental health care, which shall be part of the health and social care system.

2. All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.

3. All persons with a mental illness, or who are being treated as such persons, have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment.

4. There shall be no discrimination on the grounds of mental illness. "Discrimination" means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights. Special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory. Discrimination does not include any distinction, exclusion or preference undertaken in accordance with the provisions of these Principles and necessary to protect the human rights of a person with a mental illness or of other individuals.

5. Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on

Civil and Political Rights, and in other relevant instruments, such as the Declaration on the Rights of Disabled Persons and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

6. Any decision that, by reason of his or her mental illness, a person lacks legal capacity, and any decision that, in consequence of such incapacity, a personal representative shall be appointed, shall be made only after a fair hearing by an independent and impartial tribunal established by domestic law. The person whose capacity is at issue shall be entitled to be represented by a counsel. If the person whose capacity is at issue does not himself or herself secure such representation, it shall be made available without payment by that person to the extent that he or she does not have sufficient means to pay for it. The counsel shall not in the same proceedings represent a mental health facility or its personnel and shall not also represent a member of the family of the person whose capacity is at issue unless the tribunal is satisfied that there is no conflict of interest. Decisions regarding capacity and the need for a personal representative shall be reviewed at reasonable intervals prescribed by domestic law. The person whose capacity is at issue, his or her personal representative, if any, and any other interested person shall have the right to appeal to a higher court against any such decision.

7. Where a court or other competent tribunal finds that a person with mental illness is unable to manage his or her own affairs, measures shall be taken, so far as is necessary and appropriate to that person's condition, to ensure the protection of his or her interest.

#### *Principle 2*

##### *Protection of minors*

Special care should be given within the purposes of these Principles and within the context of domestic law relating to the protection of minors to protect the rights of minors, including, if necessary, the appointment of a personal representative other than a family member.

#### *Principle 3*

##### *Life in the community*

Every person with a mental illness shall have the right to live and work, as far as possible, in the community.

#### *Principle 4*

##### *Determination of mental illness*

1. A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standards.

2. A determination of mental illness shall never be made on the basis of political, economic or social status, or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status.

3. Family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in diagnosing mental illness.

4. A background of past treatment or hospitalization as a patient shall not of itself justify any present or future determination of mental illness.

5. No person or authority shall classify a person as having, or otherwise indicate that a person has, a mental illness except for purposes directly relating to mental illness or the consequences of mental illness.

#### *Principle 5*

##### *Medical examination*

No person shall be compelled to undergo medical examination with a view to determining whether or not he or she has a mental illness except in accordance with a procedure authorized by domestic law.

#### *Principle 6*

##### *Confidentiality*

The right of confidentiality of information concerning all persons to whom these Principles apply shall be respected.

*Principle 7*

*Role of community and culture*

1. Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.
2. Where treatment takes place in a mental health facility, a patient shall have the right, whenever possible, to be treated near his or her home or the home of his or her relatives or friends and shall have the right to return to the community as soon as possible.
3. Every patient shall have the right to treatment suited to his or her cultural background.

*Principle 8*

*Standards of care*

1. Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.
2. Every patient shall be protected from harm, including unjustified medication, abuse by other patients, staff or others or other acts causing mental distress or physical discomfort.

*Principle 9*

*Treatment*

1. Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.
2. The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.
3. Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused.
4. The treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

*Principle 10*

*Medication*

1. Medication shall meet the best health needs of the patient, shall be given to a patient only for therapeutic or diagnostic purposes and shall never be administered as a punishment or for the convenience of others. Subject to the provisions of paragraph 15 of Principle 11, mental health practitioners shall only administer medication of known or demonstrated efficacy.
2. All medication shall be prescribed by a mental health practitioner authorized by law and shall be recorded in the patient's records.

*Principle 11*

*Consent to treatment*

1. No treatment shall be given to a patient without his or her informed consent, except as provided for in paragraphs 6, 7, 8, 13 and 15 below.
2. Informed consent is consent obtained freely, without threats or improper inducements, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient on:
  - (a) The diagnostic assessment;
  - (b) The purpose, method, likely duration and expected benefit of the proposed treatment;
  - (c) Alternative modes of treatment, including those less intrusive; and
  - (d) Possible pain or discomfort, risks and side-effects of the proposed treatment.
3. A patient may request the presence of a person or persons of the patient's choosing during the procedure for granting consent.
4. A patient has the right to refuse or stop treatment, except as provided for in paragraphs 6, 7, 8, 13 and 15 below. The consequences of refusing or stopping treatment must be explained to the patient.

5. A patient shall never be invited or induced to waive the right to informed consent. If the patient should seek to do so, it shall be explained to the patient that the treatment cannot be given without informed consent.

6. Except as provided in paragraphs 7, 8, 12, 13, 14 and 15 below, a proposed plan of treatment may be given to a patient without a patient's informed consent if the following conditions are satisfied:

(a) The patient is, at the relevant time, held as an involuntary patient;

(b) An independent authority, having in its possession all relevant information, including the information specified in paragraph 2 above, is satisfied that, at the relevant time, the patient lacks the capacity to give or withhold informed consent to the proposed plan of treatment or, if domestic legislation so provides, that, having regard to the patient's own safety or the safety of others, the patient unreasonably withholds such consent; and

(c) The independent authority is satisfied that the proposed plan of treatment is in the best interest of the patient's health needs.

7. Paragraph 6 above does not apply to a patient with a personal representative empowered by law to consent to treatment for the patient; but, except as provided in paragraphs 12, 13, 14 and 15 below, treatment may be given to such a patient without his or her informed consent if the personal representative, having been given the information described in paragraph 2 above, consents on the patient's behalf.

8. Except as provided in paragraphs 12, 13, 14 and 15 below, treatment may also be given to any patient without the patient's informed consent if a qualified mental health practitioner authorized by law determines that it is urgently necessary in order to prevent immediate or imminent harm to the patient or to other persons. Such treatment shall not be prolonged beyond the period that is strictly necessary for this purpose.

9. Where any treatment is authorized without the patient's informed consent, every effort shall nevertheless be made to inform the patient about the nature of the treatment and any possible alternatives and to involve the patient as far as practicable in the development of the treatment plan.

10. All treatment shall be immediately recorded in the patient's medical records, with an indication of whether involuntary or voluntary.

11. Physical restraint or involuntary seclusion of a patient shall not be employed except in accordance with the officially approved procedures of the mental health facility and only when it is the only means available to prevent immediate or imminent harm to the patient or others. It shall not be prolonged beyond the period which is strictly necessary for this purpose. All instances of physical restraint or involuntary seclusion, the reasons for them and their nature and extent shall be recorded in the patient's medical record. A patient who is restrained or secluded shall be kept under humane conditions and be under the care and close and regular supervision of qualified members of the staff. A personal representative, if any and if relevant, shall be given prompt notice of any physical restraint or involuntary seclusion of the patient.

