

EKITI STATE MENTAL HEALTH LAW, 2021

NO. 16 OF 2021

EKITI STATE OF NIGERIA.

**A LAW TO ESTABLISH THE EKITI STATE MENTAL HEALTH SERVICE,
TO PROVIDE FOR THE PROTECTION, CARE AND TREATMENT OF THE
MENTALLY DISTRESSED PERSONS AND FOR CONNECTED PURPOSES.**

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EKITI STATE OF NIGERIA

ENACTED BY THE EKITI STATE HOUSE OF ASSEMBLY as follows:

Objectives of the Law.

1. The objectives of this Law are to –
 - (a) establish purpose built mental health facilities and medical social work department and units in all primary, secondary and tertiary medical facilities in the State;
 - (b) guarantee the protection of persons suffering from mental disorder or illness and substance abuse in the State;
 - (c) ensure that a Mentally Distressed person has access to mental health care facilities in the State; and
 - (d) ensure that a person is received and admitted for treatment in a mental health facility in accordance with the provisions of this Law.

Establishment of the Ekiti State Mental Health Service.

2. There is established the Ekiti State Mental Health Service (referred to in this Law as "The Mental Health Service").

Establishment and Composition of the Ekiti State Mental Health Service Steering Committee.

3. (1) There is established the Ekiti State Mental Health Service Steering Committee (referred to in this Law as "the Committee") established under the office of the Honourable Commissioner for Health.
 - (2) The Committee shall consists of –
 - (a) the Permanent Secretary of the Ministry of Health who shall be the Chairman of the Committee;
 - (b) the Permanent Secretary of Ministry of Women Affairs and Social Development;
 - (c) the Chief Medical Director, Ekiti State Teaching Hospital;
 - (d) Chief Psychiatrist;
 - (e) a person with background in Clinical Psychology;
 - (f) a Counselor;
 - (g) a Medical Social Worker;

- (h) a Legal Officer from Ekiti State Ministry of Justice (not below the rank of a Deputy Director) to be appointed by the Honourable Attorney General & Commissioner for Justice;
 - (i) a representative of the Pharmaceutical Society of Nigeria, Ekiti State Chapter
 - (j) representative of Civil Society Organisation; and
 - (k) two (2) other members appointed on part-time and voluntary service from the public or private sector of the State who shall be expert in mental and public health care with cognate experience.
- (3) The Director of Public Health from the Ministry of Health shall be the Secretary of the Committee.
- (4) Members of the Committee except the ex-officio members shall be appointed by the Governor on the recommendation of the Commissioner.

Powers of the Steering Committee.

4. The Steering Committee shall have powers to –
- (a) inspect mental health facilities to ensure that they meet the prescribed standards;
 - (b) set general policy guidelines for the management of the mental Health Services;
 - (c) formulate and implement preventive campaigns and other sensitization strategies on mental health;
 - (d) raise funds for the activities of the Mental Health Service;
 - (e) manage the funds of the Mental Health Service;
 - (f) enter into such contracts as may be expedient for carrying into effect the provisions of this Law;

Functions of the Steering Committee.

5. The functions of the Steering Committee shall be to –
- (a) coordinate mental health care activities in the State;
 - (b) collaborate with other State registered mental health care service providers;
 - (c) protect the rights and responsibilities of Mentally Distressed persons;
 - (d) ensure and guarantee the fundamental human rights of Mentally Distressed persons against discrimination and stigmatization;

- (e) provide mental health care services to voluntary and involuntary Mentally Distressed patients and ensure psychiatric in-patient care which is of an equitable standard to physical in-patient care;
- (f) receive and investigate any matter referred to it by a patient or a relative of a patient concerning the treatment of the patient at a mental health facility and where necessary to take, or recommend to the Commissioner any remedial action;
- (g) initiate and organize community advocacy or family based programmes for the care of Mentally Distressed persons and to assist persons with severe mental illness;
- (h) create and maintain a State Data Base on all mental health matters and cases of substance abuse;
- (i) advise the State on the care of persons living with mental disorder or illness;
- (j) advise the State on the state of mental health and mental health care facilities in the State;
- (k) approve the establishment of mental health facilities and Medical Social works unit in all government health facilities in the State;
- (l) assist, whenever necessary, in the administration of mental health facilities;
- (m) take all such other lawful measures as may be considered necessary to assist in carrying out the purposes of this Law;
- (n) receive and investigate complaints of persons admitted under the provisions of this Law;
- (o) review and monitor cases of involuntary admissions, treatment processes, and long-term stay of voluntary admissions;
- (p) approve requests for intrusive or irreversible treatments, except in exceptional emergency cases;
- (q) in consultation with relevant mental health care providers and other experts, provide guidance on minimal intrusive and irreversible treatments, seclusion or restraint; and
- (r) direct the discharge of a patient where it is satisfied that –
 - (i) the patient is no longer suffering from mental disorder or illness or that the mental disorder or illness is under control;
 - (ii) it is not necessary in the interest of the health or safety of the patient or of the protection of other persons that the patient should continue to be on admission;
 - (iii) the patient if released is not likely to act in a manner dangerous to the patient or to others; and

- (iv) admission is no longer the least restrictive form of treatment for the patient.

