

Department of Health & Family Welfare
DRAFT MENTAL HEALTH CARE BILL (01.10.2012)

	exercise the powers conferred upon and to perform the functions assigned to it under this Act.	
	(2) The head office of the Commission shall be at	
Composition of Commission.	74. (1) The Commission shall consist of a president and four members.	
	(2) The president and members of the Commission shall be appointed by the President of India on recommendation of the Selection Committee referred to in sub-section (1) of section 76 : Provided that in case a sitting Chief Justice of High Court is appointed as the president of the Commission, he shall be appointed in consultation with the Chief Justice of India.	
Qualifications for appointment of President and Members of Commission.	75. (1) A person shall be qualified to be appointed as the president, if such person is or has been a Chief Justice of a High Court.	
	(2) A person shall be qualified to be appointed as a member, if such person has ability, integrity and standing, and adequate knowledge and experience in mental health.	
	(3) Out of the four members referred to in section 74, one each shall be chosen from amongst—	
	(a) psychiatrists having at least fifteen years experience in the field;	
	(b) persons with mental illness or representatives of persons with mental illness;	
	(c) representatives of families and care-givers to person with mental illness or of non-Governmental organisations working in the field of mental health;	
	(d) persons having at least fifteen years of experience in public administration.	
Selection Committee.	76. (1) The Central Government shall, for the purpose of selection of the president and members of the Commission, constitute a Selection Committee consisting of-- (a) Chief Justice of India —chairperson, (b) Secretary of the Department of Health and Family Welfare in the Ministry of Health and Family Welfare as the convener—member, (c) Secretary of the Department of Disability Affairs in the Ministry of Social Justice and Empowerment—member, (d) Secretary of the Ministry of Women and Child Development—member, (e) an eminent person working in the field of mental health—member.	

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	<p>(2) The Central Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of the president or a member of the Commission and three months before the superannuation or completion of the term of office of the president or any member of that Commission, make a reference to the Selection Committee for filling up of the vacancy.</p> <p>(3) The Selection Committee shall finalise the selection of the president and members of the Commission within two months from the date on which the reference is made to it.</p> <p>(4) The Selection Committee shall issue a public advertisement seeking applications from persons for recommendation of names in respect of categories mentioned under clauses (a), (b), (c) and (d) of sub-section (3) of section 75.</p> <p>(5) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.</p> <p>(6) Before recommending any person for appointment as a president or other member of the Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest, which is likely to affect prejudicially his functions as a member.</p> <p>(7) Subject to the provisions of sub-sections (1) to (6), the Selection Committee shall regulate its own procedure.</p> <p>(8) No appointment of the president or other member of the Commission shall be invalid merely by reason of any vacancy in the Selection Committee.</p>	
	<p>77. (1) The president of the Commission shall be appointed on whole time basis and the members of the Commission shall be appointed on the whole time or part time basis as the Central Government may decide.</p>	<p>Term of office, salaries and allowances of President and other Members.</p>
	<p>(2) The president and the other members of the Commission shall hold office as such for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:</p>	
	<p>Provided that the president or the member shall not hold office as such after he has attained the age of seventy years.</p>	
	<p>(3) The salaries and allowances payable to, and the other terms and conditions of service of, the president and other members shall be such as may be prescribed by the Central Government.</p>	
	<p>Provided that neither the salary and allowances nor the other terms and conditions of service of the president and other member of the Commission shall be varied to their disadvantage after their appointment.</p>	
	<p>78. No act or proceeding of the Commission shall be invalid</p>	<p>Vacancies, etc., not to invalidate</p>

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	merely by reason of—	proceedings of Commission.
	(a) any vacancy in, or any defect in the constitution of, the Commission; or	
	(b) any defect in the appointment of a person acting as a member of the Commission; or	
	(c) any irregularity in the procedure of the Commission not affecting the merits of the case.	
	79. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit.	Staff of Commission.
	(2) The officers and other employees of the Commission shall discharge their functions under the general superintendence of the president.	
	(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Commission shall be such as may be prescribed by the Central Government.	
Constitution of Mental Health Review Boards.	80. (1) The Commission shall, with the prior concurrence of the concerned State Government, constitute Boards to be called as Mental Health Review Board in the districts of that State.	
	(2) The number, location and jurisdiction of the Boards shall be decided by the Commission in consultation with the concerned State Government.	
	(3) While constituting the Boards under sub-section (1), the Commission shall have regard of the followings, namely:—	
	(a) the expected or actual workload of the Board in the State in which such Board is to be constituted;	
	(b) number of mental health establishments existing in the State;	
	(c) the number of persons with mental illness;	
	(d) population in the district in which the Board is to be constituted;	
	(e) geographical and climatic conditions of the district in which the Board is to be constituted;	
Composition of Board.	81. (1) Each Board shall consist of—	
	(a) a District Judge, or an officer of the state judicial services who is qualified to be appointed as District Judge or a retired District Judge who shall be chairperson of the Board;	
	(b) representative of the District Collector or District Magistrate or Deputy Commissioner of the districts in which	

