



**GAUTENG**  
**LEGISLATURE**  
Your View — Our Vision

**NEGOTIATING MANDATE**

**TO:** The Chairperson of the Select Committee on Social Services

Hon R N Rasmeni

**NAME OF BILL:** Mental Health Care Amendment Bill.

(Section 76)

**NUMBER OF BILL:** [B39-2012]

**DATE OF DELIBERATION:** 19 July 2013

**VOTE OF THE LEGISLATURE:**

The Gauteng Provincial Legislature supports the principle and the detail of the bill with the proposed amendments and therefore votes in favour of-

- Mental Health Care Amendment Bill.

**HON. M F BOPAPE**

Chairperson of Health Committee

GAUTENG PROVINCIAL LEGISLATURE

Date: 19/07/2013



# GAUTENG LEGISLATURE

## HEALTH PORTFOLIO COMMITTEE NEGOTIATING MANDATE ON THE: MENTAL HEALTH CARE AMENDMENT BILL [B39-2012]

19<sup>th</sup> July 2013

### 1. INTRODUCTION

The Chairperson of the Health Portfolio Committee, Ms. Molebatsi Bopape, tables the Committee's Negotiating Mandate on the Mental Health Care Amendment Bill [B39-2012] as follows:

### 2. PROCESS FOLLOWED

- 2.1 The Speaker, on Tuesday, 26 March 2013, formally referred the *Mental Health Care Amendment Bill [B39-2012]* Section 76, to the Portfolio Committee on Health for formal consideration in terms of Rule 252 (1) (a) read with 254 (1) and 255 (1) and reporting.
- 2.2 On Wednesday, 12<sup>th</sup> June 2013, the Permanent Delegate of the National Council of Provinces (NCOP), Honourable Pinky Mncube together with the officials from the National Department of Health briefed the Committee on the intentions of the Bill. In the same meeting the Committee received a research analysis on the Bill.
- 2.3 On Wednesday, 12<sup>th</sup> June 2013, the Honourable MEC Hope Papo mandated officials from the Gauteng Department of Health to present on the Bill and indicate the position of the Department on the Bill. In the same meeting the Legal Unit of the Gauteng Provincial Legislature also presented the legal opinion.
- 2.4 On Friday, 14<sup>th</sup> June 2013, the Portfolio Committee held a Public Hearing on the *Mental Health Care Amendment Bill [B39-2012]*.
- 2.5 On Friday, 19<sup>th</sup> July 2013, the Portfolio Committee on Health deliberated and adopted the Negotiating Mandate of the Bill. The oral and written submissions made at the public hearing were considered in developing the position of the Portfolio Committee on the Negotiating Mandate.

### 3. PRINCIPLES AND DETAILS OF THE BILL

This Bill seeks to amend the Mental Health Care Act, 2002, with the insertion of a new section that provides for the delegation of powers by the Director General of the National Department Health to officials in the National Department.

### 4. OBJECTIVES OF THE BILL

The main objects of the Mental Health Care Amendment Bill [B39-2012], is to amend the Mental Health Care Act, 2002, so as to provide for the delegation of powers by the Director General of the National Department of Health to officials in the National Department to improve the application and implementation of the Act.

The proposed insertion enables the Director General to delegate powers as follows:

- To determine the transfers of state patients from detention centres to health establishments pursuant to court orders issued in terms of the Criminal Procedure Act, 1997,
- To determine the transfers of state patients between the designated health establishment upon an order issued by the Mental Health Review Board, and
- To review the Mental Health status of state patients.

The Bill also seeks to repeal the remaining Chapter 8 of the Mental Health Act No.8 of 1973. This Chapter dealt with the hospital boards and is no longer necessary since Chapter 6 of the National Health Act No. 61 of 2003, deals with that subject.

### 5. CLAUSE BY CLAUSE ANALYSIS OF THE BILL

The mental Health Care Act No. 17 of 2002 is proposed to be amended by the insertion after section 72 of the following section "Delegation of powers" as follows:

- Clause 72A (1) The head of the National Department may, in writing, delegate any power conferred upon him or her by this Act to any person in the employ of the National Department, except the powers referred to in sections 5, 6 (3), 13 (2), 41 and 49.
- The head of the National Department may, at any time
  - a) Withdraw a delegation made under subsection (1), or
  - b) Withdraw or amend any decision made in the exercise of such delegated power.
- A decision made in the exercise of any delegated power, unless withdrawn or amended, is deemed to have been made by the head of the National Department.
- Any right or privilege acquired or any obligation or liability incurred as a result of a decision made in terms of a delegated power referred to in subsection (1) cannot be affected by any subsequent withdrawal or amendment of that decision.

The Mental Health Act No. 18 of 1973, will therefore be repealed.

## **6. OVERVIEW OF THE PUBLIC HEARING AND SUBMISSIONS**

As part of its functions and obligations, the Committee held a public hearing on the Mental Health Care Amendment Bill [B39-2012] on Friday, 14<sup>th</sup> June 2013 at Refilwe Community Hall, Cullinan. The public hearing was attended by approximately three hundred (300) people and both verbal and written submissions were received from the various individuals and organisations as listed below:

- 6.1 Lack of Transport at Refilwe Clinic for mentally ill patients.
- 6.2 Provincial ambulances refuse to assist mental ill patients when called.
- 6.3 Sexual abuse cases perpetrated against mental ill patients not being attended to by SAPS.
- 6.4 Lack of support for learners at local primary school who have signs of mental illness.

## **7. VIEWS OF THE GAUTENG DEPARTMENT OF HEALTH**

The Gauteng Department of Health supports the insertion after Section 72, the delegation of powers by the head of the National Department of Health (The Director General) to officials in the National Department. The Department believes that the proposed insertion will speed up the processes of authorizing admission of the state patients.

Chapter 8 of the Mental Health Act 18 of 1973 that dealt with Hospital Boards has been repealed as this Chapter is no longer necessary for improving mental health. The Department also notes that the proposed amendments will assist in the improvement, efficiency and effectiveness of service delivery.

## **8. FINANCIAL IMPLICATIONS**

The committee notes that there are no financial implications to the amended Act.

## **9. SOCIAL IMPACT ASSESSMENT OF THE BILL**

The amendments to the Act are welcome, as they will raise the efficiency levels in response to the determination of transfers and review of mental health status of state patients. The amendments are also going to assist in providing psychiatric patients and involuntary health care users, coming from correctional services with proper mental health care.

This will further protect other inmates and correctional service officers from unintentional and intentional injuries from mentally unstable inmates who can also be a danger to themselves. The Act will assist the Mental Review Board to reclassify mentally ill inmates on time for transfer to mental institutions with appropriate mental health care. There are few countries that have a legal framework that adequately protects the rights of people with mental disorders therefore this Act proves a commitment by the government to the care and protection of mentally ill patients.

**10. COMMITTEE RECOMMENDATIONS**

The amendment of the Bill has proven commitment by the government to the care and protection of mentally ill patients the Committee therefore, recommends the following:

10.1 Under the delegation of powers "any person" be replaced by "designated person" in the employ of the national department".

10.2 In all the clauses being amended or inserted, the word "may" be substituted with "must", so that the head of the National Department must be the only one delegating powers to designated person or persons in the employ of the National Department.

**11. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE**

The Health Portfolio Committee supports the principle and details of the Mental Health Care Amendment Bill [B39-2012] taking into consideration the recommendations proposed above which seek to ensure compliance with the constitution and other applicable laws.