Tenure of Office Members of the Steering Committee.

- 6. The members of the Steering Committee shall hold office on part-time basis at the pleasure of the Governor and as may be contained in their letters of appointment.

Allowances of the Steering Committee.

- 7. Members of the Steering Committee shall be paid such allowances as may be approved by the Governor.

Cessation of Office of members of the Steering Committee.

- 8. (1) A member of the Steering Committee shall cease to hold office if the member –
 - (a) becomes of unsound mind or incapable of carrying on the duties of the office;
 - (b) becomes bankrupt;
 - (c) is convicted of a felony or of any offence involving dishonesty or corruption;
 - (d) resigns by notice in writing addressed to the Governor;
 - (e) ceases to hold the office on the basis of which the member became a member of the Committee; or
 - (f) is disqualified or suspended as a member of a professional body.
- (2) The Governor may at any time remove any member from office, if it is in the interest of the Steering Committee or of the public for such member to be removed.

Meetings of the Steering Committee.

- 9. (1) The Steering Committee shall meet once every quarter and a special meeting may be convened in case of exigency.
- (2) The Chairman shall preside at a meeting of the Committee and in the Chairman's absence, a member duly appointed at the meeting shall preside.

Proceedings of the Steering Committee.

10. The Committee shall regulate its own proceedings for the purpose of carrying out its functions under this Law.

Validity of Proceedings.

11. The validity of any proceeding of the Committee shall not be affected by any vacancy in the membership of the Committee or any defect in the appointment.

Quorum.

12. The quorum for a meeting of the Committee shall be five (5) members.

Power to Co-opt.

13. Where the Committee desires to obtain the advice of any person on any matter, the Committee may co-opt such person to be a member for the meeting(s) and the person so co-opted shall not be entitled to vote on any question or count towards a quorum.

Disclosure of Interest by Members of the Committee.

14. (1) A member of the Committee who is directly or indirectly interested in a transaction or project of the Mental Health Service shall disclose the nature of the interest at a meeting of the Committee and such disclosure shall be recorded in the minutes book of the Mental Health Service.
- (2) Notice of disclosure of interest in relation to a transaction or project given by a member at a meeting of the Committee shall be sufficient disclosure of that interest however, such member shall not make part in any deliberation or decision of the Committee with respect to that transaction or project.

Voting.

15. (1) All questions at a meeting of the Committee shall be determined by the majority of votes of the members of the Committee present and voting,
- (2) At a meeting of the Committee each member shall have a deliberative vote, and if there is equality of votes, the Chairman shall have a casting vote.

Filling of Vacancy.

16. On the death or vacation of office of the Chairman or any member of the Committee, the Governor shall appoint another person to fill that vacancy.

Power to give directive to the Committee.

17. (1) The Governor may give directive of a general or special nature to the Committee with respect to the exercise of its powers and the performance of its functions on any matter pertaining to the Committee and the Committee shall give effect to such directive(s).
- (2) The Committee shall furnish the Governor with such information and returns relating to the activities of the Committee or other bodies by whom activities are carried out with the assistance of or in association with the Committee, as the Governor may require, and shall afford the Governor facilities for the verification of information furnished by it.

The Secretary of the Mental Health Service.

18. (1) There shall be for the Mental Health Service Steering Committee a Secretary who shall be the Director of Public Health in the Ministry of Health.
- (2) The Secretary shall be responsible to the Permanent Secretary for the following -
- (a) making arrangements for meetings of the Committee;
 - (b) preparing agenda and the minutes of such meetings;
 - (c) conveying decisions of the Committee to its members;
 - (d) arranging for payment of allowances of meetings and all other matters affecting members of the Committee; and
 - (e) performing all other duties affecting the Mental Health Service as may be assigned by the Permanent Secretary.

Staff of the Mental Health Service.

19. (1) The Mental Health Service may make request to the appropriate Service Commission for the employment of staff as it considers necessary for due and proper execution of its functions under this Law.

- (2) Where the Mental Health Service deems it expedient that a vacancy in the Mental Health Service be filled by a person holding office in the Public Service of the State, it shall inform the appropriate Service Commission to that effect and cause such vacancy to be filled by way of secondment or transfer.

Application of the Pensions Law.

20. (1) The provisions of the Pension Reform Law shall apply to the Pension and other retirement benefits of officer and staff of the Mental Health Service.
- (2) Nothing in subsection (1) of this Section shall prevent the appointment of a person to any office on terms which precludes the grant of a pension in respect of that office.

Discharge by the Steering Committee.

21. (1) The Steering Committee may direct the discharge of a person admitted under the provisions of this Law and make necessary recommendations to the head of the mental health facility.
- (2) The Steering Committee shall direct the discharge of a patient where it is satisfied that –
- (a) the patient is no longer suffering from mental disorder or illness or that the mental disorder or illness is under control;
 - (b) it is not necessary in the interest of the health or safety of the patient or of the protection of other persons that the patient should continue to be on admission;
 - (c) the patient if released is not likely to act in a manner dangerous to the patient or to others;
 - (d) admission is no longer the least restrictive form of treatment for the patient.