12. Sterilization shall never be carried out as a treatment for mental illness.

13. A major medical or surgical procedure may be carried out on a person with mental illness only where it is permitted by domestic law, where it is considered that it would best serve the health needs of the patient and where the patient gives informed consent, except that, where the patient is unable to give informed consent, the procedure shall be authorized only after independent review.

14. Psychosurgery and other intrusive and irreversible treatments for mental illness shall never be carried out on a patient who is an involuntary patient in a mental health facility and, to the extent that domestic law permits them to be carried out, they may be carried out on any other patient only where the patient has given informed consent and an independent external body has satisfied itself that there is genuine informed consent and that the treatment best serves the health needs of the patient.

15. Clinical trials and experimental treatment shall never be carried out on any patient without informed consent, except that a patient who is unable to give informed consent may be admitted to a clinical trial or given experimental treatment, but only with the approval of a competent, independent review body specifically constituted for this purpose.

16. In the cases specified in paragraphs 6, 7, 8, 13, 14 and 15 above, the patient or his or her personal representative, or any interested person, shall have the right to appeal to a judicial or other independent authority concerning any treatment given to him or her.

*Principle 12*

*Notice of rights*

1. A patient in a mental health facility shall be informed as soon as possible after admission, in a form and a language which the patient understands, of all his or her rights in accordance with these Principles and under domestic law, which information shall include an explanation of those rights and how to exercise them.
2. If and for so long as a patient is unable to understand such information, the rights of the patient shall be communicated to the personal representative, if any and if appropriate, and to the person or persons best able to represent the patient's interests and willing to do so.
3. A patient who has the necessary capacity has the right to nominate a person who should be informed on his or her behalf, as well as a person to represent his or her interests to the authorities of the facility.

*Principle 13*

*Rights and conditions in mental health facilities*

1. Every patient in a mental health facility shall, in particular, have the right to full respect for his or her:
  - (a) Recognition everywhere as a person before the law;
  - (b) Privacy;
  - (c) Freedom of communication, which includes freedom to communicate with other persons in the facility; freedom to send and receive uncensored private communications; freedom to receive, in private, visits from a counsel or personal representative and, at all reasonable times, from other visitors; and freedom of access to postal and telephone services and to newspapers, radio and television;
  - (d) Freedom of religion or belief.
2. The environment and living conditions in mental health facilities shall be as close as possible to those of the normal life of persons of similar age and in particular shall include:
  - (a) Facilities for recreational and leisure activities;
  - (b) Facilities for education;
  - (c) Facilities to purchase or receive items for daily living, recreation and communication;
  - (d) Facilities, and encouragement to use such facilities, for a patient's engagement in active occupation suited to his or her social and cultural background, and for appropriate vocational rehabilitation measures to promote reintegration in the community. These measures should include vocational guidance, vocational training and placement services to enable patients to secure or retain employment in the community.
3. In no circumstances shall a patient be subject to forced labour. Within the limits compatible with the needs of the patient and with the requirements of institutional administration, a patient shall be able to choose the type of work he or she wishes to perform.
4. The labour of a patient in a mental health facility shall not be exploited. Every such patient shall have the right to receive the same remuneration for any work which he or she does as would, according to domestic law or custom, be paid for such work to a non-patient. Every such patient shall, in any event, have the right to receive a fair share of any remuneration which is paid to the mental health facility for his or her work.

*Principle 14*

*Resources for mental health facilities*

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 and other appropriate professional staff in sufficient numbers and with adequate space to provide each patient with privacy and a programme of appropriate and active therapy;
  - (b) Diagnostic and therapeutic equipment for the patient;
  - (c) Appropriate professional care; and
  - (d) Adequate, regular and comprehensive treatment, including supplies of medication.
2. Every mental health facility shall be inspected by the competent authorities with sufficient frequency to ensure that the conditions, treatment and care of patients comply with these Principles.

*Principle 15*

*Admission principles*

1. Where a person needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission.
2. Access to a mental health facility shall be administered in the same way as access to any other facility for any other illness.
3. Every patient not admitted involuntarily shall have the right to leave the mental health facility at any time unless the criteria for his or her retention as an involuntary patient, as set forth in Principle 16, apply, and he or she shall be informed of that right.

*Principle 16*

*Involuntary admission*

1. A person may (a) be admitted involuntarily to a mental health facility as a patient; or (b) having already been admitted voluntarily as a patient, be retained as an involuntary patient in the mental health facility if, and only if, a qualified mental health practitioner authorized by law for that purpose determines, in accordance with Principle 4, that person has a mental illness and considers:

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

(b) That, in the case of a person whose mental illness is severe and whose judgement is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

In the case referred to in subparagraph (b), a second such mental health practitioner, independent of the first, should be consulted where possible. If such consultation takes place, the involuntary admission or retention may not take place unless the second mental health practitioner concurs.

2. Involuntary admission or retention shall initially be for a short period as specified by domestic law for observation and preliminary treatment pending review of the admission or retention by the review body. The grounds of the admission shall be communicated to the patient without delay and the fact of the admission and the grounds for it shall also be communicated promptly and in detail to the review body, to the patient's personal representative, if any, and, unless the patient objects, to the patient's family.

3. A mental health facility may receive involuntarily admitted patients only if the facility has been designated to do so by a competent authority prescribed by domestic law.

*Principle 17*

*Review body*

1. The review body shall be a judicial or other independent and impartial body established by domestic law and functioning in accordance with procedures laid down by domestic law. It shall, in formulating its decisions, have the assistance of one or more qualified and independent mental health practitioners and take their advice into account.

2. The review body's initial review, as required by paragraph 2 of Principle 16, of a decision to admit or retain a person as an involuntary patient shall take place as soon as possible after that decision and shall be conducted in accordance with simple and expeditious procedures as specified by domestic law.

3. The review body shall periodically review the cases of involuntary patients at reasonable intervals as specified by domestic law.

4. An involuntary patient may apply to the review body for release or voluntary status, at reasonable intervals as specified by domestic law.

5. At each review, the review body shall consider whether the criteria for involuntary admission set out in paragraph 1 of Principle 16 are still satisfied, and, if not, the patient shall be discharged as an involuntary patient.

6. If at any time the mental health practitioner responsible for the case is satisfied that the conditions for the retention of a person as an involuntary patient are no longer satisfied, he or she shall order the discharge of that person as such a patient.

7. A patient or his personal representative or any interested person shall have the right to appeal to a higher court against a decision that the patient be admitted to, or be retained in, a mental health facility.

*Principle 18*

*Procedural safeguards*

1. The patient shall be entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure or appeal. If the patient does not secure such services, a counsel shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

2. The patient shall also be entitled to the assistance, if necessary, of the services of an interpreter. Where such services are necessary and the patient does not secure them, they shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

3. The patient and the patient's counsel may request and produce at any hearing an independent mental health report and any other reports and oral, written and other evidence that are relevant and admissible.