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	the Board is to be constituted;	
	(c) two members who shall be mental health professionals of whom at-least one shall be a psychiatrist;	
	(d) two members who shall be persons with mental illness or care-givers or persons representing organisations of persons with mental illness or care-givers or non-governmental organisations working in the field of mental health.	
	82. (1) A person shall be disqualified to be appointed as the president or a member of the Commission or be removed by the President of India on the recommendation of the Central Government, if he—	Disqualification and removal.
	(a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or	
	(b) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or	
	(c) is adjudged as an insolvent; or	
	(d) has such financial or other interest as is likely to prejudice the discharge by him or her functions as a member; or	
	(e) has such other disqualifications as may be prescribed by the Central Government.	
	(2) A person shall be disqualified to be appointed as the chairperson or a member of a Board or be removed by the Commission, if he—	
	(a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude or;	
	(b) is adjudged as an insolvent or;	
	(c) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or	
	(d) has such financial or other interest as is likely to prejudice the discharge by him or her functions as a member; or	
	(e) has such other disqualifications as may be prescribed by the Central Government.	
	(3) The president or a member of the Commission may resign from the office by notice in writing under his hand addressed to the President of India and on such resignation being accepted, the vacancy shall be filled by appointment of a person, belonging to	

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	the category under sub-section (3) of section 75.	
Please fill this space	(4) A chairperson or member of a Board may resign his office by notice in writing under his hand addressed to the president of the Commission and on such resignation being accepted, the vacancy shall be filled by appointment of a person, belonging to the category under sub-section (3) of section 75.	
	83. (1) The chairperson and members of the Board shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall be eligible for re-appointment for another term of five years or up to the age of seventy years whichever is earlier.	Terms and conditions of service of chairperson and members of Board.
	(2) The appointment of chairperson and members of every Board shall be made by the president of the Commission.	
	(3) The honorarium and other allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Board shall be such as may be prescribed by the Central Government.	
	84. (1) The decisions of the Commission or the Board, as the case may be, shall be by consensus, failing which by a majority of votes of members present and voting and in the event of equality of votes, the president or the chairperson, as the case may be, shall have a second or casting vote.	Decisions of Commission and a Board.
	(2) The quorum of a meeting of the Commission or the Board, as the case may be, shall be three members.	
	85. (1) Any person with mental illness or his nominated representative or a representative of a registered non-governmental organisation, with the consent of such a person, being aggrieved from the decision of any of the mental health establishment or whose rights under this Act have been violated, may make an application to the Board seeking redressal or appropriate relief. (2) There shall be no fee or charge levied for making such an application.	Applications to a Board.
	(3) Every application referred to in sub-section (1) shall contain the name of applicant, his contact details, the details of the violation of his rights, the mental health establishment or any other place where such violation took place and the redressal sought from the Board. (4) In exceptional circumstances, the Board may accept an application made orally or over telephone from a person admitted	

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	to a mental health establishment.	
45 of 1860.	86. All proceedings before the Commission and the Board, shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.	Proceedings before Commission and Board to be judicial proceedings.
	87. The Commission and the Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be specified by regulations made by the Commission.	Meetings.
	88. (1) The Board, on receipt of an application under sub-section (1) of section 85, shall, subject to the provisions of this section, endeavour to hear and dispose of the same within a period of ninety days.	Proceedings before a Board.
	(2) The Board shall dispose of an application— (a) for appointment of nominated representative under clause (d) of sub-section (4) of section 14; (b) challenging admission of a minor under section 96 ; (c) challenging supported admission under sub-section (10) or sub-section (11) of section 98, within a period of seven days from the date of receipt of such applications. (3) The Board shall dispose of an application challenging supported admission under section 99 within a period of twenty-one days from date of receipt of the application. (4) The Board shall dispose of an application, other than an application referred to in sub-section (3), within a period of ninety days from the date of filing of the application.	
	(5) The proceeding of the Board shall be held in camera. (6) The Board shall not ordinarily grant an adjournment for the hearing.	
	(7) The parties to an application may appear in person or be represented by a counsel or a representative of their choice.	
	(8) Where in the opinion of the Board and based on representation made by the parties to the hearing, the interests of the person with mental illness are better served by holding the hearing at the establishment where the person is admitted, the Board may conduct the proceedings at the facility.	
	(9) The Board may allow any persons other than those directly interested with the application, with the permission of the person	