4. Copies of the patient's records and any reports and documents to be submitted shall be given to the patient and to the patient's counsel, except in special cases where it is determined that a specific disclosure to the patient would cause serious harm to the patient's health or put at risk the safety of others. As domestic law may provide, any document not given to the patient should, when this can be done in confidence, be given to the patient's personal representative and counsel. When any part of a document is withheld from a patient, the patient or the patient's counsel, if any, shall receive notice of the withholding and the reasons for it and shall be subject to judicial review.

5. The patient and the patient's personal representative and counsel shall be entitled to attend, participate and be heard personally in any hearing.

6. If the patient or the patient's personal representative or counsel requests that a particular person be present at a hearing, that person shall be admitted unless it is determined that the person's presence could cause serious harm to the patient's health or put at risk the safety of others.

7. Any decision whether the hearing or any part of it shall be in public or in private and may be publicly reported shall give full consideration to the patient's own wishes, to the need to respect the privacy of the patient and of other persons and to the need to prevent serious harm to the patient's health or to avoid putting at risk the safety of others.

8. The decision arising out of the hearing and the reasons for it shall be expressed in writing. Copies shall be given to the patient and his or her personal representative and counsel. In deciding whether the decision shall be published in whole or in part, full consideration shall be given to the patient's own wishes, to the need to respect his or her privacy and that of other persons, to the public interest in the open administration of justice and to the need to prevent serious harm to the patient's health or to avoid putting at risk the safety of others.

*Principle 19*

*Access to information*

1. A patient (which term in this Principle includes a former patient) shall be entitled to have access to the information concerning the patient in his or her health and personal records maintained by a mental health facility. This right may be subject to restrictions in order to prevent serious harm to the patient's health and avoid putting at risk the safety of others. As domestic law may provide, any such information not given to the patient should, when this can be done in confidence, be given to the patient's personal representative and counsel. When any of the information is withheld from a patient, the patient or the patient's counsel, if any, shall receive notice of the withholding and the reasons for it and it shall be subject to judicial review.

2. Any written comments by the patient or the patient's personal representative or counsel shall, on request, be inserted in the patient's file.

*Principle 20*

*Criminal offenders*

1. This Principle applies to persons serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal proceedings or investigations against them, and who are determined to have a mental illness or who it is believed may have such an illness.
2. All such persons should receive the best available mental health care as provided in Principle 1. These Principles shall apply to them to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances. No such modifications and exceptions shall prejudice the persons' rights under the instruments noted in paragraph 5 of Principle 1.
3. Domestic law may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility.
4. Treatment of persons determined to have a mental illness shall in all circumstances be consistent with Principle 11.

*Principle 21*

*Complaints*

Every patient and former patient shall have the right to make a complaint through procedures as specified by domestic law.

*Principle 22*

*Monitoring and remedies*

States shall ensure that appropriate mechanisms are in force to promote compliance with these Principles, for the inspection of mental health facilities, for the submission, investigation and resolution of complaints and for the institution of appropriate disciplinary or judicial proceedings for professional misconduct or violation of the rights of a patient.

*Principle 23*

*Implementation*

1. States should implement these Principles through appropriate legislative, judicial, administrative, educational and other measures, which they shall review periodically.
2. States shall make these Principles widely known by appropriate and active means.

*Principle 24*

*Scope of principles relating to mental health facilities*

These Principles apply to all persons who are admitted to a mental health facility.

*Principle 25*

*Saving of existing rights*

There shall be no restriction upon or derogation from any existing rights of patients, including rights recognized in applicable international or domestic law, on the pretext that these Principles do not recognize such rights or that they recognize them to a lesser extent.

***For further information and guidance on the MI Principles, see also Guidelines for the Promotion of Human Rights of Persons with Mental Disorder. Geneva, World Health Organization, 1996; available at:***

***[http://whqlibdoc.who.int/hq/1995/WHO\\_MNH\\_MND\\_95.4.pdf](http://whqlibdoc.who.int/hq/1995/WHO_MNH_MND_95.4.pdf)***

## Annex 4. Extract from the PAHO/WHO Declaration of Caracas

The legislators, associations, health authorities, mental health professionals and jurists assembled at the Regional Conference on the Restructuring of Psychiatric Care in Latin America within the Local Health Systems Model,

### DECLARE

1. That the restructuring of psychiatric care on the basis of Primary Health Care and within the framework of the Local Health Systems Model will promote alternative service models that are community-based and integrated into social and health care networks.
2. That the restructuring of psychiatric care in the Region implies a critical review of the dominant and centralizing role played by the mental hospital in mental health service delivery.
3. That the resources, care and treatment that are made available must:
  - a) safeguard personal dignity and human and civil rights;
  - b) be based on criteria that are rational and technically appropriate; and
  - c) strive to maintain patients in their communities.
4. That national legislation must be redrafted if necessary so that:
  - a) the human and civil rights of mental patients are safeguarded; and
  - b) that the organization of community mental health services guarantees the protection of these rights.
5. That training in mental health and psychiatry should use a service model that is based on the community health center and encourages psychiatric admission in general hospitals, in accordance with the principles that underlie the restructuring movement.
6. That the organizations, associations, and other participants in this Conference hereby undertake to advocate and develop programs at the country level that will promote the desired restructuring, and at the same time commit themselves to monitoring and defending the human rights of mental patients in accordance with the national legislation and international agreements.

To this end, they call upon the Ministries of Health and Justice, the Parliaments, Social Security and other care-providing institutions, professional organizations, consumer associations, universities and other training facilities and the media to support the restructuring of psychiatric care, thus assuring this successful development for the benefit of the population in the Region.

*Extract from the text of the Declaration of Caracas adopted on 14 November 1990 by the Regional Conference on the Restructuring of Psychiatric Care in Latin America, convened in Caracas, Venezuela, by the Pan American Health Organization/WHO Regional Office for the Americas. International Digest of Health Legislation, 1991, 42(2):336–338.*

## Annex 5. Extract from the Declaration of Madrid of the World Psychiatric Association

### Madrid Declaration on Ethical Standards for Psychiatric Practice

*Approved by the General Assembly on August 25, 1996 and amended by the General Assembly in Yokohama, Japan, in August 2002*

In 1977, the World Psychiatric Association approved the Declaration of Hawaii, setting out ethical guidelines for the practice of psychiatry. The Declaration was updated in Vienna in 1983. To reflect the impact of changing social attitudes and new medical developments on the psychiatric profession, the World Psychiatric Association has once again examined and revised some of these ethical standards.

Medicine is both a healing art and a science. The dynamics of this combination are best reflected in psychiatry, the branch of medicine that specializes in the care and protection of those who are ill and infirm because of a mental disorder or impairment. Although there may be cultural, social, and national differences, the need for ethical conduct and continual review of ethical standards is universal.

As practitioners of medicine, psychiatrists must be aware of the ethical implications of being a physician and of the specific ethical demands of the speciality of psychiatry. As members of society, psychiatrists must advocate for fair and equal treatment of the mentally ill, for social justice and equity for all.

Ethical behavior is based on the psychiatrist's individual sense of responsibility towards the patient and their judgement in determining what is correct and appropriate conduct. External standards and influences such as professional codes of conduct, the study of ethics, or the rule of law by themselves will not guarantee the ethical practice of medicine.

Psychiatrists should at all times, keep in mind the boundaries of the psychiatrist-patient relationship, and be guided primarily by the respect for patients and concern for their welfare and integrity.

It is in this spirit that the World Psychiatric Association approved at the General Assembly on August 25th, 1996, the following ethical standards that should govern the conduct of psychiatrists worldwide.

**1.** Psychiatry is a medical discipline concerned with the provision of the best treatment for mental disorders, with the rehabilitation of individuals suffering from mental illness and with the promotion of mental health. Psychiatrists serve patients by providing the best therapy available consistent with accepted scientific knowledge and ethical principles. Psychiatrists should devise therapeutic interventions that are least restrictive to the freedom of the patient and seek advice in areas of their work about which they do not have primary expertise. While doing so, psychiatrists should be aware of and concerned with the equitable allocation of health resources.

**2.** It is the duty of psychiatrists to keep abreast [of] scientific developments of the specialty and to convey updated knowledge to others. Psychiatrists trained in research should seek to advance the scientific frontiers of psychiatry.

**3.** The patient should be accepted as a partner by right in the therapeutic process. The therapist-patient relationship must be based on mutual trust and respect to allow the patient make free and informed decisions. It is the duty of psychiatrists to provide the patient with

relevant information so as to empower the patient to come to a rational decision according to personal values and preferences.

4. When the patient is incapacitated and/or unable to exercise proper judgement because of a mental disorder, the psychiatrists should consult with the family and, if appropriate, seek legal counsel, to safeguard the human dignity and the legal rights of the patient. Not treatment should be provided against the patient's will, unless withholding treatment would endanger the life of the patient and/or those who surround him or her. Treatment must always be in the best interest of the patient.

5. When psychiatrists are requested to assess a person, it is their duty first to inform and advise the person being assessed about the purpose of the intervention, the use of the findings, and the possible repercussions of the assessment. This is particularly important when the psychiatrists are involved in third party situations.

6. Information obtained in the therapeutic relationship should be kept in confidence and used, only and exclusively, for the purpose of improving the mental health of the patient. Psychiatrists are prohibited from making use of such information for personal reasons, or financial or academic benefits. Breach of confidentiality may only be appropriate when serious physical or mental harm to the patient or to the third person would ensue if confidentiality were maintained; as in the case of child abuse, in these circumstances, psychiatrist should whenever possible, first advise the patient about the action to be taken.

7. Research that is not conducted in accordance with the canons of science is unethical. Research activities should be approved by an appropriately constituted ethics committee. Psychiatrists should follow national and international rules for the conduct of research. Only individuals properly trained for research should undertake or direct it. Because psychiatric patients are particularly vulnerable research subjects, extra caution should be taken to safeguard their autonomy as well as their mental and physical integrity. Ethical standards should also be applied in the selection of population groups, in all types of research including epidemiological and sociological studies and in collaborative research involving other disciplines or several investigating centers.

## **GUIDELINES CONCERNING SPECIFIC SITUATIONS**

*The World Psychiatric Association Ethics Committee recognizes the need to develop a number of specific guidelines on a number of specific situations. The first five were approved by the General Assembly in Madrid, Spain, on August 25, 1996 and the last three by the General Assembly in Hamburg, Germany, on August 8, 1999.*

**1. Euthanasia:** A physician's duty, first and foremost, is the promotion of health, the reduction of suffering, and the protection of life. The psychiatrist, among whose patients are some who are severely incapacitated and incompetent to reach an informal decision, should be particularly careful of actions that could lead to the death of those who cannot protect themselves because of their disability. The psychiatrist should be aware that the views of a patient may be distorted by mental illness such as depression. In such situations, the psychiatrist's role is to treat the illness.

**2. Torture:** Psychiatrists shall not take part in any process of mental or physical torture, even when authorities attempt to force their involvement in such acts.

**3. Death Penalty:** Under no circumstances should psychiatrists participate in legally authorized executions nor participate in assessments of competency to be executed.

**4. Selection of Sex:** Under no circumstances should a psychiatrist participate in decisions to terminate pregnancy for the purpose of sex selection.

**5. Organ Transplantation:** The role of the psychiatrist is to clarify the issues surrounding organ donations and to advise on religious, cultural, social and family factors to ensure that informed and proper decisions be made by all concerned. The psychiatrists should not act as a proxy decision maker for patients nor use psychotherapeutic skills to influence the decision of a patient in these matters. Psychiatrists should seek to protect their patients and help them exercise self-determination to the fullest extent possible in situation of organ transplantation.

**6. Psychiatrists Addressing the Media:**

The media has a key role in shaping the perceptions and attitudes of the community. In all contacts with the media psychiatrists shall ensure that people with mental illness are presented in a manner which preserves their dignity and pride, and which reduces stigma and discrimination against them. An important role of psychiatrists is to advocate for those people who suffer from mental disorders. As the public perception of psychiatrists and psychiatry reflects on patients, psychiatrists shall ensure that in their contacts with the media they represent the profession of psychiatry with dignity. Psychiatrists shall not make announcements to the media about presumed psychopathology on any individuals. In presenting research findings to the media, psychiatrists shall ensure the scientific integrity of the information given and be mindful of the potential impact of their statements on the public perception of mental illness and on the welfare of people with mental disorders.

**7. Psychiatrists and Discrimination on Ethnic or Cultural Grounds**

Discrimination by psychiatrists on the basis of ethnicity or culture, whether directly or by aiding others, is unethical. Psychiatrists shall never be involved or endorse, directly or indirectly, any activity related to ethnic cleansing.

**8. Psychiatrists and Genetic Research and Counselling**

Research on the genetic basis of mental disorders is rapidly increasing and more people suffering from mental illness are participating in such research. Psychiatrists involved in genetic research or counselling shall be mindful of the fact that the implication of genetic information [is] not limited to the individual from whom it was obtained, and that its disclosure can have negative and disruptive effects on the families and communities of the individuals concerned. Psychiatrists shall therefore ensure that:

- People and families who participate in genetic research do so with a fully informed consent;
- Any genetic information in their possession is adequately protected against unauthorized access, misinterpretation or misuse,
- Care is taken in communication with patients and families to make clear that current genetic knowledge is incomplete and may be altered by future findings.

Psychiatrists shall only refer people to facilities for diagnostic genetic testing if that facility has:

- Demonstrated satisfactory quality assurance procedures for such testing;
- Adequate and easily accessible resources for genetic counselling. Genetic counselling with regard to family planning or abortion shall be respectful of the patients' value system, while providing sufficient medical and psychiatric information to aid patients make decisions they consider best for them.

## Annex 6. Example: Rights of a Patient, as specified in Connecticut, USA

### Your Rights as a Client or Patient of the Connecticut Department of Mental Health & Addiction Services (USA)

You are entitled to be treated in a humane and dignified way at all times, and with full respect to:

- Personal Dignity
- Right to Privacy
- Right to Personal Property
- Civil Rights

You have the right to freedom from physical or mental abuse or harm;

You have the right to a written treatment plan that is developed with your input and suited to your own personal needs, goals and aspirations;

You should be informed of your rights by the institution, agency or program.