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	with mental illness and the chairperson of the Board, to attend the hearing.	
	(10) The person with mental illness whose matter is being heard shall have the right to give oral evidence to the Board, if such person desires to do so. (11) The Board shall have the power to require the attendance and testimony of such other witnesses as it deems appropriate.	
	(12) The parties to a matter shall have the right to inspect any document relied upon by any other party in its submissions to the Board and may obtain copies of the same.	
	(13) The Board shall, within five days of the completion of the hearing, communicate its decision to the parties in writing.	
	(14) Any member who is directly or indirectly involved in a particular case, shall not sit on the Board during the hearings with respect to that case.	
	89. Subject to the provisions of this Act, the powers and functions of the Commission shall, <i>inter alia</i> , include all or any of the following matters, namely:—	Functions of Commission.
	(a) appoint and remove members of the Board	
	(b) give guidance to Board on interpretation of the provisions of this Act and the procedures to be followed by the Board;	
	(c) review periodically the use of advance directives and make regulations with regard to the procedure for advance directive;	
	(d) advise the Central Government on matters relating to the promotion and protection of rights of persons with mental illness.	
	90. (1) The Commission shall appoint an Expert Committee to prepare a guidance document for medical practitioners and mental health professionals, containing procedures for assessing, when necessary or the capacity of persons to make mental health care or treatment decisions.	Commission to prepare guidance document.
	(2) Every medical practitioner and mental health professional shall, while assessing capacity of a person to make mental health care or treatment decisions, comply with the guidance document referred to in sub-section (1) and follow the procedure specified therein.	
	91. (1) Subject to the provisions of this Act, the powers and functions of the Board shall, include all or any of the following	Powers and functions of Board.

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	matters, namely:—	
	(a) to register, review, alter, modify or cancel an advance directive ;	
	(b) to appoint a nominated representative ;	
	(c) to receive and decide application from a person with mental illness or his nominated representative or any other interested person against the decision of medical officer or psychiatrists in charge of mental health establishment or mental health establishment under section 96 or section 98 or section 99;	
	(d) to receive and decide applications in respect non-disclosure of information specified under sub-section (3) of section 25;	
	(e) to adjudicate complaints regarding deficiencies in care and services specified under section 28; (f) to visit and inspect prison or jails and seek clarifications from the medical officer in charge of health services in such prison or jail ;	
	(2) Where it is brought to the notice of a Board or to the Commission, that a mental health establishment violates the rights of persons with mental illness, the Board or the Commission, as the case may be, shall direct the Central Authority or the State Authority to conduct an inspection and inquiry and submit a report of such inspection and inquiry to the Board or the Commission, as the case may be, containing the action taken or proposed to be taken by the Central Authority or the State Authority to protect the rights of persons with mental illness in the said mental health establishment. (3) Notwithstanding anything contained in this Act, the Board, in consultation with the Commission, may take measures to protect the rights of persons with mental illness as it considers appropriate.	
	(4) If the mental health establishment does not comply with the orders or directions of the Commission or the Board or wilfully neglects such order or direction, the Commission or the Board, as the case may be, may impose monetary penalty which may extend up to five lakh rupees on such mental health establishment or order the Central Authority or the State Authority to cancel the registration of such mental health establishment.	
	92. Any person or establishment aggrieved by the decision of	Appeal against order of <i>to High Court</i>

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	the Commission or a Board may, within a period of thirty days from such decision, prefer an appeal to the High Court of the State in which the Board is situated:	Commission.
	Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.	
	93. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.	Grants by Central Government to Commission.
	(2) The grants referred to in sub-section (1) shall be applied for, (a) meeting the salary, allowances and other remuneration of the president, members, officers and other employees of the Commission; (b) meeting the salary, allowances and other remuneration of the chairperson, members, officers and other employees of the Boards; and (c) the expenses of the Commission and the Boards incurred in the discharge of their functions and for the purposes of this Act.	
	CHAPTER XII ADMISSION, TREATMENT AND DISCHARGE	
	94. (1) For the purposes of this Act, "independent patient or an independent admission" refers to the admission of person with mental illness, to a mental health establishment, who has the capacity to make mental health care and treatment decisions or requires minimal support in making decisions. (2) All admissions in the mental health establishment shall, as far as possible, be independent admissions except when such conditions exist as make supported admission unavoidable.	Admission of a person with mental illness as independent patient in a mental health establishment.
	95. (1) Any person, who is not a minor and who considers himself to have a mental illness and desires to be admitted to any mental health establishment for treatment may request the medical officer or psychiatrist in charge of the establishment to be admitted as an independent patient.	Independent admission and treatment.
	(2) On receipt of such request under sub-section (1), the medical officer or psychiatrist in charge of the establishment shall admit the person to the establishment if the medical officer or psychiatrist is satisfied that—	