In addition, a list of your rights must be posted on each ward of a hospital.

Other rights you have include:

**Humane and dignified treatment:** You have the right to receive humane and dignified treatment at all times and with full respect to your personal dignity and privacy. A specialized treatment plan shall be developed in accordance with your needs. Any treatment plan shall include, but not be limited to, reasonable notice of discharge, your active participation in and planning for appropriate aftercare. (See CGS 17a-542)

**Personal Dignity:** While in an inpatient facility, you have the right to wear your own clothing, to maintain your own personal belongings (given reasonable space limitations) and to be able to have access to and spend your own money for personal purchases.\* Except for patients in Whiting Forensic Division, you have the right to be present during any search of your personal belongings. Any exception to these rights must be explained in writing and made a part of your clinical record. (See CGS 17a-548)

**Privacy & Confidentiality:** You have the right to privacy & confidentiality. Records that would identify your person, manner of treatment or your diagnosis cannot be given to any other person or agency without your written consent. All records maintained by the courts [as they relate to a recipient's treatment] shall be sealed and available only to respondent or counsel.\* No person, hospital, treatment facility nor DMHAS may disclose or permit the disclosure of the identity, diagnosis, prognosis or treatment of any service recipient that would constitute a violation of state or federal statutes concerning confidentiality.\* (See CGS 17a-500, 17a-688, 52-146f and 42 CFR part 2)

**Physician's Emergency Certificate & Commitment:** You, your advocate or counsel, can find out more about what Commitment procedures apply by reviewing the appropriate statutes. All persons admitted through a Physician's Emergency Certificate have the right, upon request, to a Probable Cause hearing within 3 business days from admission. All voluntarily admitted patients shall be informed, upon admission, of their ability to leave after three days notice. Any voluntarily confined patient shall not be denied his or her request to leave within three days notice in writing unless an application for commitment has been filed in a court of competent jurisdiction. Different statutes apply depending on your placement in addictions treatment or for a psychiatric disorder. (See CGS 17a-495 et seq.; 17a-502; 17a-506; 17a-682 to 17a-685, 54-56d)

**Visiting and Communication Rights:** You may receive visitors during scheduled visiting hours. You have the right to visit with and may have private conversations with clergy, attorneys or paralegals of your choice at any reasonable hour. Facilities may reasonably maintain rules regulating visitors. Mail or other communications to or from a service recipient in any treatment facility may not be intercepted, read or censored.\* Any exceptions to rights regarding communications must be explained in writing, signed by the head of the facility (or designee) and made a part of your clinical record. (See CGS 17a-546, 17a-547)

**Access to Your Medical Record:** You or your attorney may have the right, upon written request, to inspect your hospital records. Unless your request is made in connection with litigation, a facility may refuse to disclose any portion of the record which the mental health facility has determined would create a substantial risk that you would inflict a life threatening injury to self or others, experience a severe deterioration in mental state,\* or would constitute an invasion of privacy of another. (See CGS 17a-548, 52-146f)

**Restraint & Seclusion:** If conditions are such that you are restrained or placed in seclusion, you must be treated in a humane and dignified manner. The use of involuntary seclusion or mechanical restraints is allowed only when there is an imminent danger to yourself or others. Documentation of reasons for these interventions must be placed in your clinical records within 24 hours. Medications cannot be used as a substitute for a more appropriate treatment. (See CGS 17a-544)

**Remedies of Aggrieved Persons:** If you have been aggrieved by a violation of sections 17a-540 to 17a-549 you may petition the Superior Court within whose jurisdiction you reside for appropriate relief. (See CGS 17a-550)

**Disclosure of Your Rights:** A copy of your rights shall be prominently posted in each ward where mental health services are provided. (See CGS 17a-548)

**Medication, Treatment, Informed Consent & Surgical Procedures:**

You, your advocate or counsel, can find out more about what procedures apply by reviewing the appropriate statutes (see CGS 17a-543a-j). If you have been hospitalized under any sections of 17a-540 to 550, you shall receive a physical examination within 5 days of admission and at least once every year thereafter. Reports of such exams must be entered into your clinical record. (See CGS 17a-545). No medical or surgical procedures, no psychosurgery or shock therapy shall be administered to any patient without such patient's written informed consent, except as provided by statute.\* A facility may establish a procedure that governs involuntary medication treatments but any such decision shall be made by someone not employed by the treating facility and not until the patient's advocate has had reasonable opportunity to discuss such with the facility.\* If a facility had determined to administer involuntary medication pursuant to statute, the patient may petition the Probate Court to hold a hearing to decide whether to allow this intervention. Notwithstanding the provisions of this section (17a-540 to 550) if obtaining consent would cause a medically harmful delay, emergency treatment may be provided without consent. (See CGS 17a-543a-f)

**Denial of Employment, Housing, Etceteras:** You cannot be denied employment, housing, civil service rank any license or permit (including a professional license) or any other civil or legal right, solely because of a present or past history of a mental disorder, unless otherwise provided.\* (See CGS 17a-549)

**Filing of Grievances:** Recipients of DMHAS facilities or programs have the right to file a grievance if any staff or facility has: 1) violated a right provided by statute, regulation or policy; 2) if you have been treated in an arbitrary or unreasonable manner; 3) denied services authorized by a treatment plan due to negligence, discrimination ...or other improper reasons; 4) engaged in coercion to improperly limit your treatment choices; 5) unreasonably failed to intervene when your rights have been jeopardized in a setting controlled by the facility or DMHAS; or 6) failed to treat you in a humane or dignified manner. (See CGS 17a-451-t[1-6])

**Other Rights** may be guaranteed by state or federal statute, regulation or policies which have not been identified in this list. You are encouraged to seek counsel to learn of or to better understand these laws and policies.

Many of the rights of service recipients in facilities in Connecticut are specified in sections 17a-540 through 17a-550 of the Connecticut General Statutes. There may also be other rights provided by other state and federal statutes as well as by case law, but the ones identified in 17a-540 through 17a-550 are specifically protected and must be adhered to by inpatient or outpatient facilities in Connecticut. These statutes apply to both voluntary and involuntary service recipients, unless otherwise provided.

In general, both public and private facilities are prohibited from depriving you of any of your personal, property or civil rights. These include the right to vote, to hold or convey property and contract, except in accordance with due process of law and unless you have been declared incapable pursuant to sections 45a-644 to 45a-662. Any finding of incapability should specifically state which civil or personal rights you are incapable of exercising.

***For more information about your rights as a recipient of substance abuse or mental health services in Connecticut, contact 1-800-446-7348.***

\*There may be exceptions and limitations to some rights. Your rights are detailed in the Connecticut General Statutes, sections 17a-450 et seq.; 17a-540 et seq.; 17a-680 et seq.; 52-146d-j; 54-56d; in Federal regulation 42 CFR part 2, the Rehabilitation Act, the Americans with Disabilities Act; in the Patients' Self-Determination Act, in Section 1983 and in other parts of state and federal law.

(<http://www.dmhas.state.ct.us/documents/ptrights.pdf>)

## **Annex 7. Example: Rights of Recipients of Mental Health Services, State of Maine Department of Behavioral and Developmental Services, USA**

### **Extract of Table of contents and Rights of Recipients Summary**

#### Table of Contents

Non-Discrimination Notice  
Basis Statement  
Introduction

#### **A. RULES OF GENERAL APPLICABILITY**

- I. Statement of Intent
- II. Definitions
- III. Basic Rights
- IV. Least Restrictive Appropriate Treatment
- V. Notification of Rights
- VI. Assistance in the Protection of Rights
- VII. Right to Due Process with regard to Grievances
- VIII. Complaints
- IX. Confidentiality and Access to Records
- X. Fair Compensation for Work
- XI. Protection During Experimentation and Research

#### **B. RIGHTS IN INPATIENT AND RESIDENTIAL SETTINGS**

- I. Statement of Intent
- II. Privacy and Humane Treatment Environment
- III. Individualized Treatment and Discharge Plan
- IV. Individualized Treatment or Service Plan in Residential Settings in Residential Settings
- V. Informed Consent to Treatment
- VI. Basic Rights
- VII. Freedom From Unnecessary Seclusion and Restraint in Residential Settings

#### **C. RIGHTS IN OUTPATIENT SETTINGS**

- I. Statement of Intent
- II. Individualized Support Planning Process
- III. Individualized Treatment or Service Plan
- IV. Informed Consent to Treatment

Summary in English, French, Russian, Serbo-Croatian, Somali, Spanish, Vietnamese

## **Rights of Recipients Summary in English**

### **DEPARTMENT OF BEHAVIORAL AND DEVELOPMENTAL SERVICES RIGHTS OF RECIPIENTS OF MENTAL HEALTH SERVICES**

This is a summary of your rights as a recipient of services under the Rights of Recipients of Mental Health Services. You have a right to obtain a full copy of the Rights from this agency or from the Department of Behavioral and Developmental Services, 40 State House Station, Augusta, Maine 04333, Tel: 287-4200 (V), 287-2000 (TTY). If you are deaf or do not understand English, a qualified interpreter will be made available at no charge so that you can understand your rights and understand your treatment.

1. Basic rights. You have the same civil, human, and legal rights which all Maine residents have. You have a right to be treated with courtesy and full respect for your individuality and dignity.
2. Confidentiality and Access to Records. No one else can see your record unless you specifically authorize them to see it, except in instances described in the complete Rights book. You may add written comments to your record to clarify information you believe is inaccurate or incomplete. You have the right to review your record at any reasonable time.
3. Individualized Treatment or Service Plan. You have the right to an individualized plan, developed by you and your worker, based upon your needs and goals. The plan must be in writing and you have the right to a copy of it. The plan needs to specifically detail what everyone will do, the time frames in which the tasks and goals will be accomplished and how success will be determined. The plan must be based upon your actual needs and, if a needed service is not available, detail how your need will be met.
4. Informed Consent. No services or treatment can be provided to you against your will, unless you have a guardian who has consented, there is an emergency, or a special hearing about your treatment has occurred. You have the right to be informed (or if under guardianship, the guardian has the right to be informed) of the possible risks and anticipated benefits of all services and treatment, including medications, in a manner which you understand. If you have any questions, you may ask your worker or anyone else you choose before making decisions about treatment or services.
5. Assistance in the Protection of Rights. You have the right to appoint a representative of your choice to help you understand your rights, protect your rights or help you work out a treatment or service plan. If you wish a representative, you must designate this person in writing. You can have access to the representative at any time you wish and you can change or cancel the designation at any time.
6. Freedom From Seclusion and Restraint. You cannot be secluded or restrained in an outpatient setting.
7. Right to File a Grievance. You have the right to bring a grievance to challenge any possible violation of your rights or any questionable practices. You have the right to have your grievance answered in writing, with reasons for the decisions. You may appeal any decision to the Division of Mental Health. You may not be punished in any way for filing a grievance. For help with grievances, you may contact the Office of Advocacy, 60 State House Station, Augusta, Maine 04333, Tel: 287-4228 (V), 287-1798 (TTY) or Disability Rights Center, P.O. Box 2007, Augusta, Maine 04338-2007, Tel: 1-800-452-1948 (V/TTY).

I have received a copy of the summary of the Rights of Recipients of Mental Health Services

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|      |                  |      |                   |
|------|------------------|------|-------------------|
| Date | Client Signature | Date | Witness Signature |
|------|------------------|------|-------------------|

*(To view full notice of rights for recipients of mental health services of the State of Maine, please see the following website: <http://www.state.me.us/bds/Licensing/RightsRecipients/Index.html>)*

**Annex 8. Example: Forms for involuntary admission and treatment (combined approach) and appeal form, Victoria, Australia**

**SCHEDULE 1**

Regulation 5(1)

**FORM OF INVOLUNTARY ADMISSION REQUEST**

Mental Health Act 1986  
(Section 9)  
Mental Health Regulations 1998

**PART A**

REQUEST FOR ADMISSION OF A PERSON AS AN INVOLUNTARY PATIENT TO AN APPROVED MENTAL HEALTH SERVICE

**TO THE ADMITTING REGISTERED MEDICAL PRACTITIONER**

Please admit

.....  
GIVEN NAME(S)/FAMILY NAME (BLOCK LETTERS) of person to be admitted  
of .....

(ADDRESS OF PERSON TO BE ADMITTED)

as an involuntary patient to an appropriate approved mental health service.

**PART B**

**DETAILS OF PERSON MAKING THE REQUEST**

.....  
GIVEN NAME(S)/FAMILY NAME (BLOCK LETTERS) of person making the request  
of .....

address of person making the request

signed ..... date .....

**PART C**

**TAKING PERSON TO APPROVED MENTAL HEALTH SERVICE  
(TO BE COMPLETED IF NECESSARY) \***

I hereby authorise

.....

GIVEN NAME(S)/FAMILY NAME (BLOCK LETTERS) of a \*\*member of the police force, an ambulance officer or a person authorised by the person making the request

employed by ..... designation .....

to take the above named person to an appropriate approved mental health service.

.....

GIVEN NAME(S)/FAMILY NAME (BLOCK LETTERS) of person making the request

signed ..... date .....

\* This authorisation to take a person to an approved mental health service is only to be used when a Request and Recommendation have been completed. In the case of an Authority to Transport without Recommendation, schedule 4 must be used.

\*\* Circle as necessary

\_\_\_\_\_

## SCHEDULE 2

Regulation 5(2)

### FORM OF INVOLUNTARY ADMISSION RECOMMENDATION

Mental Health Act 1986  
(Section 9)  
Mental Health Regulations 1998

RECOMMENDATION FOR ADMISSION OF A PERSON AS AN INVOLUNTARY PATIENT TO  
AN APPROVED MENTAL HEALTH SERVICE

#### TO THE ADMITTING REGISTERED MEDICAL PRACTITIONER

Please admit

.....

GIVEN NAME(S)/FAMILY NAME (BLOCK LETTERS) of person to be admitted

of .....

address of person to be admitted

I am a registered medical practitioner and state as follows

I have personally examined the abovenamed person on (date) .....

at .....\*am/pm.

It is my opinion that:

(a) the person appears to be mentally ill (*a person is mentally ill if he or she has a mental illness, being a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory*); and

(b) the person's mental illness requires immediate treatment and that treatment can be obtained by admission to and detention in an approved mental health service; and

(c) because of the person's mental illness, the person should be admitted and detained for treatment as an involuntary patient for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and

(d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and

(e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of that person's freedom of decision and action.

I do not consider the person to be mentally ill by reason only of any one or more of the exclusion criteria listed in section 8(2) of the **Mental Health Act 1986**.

I base my opinion on the following facts

FACT/S PERSONALLY OBSERVED BY ME ON EXAMINATION

.....

FACTS COMMUNICATED TO ME BY ANOTHER PERSON

.....

**TO BE COMPLETED WHERE NO FACTS ARE PERSONALLY OBSERVED**

As no facts were personally observed by me, the following facts were communicated directly to me \*in person/in writing/by telephone/by electronic communication by

Dr.....

GIVEN NAME(S)/FAMILY NAME (BLOCK LETTERS) of other registered medical practitioner

of .....

doctor's address

doctors telephone number .....

who examined the above named person on (date) .....

(being a period not more than 28 days prior to today's date)

FACTS COMMUNICATED BY OTHER EXAMINING REGISTERED MEDICAL PRACTITIONER:

.....

I consider that the above named person should be admitted to an approved mental health service.

.....

GIVEN NAME(S)/FAMILY NAME (BLOCK LETTERS)

of recommending registered medical practitioner

signed .....

SIGNATURE of recommending registered medical practitioner

Qualifications: .....

Address .....

Telephone number ..... date .....

\*circle as necessary

(See: [http://www.dms.dpc.vic.gov.au/Domino/Web\\_Notes/LDMS/PubLawToday.nsf?OpenDatabase](http://www.dms.dpc.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf?OpenDatabase))

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**Mental Health Act 1986**

Sections 29

Local Hospital  
Patient Number:

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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Family Name: \_\_\_\_\_

Given Names: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex: \_\_\_\_\_

Alias: \_\_\_\_\_

Mental Health Statewide  
Patient Number

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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**APPEAL TO THE MENTAL HEALTH REVIEW BOARD**

**Notes to completing this form**

**Appeals**

A patient may appeal to the Board at any time.

A community visitor or any other person who satisfies the Board of a genuine concern for the patient may make an appeal on behalf of an involuntary or security patient.

**Further information**

To find out more about the Board:

- Ask your case manager or another member of the treating team for the relevant patients' rights booklet.
- Call the Board on the number below.
- Visit the Board's website at [www.mhrb.vic.gov.au](http://www.mhrb.vic.gov.au)

**Privacy Statement**

The information being collected on this form will be used by the Mental Health Review Board to schedule your appeal. The Board will notify you and the approved mental health service that a hearing has been scheduled. It will request the service to provide information about you and your treatment. The Board will use this information to help it decide your appeal. The exchange of information between the Board and your treating mental health service is authorised under the **Mental Health Act 1986**.

The Board will keep your information secure and not disclose it for any other purpose unless there is a legal requirement for it to do so. You can access information held about you by the Board by contacting the Executive Officer at the address shown.

**TO THE EXECUTIVE OFFICER MENTAL HEALTH REVIEW BOARD**

\_\_\_\_\_ GIVEN NAME/S FAMILY NAME (BLOCK LETTERS) of patient

\_\_\_\_\_ address of patient if living in the community

I am a patient of: \_\_\_\_\_ approved mental health service

**I wish to appeal against:**

(please cross )

- being an involuntary inpatient.
- my community treatment order. I want to be discharged off the order.
- the conditions of my community treatment order. I want the conditions changed.
- my transfer to: \_\_\_\_\_ another approved mental health service
- my restricted community treatment order. I want to be discharged off the order (hospital order patients only).
- being a security patient.
- the refusal of the Chief Psychiatrist to grant me special leave (security patients only).

I wish to appeal because: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_ Date: 

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**TO BE COMPLETED IF A PERSON MAKES AN APPEAL ON BEHALF OF A PATIENT**

I wish to appeal on behalf of the abovenamed patient.

\_\_\_\_\_ GIVEN NAME/S FAMILY NAME (BLOCK LETTERS) of person making appeal

of: \_\_\_\_\_ address of person making appeal

Signed: \_\_\_\_\_ Relationship to patient: \_\_\_\_\_ Date: 

|  |  |  |  |  |  |  |  |  |  |
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eg. community visitor, spouse, friend etc.

Fax, mail or email your appeal to:

**The Executive Officer  
Mental Health Review Board  
Level 30, 570 Bourke Street  
Melbourne 3000**

**Telephone: 8601 5270  
Facsimile: 8601 5299  
Toll Free: 1800 242 703  
Email: mhrb@mhrb.vic.gov.au**

You may ask a member of staff to send your appeal to the Board.

ROLLS FILING SYSTEMS (03) 8770 1111

DEC 2004

**MHA 5 APPEAL TO MHRB**

## ADVANCE DIRECTIVES IN MENTAL HEALTH CARE AND TREATMENT

*Information for mental health service users*

*HDI*

*Health and Disability Commissioner*

*Te Toihau Hauora, Hauātanga*

*Example:*

### *An advance directive refusing ECT*

*Manu has been sectioned under the Mental Health Act on several occasions. He was once given a series of electroconvulsive shock treatments without his consent. He does not remember much about the procedure, but did not like the fact that afterwards he experienced memory blanks.*

*He has read a lot of material about ECT and strongly believes he does not want to take the risk of experiencing further memory blanks. He also knows from experience that other treatment, as well as family support, will help prevent disabling depression.*

*It is now three months since Manu's last hospitalisation and, at his next outpatient appointment, he sits down with his psychiatrist to discuss a personal crisis plan.*

*It is agreed that Manu will prepare an advance directive stating that he does not wish to receive ECT under any circumstances.*

*His crisis plan covers issues such as noticing early symptoms of depression and seeking help from the psychiatric team, as well as advice to his family about how best to support him. Manu is hopeful that even if he is sectioned again under the Act, the wishes he has expressed in his directive will be considered by his clinicians.*

### **What options do I have if my advance directive is not followed?**

If your advance directive about your future health care is not followed and you are not satisfied with the clinician's explanation, you can complain to the Health and Disability Commissioner.

### **What happens if I do not have an advance directive?**

If you have a crisis and are considered incompetent to consent to treatment (and you're not being sectioned under the Mental Health Act), your clinician can still decide on your treatment, taking into account:

- your best interests; and
- your probable choice if you were competent to make it; or
- the views of other people who are interested in your welfare.

### **What about nominating someone to make decisions on my behalf?**

In some countries your advance directive can include a nominated person to make decisions on your behalf. However, in New Zealand you need to appoint a person to be your Enduring Power of Attorney in relation to your personal care and welfare, through the Protection of Personal Property Rights Act 1988. If you wish, you can give this person the power to make health care decisions on your behalf when you are not competent to do so yourself. You should seek advice from a lawyer if you wish to appoint someone as your Enduring Power of Attorney.

### What about decisions that don't relate to my health care?

There may be decisions not related to your health care that you wish to communicate in advance. One way to do this is through crisis planning. The people working in your mental health service should discuss your preferences with you in case you experience another crisis. Your crisis plan can record decisions such as who you would like to look after your children, or the names of family members you would like to be contacted while you are in hospital.

You can also incorporate your advance directive into the crisis planning process. If your clinician does not involve you in any crisis planning you can simply write down your own wishes and ask for them to be put in your file.

#### Example:

##### ***An advance directive refusing a specific drug***

*When Bill was hospitalised he was given a high dose of the drug X and had a very severe reaction to it. Bill discussed his medication with his psychiatrist and they decided that it would be better to avoid drug X altogether, especially as a suitable alternative had been found. Bill has family in different parts of New Zealand, and often travels around. He decided it would be a good idea to carry with him an advance directive to safeguard against being given the drug if he required admission to a different mental health service that did not have his records. He also felt it would be helpful to record the names of both drug X and his current medication, as when he is unwell he sometimes gets confused and can't remember the names.*

##### ***An Enduring Power of Attorney for informing family and friends***

*John is a young gay man who currently has a partner and a wide circle of friends who were really supportive when he had a mental health crisis last year. However, when his parents came to see him during the crisis they made things worse. They disapprove of John's lifestyle and tried to prevent his friends from seeing him. They didn't want him to go home to his flat, which he shares with his partner and a couple of other gay men. Although John wishes his parents to be informed if he is hospitalised, he wants decisions about his care to be made by his partner. For this reason, John, with help from his lawyer, has appointed his partner as an Enduring Power of Attorney for his personal care and welfare.*

### What is the best way to protect my wishes and interests?

An advance directive will help ensure your wishes and interests are respected in a crisis, but an Enduring Power of Attorney and a crisis plan will protect your wishes and interests even more.

### Do you want more control over what happens in a crisis?

If you do, an advance directive could be a good way for you to gain more control over the treatment and care you are given in a future episode. Past episodes will have helped you understand what treatments and care work for you and what don't. You have the right, under the Code of Health and Disability Services Consumers' Rights, to use an advance directive to make your wishes known about the treatments and care you receive during a future episode.

### What is an advance directive?

In simple terms, an advance directive is the giving or refusing of consent to treatment in the future. It is a statement to others, usually in writing, setting out your treatment preferences if you experience another episode of mental illness that leaves you unable to decide or communicate your preferences at the time.

Under the New Zealand Code, advance directives relate only to the type of health care and treatment you want. In some countries advance directives can include decisions not directly related to your health care, but in New Zealand different processes are needed to make these wishes known.

### Who can make an advance directive?

The Code of Health and Disability Services Consumers' Rights gives any person who is legally competent to make a health care choice the right to make an advance directive.

### What can I make an advance directive about?

Advance directives should focus on treatment and care. For example, you could state:

- the treatments you do or don't want to be given when you are in a crisis, including drugs or ECT
- the places you would prefer to receive services when in crisis, such as hospital, home or a crisis house.

#### Example:

##### **An advance directive requesting a specific drug**

*Sally knows that when she starts to feel a certain way, it's really important to begin treatment with a low dose of drug X. During her first episodes of mental illness she became very unwell and was hospitalised. Recently she shifted to a new city and is unsure whether her new doctor really respects her own knowledge of her condition.*

*She decided to prepare an advance directive, which states that if she has another episode she wishes to be prescribed drug X by her GP, rather than waiting for psychiatric referral. While Sally's request will be respected by her clinicians, the drug will be provided only if clinically appropriate at the time.*

### How do I go about making an advance directive?

It's not difficult to make an advance directive. You don't need a lawyer. In fact, you have the right to make an advance directive without involving anyone else in its preparation. However, taking the following steps will help ensure that your advance directive is respected, and the decisions contained within it acknowledged and acted upon.

- If possible, make your advance directive in writing rather than verbally. State your preferences as clearly as you can, then sign and date it.
- If you prepare your advance directive with the help of your clinician or another health worker, he or she can verify that you are competent and sufficiently informed about your stated preferences, and can help you clarify the type of situation you intend your directive to cover.
- If you involve your family or whanau in preparing your advance directive, or at least inform them of it, they will be better equipped to support you and to advocate for your wishes in a crisis.
- Regularly review and update your advance directive so that it reflects any changes in your condition or your preferences, and is viewed by clinicians as still representing your wishes.
- Keep a copy of your advance directive yourself, and give copies to your family or support persons, and the clinicians most often involved in your care.

### Will my advance directive always be followed?

**No.** When deciding whether or not to follow your advance directive, your clinician will consider five questions:

- Were you competent to make the decision when you made the advance directive?
- Did you make the decision of your own free will?
- Were you sufficiently informed to make the decision?
- Did you intend your directive to apply to the present circumstances, which may be different from those anticipated?
- Is the advance directive out of date?

The Code of Health and Disability Services Consumers' Rights sets out your right to be fully informed, make an informed choice, and give informed consent. However, your advance directive will not override the ability of your clinician to authorise compulsory treatment if you are subject to a compulsory treatment order under the Mental Health (Compulsory

Assessment and Treatment) Act 1992. The Mental Health Act also directs the responsible clinician to attempt to get your consent to treatment even though he or she may give you treatment without your consent.

It may still be worth having an advance directive if you are subject to a compulsory treatment order because it will give your clinician an indication of your wishes.

**Example of an advance directive refusing drug X.**

I \_\_\_\_\_ do not wish to receive drug X under any circumstances. I have discussed this decision with my psychiatrist, Dr \_\_\_\_\_, who has explained my treatment options and the expected benefits, risks and side effects of drug X.

I confirm that I have made this decision of my own free will and that, unless revoked by me, it is to apply for the next \_\_\_\_\_ years.

Date \_\_\_\_\_

Signature \_\_\_\_\_

I confirm that \_\_\_\_\_ is competent at the time of making this advance directive.

Date \_\_\_\_\_

Clinician \_\_\_\_\_

Mental Health Commission:  
Phone: (04) 474 8900  
Fax: (04) 474 8901  
Email: info@mhc.govt.nz  
Website: www.mhc.govt.nz

HDI Health and Disability Commission:  
Ph/TTY: (09) 373 1060  
Fax: (09) 373 1061  
Freephone: 0800 11 22 33  
Email: hdc@hdc.org.nz  
Website: www.hdc.org.nz