Annual Report of the Steering Committee.

22. The Chairman of the Steering Committee shall submit an annual report of the activities of the Steering Committee to the Commissioner.

Voluntary Treatment at a Mental Health Facility.

23. (1) A person in need of treatment for mental disorder or illness may receive treatment at any mental health facility in the State
- (2) Notwithstanding the provisions of subsection (1) of this Section, a mentally distressed person in need of treatment may visit directly, with or without referral, a mental health facility for treatment.

Admission of Voluntary Patient.

24. (1) Where a psychiatrist, medical social worker or head of a medical facility is of the opinion that the nature of the mental disorder or illness of a person justifies admission and that there are adequate facilities for the treatment of the patient, the psychiatrist or head of the medical facility may admit that person as a voluntary patient.
- (2) The psychiatrist, a medical social worker or head of medical facility shall inform the patient of the relevant information pertaining to the admission at the time of admission.
- (3) A voluntary patient shall be informed that a personal request for discharge may not be granted if the patient meets the requirements for involuntary admission at the time the request was made.
- (4) The head of a mental health facility shall report cases of long term stay of voluntary patients on admission to the Steering Committee.
- (5) A person may be treated as a voluntary in-patient or out-patient.
- (6) The patient and/or their relatives shall be informed of their rights under the provisions of this Law at the first visit to a mental health facility.

Notification of Admission, Death or Departure of a Voluntary Patient.

25. Where a person admitted into a mental health facility as a voluntary patient under Section 30 of this Law, dies or departs from the mental health facility, information of the admission, death or departure shall be given by the person in charge of the mental health facility to the nearest relative.

Discharge of Voluntary Patient.

26. (1) A person admitted into a mental health facility as a voluntary patient shall be discharged in accordance with normal rules of discharge in a health facility.

- (2) A voluntary patient may request for discharge from a mental health facility in writing against medical advice and the facility shall grant the request within twenty-four (24) hours, unless the patient meets the conditions for involuntary admission specified in this Law.

Application for Short term Involuntary Admission and Treatment.

27. (1) A person who is either a nearest relative of a patient or a certified medical social worker, may make an application to the head of mental health facility for the involuntary admission and treatment of a person believed to be suffering from severe mental disorder or illness, where –

- (a) the person named is at the risk of serious harm to self and others;
or
- (b) there is a substantial risk that the person's mental disorder or illness will deteriorate.

(2) The short-term treatment order will place the named person under the care, observation or treatment of a mental health facility, in a least restrictive environment as is compatible with the health and safety of the person and society.

(3) The application referred to in subsection (1) of this Section shall be supported by two (2) recommendations from –

- (a) a psychiatrist; and
- (b) a medical social worker.

(4) The recommendation shall specify in detail –

- (a) the reason(s) why the person is a subject for care, observation or treatment;
- (b) the facts on which the opinion has been formed, distinguished facts observed personally from those observed by somebody else;
- (c) that the person is suspected to lack capacity to make informed treatment decision; and
- (d) that the treatment is necessary to –
 - (i) bring about an improvement in the person's health condition;
 - (ii) restore capacity to make treatment decisions;

- (iii) prevent serious deterioration; or
 - (iv) prevent injury or harm to self or others.
- (5) The medical recommendations shall be presented within three (3) days of the application for the admission of the person.
- (6) A patient admitted under an emergency shall have the right to appeal to the Steering Committee.

Duration of Involuntary Admission.

- 28.** (1) A patient admitted in accordance with the provisions of Section 33 of this Law, shall only be admitted for a period not exceeding twenty-eight (28) days beginning from the day of admission.
- (2) Notwithstanding the provisions of subsection (1) of this Section, a person may be admitted beyond twenty-eight (28) days if it becomes necessary by virtue of a subsequent application.

Short Term Treatment of Person without Capacity.

- 29.** (1) A person who is suffering from mental disorder or illness and is likely to benefit from treatment in a mental health facility and is incapable of self-expression but willing or unwilling to receive treatment, may, on a written application under this Section, be received into a mental health facility as an involuntary, patient for treatment.
- (2) An application under this Section shall be made in the prescribed form to the person in charge and shall be made –
- (a) by the husband, wife or a relative of the patient or a medical social worker;
 - (b) if there is no husband, wife or relative available or willing to make an application, it may be made by any other person who shall state in the application –
 - (i) the reason why it is not made as provided under subsection (1) (a) of this Section;
 - (ii) the relationship of the applicant with the person to whom the application relates; and
 - (iii) the circumstances in which the application is made.
- (3) The application shall be accompanied by a recommendation in duplicate in the prescribed form, signed by a medical practitioner attending to the

person concerned and where this is not practicable, a medical practitioner approved by the Permanent Secretary for the purpose of making any such recommendation, shall make it.

- (4) The medical practitioner who makes a recommendation under this Section shall, before signing, examine the person to whom it relates and specify in the recommendation the date(s) the person was examined and on the grounds the recommendation was based.

Notification of Reception, Death or Departure of Involuntary Patient.

30. The provisions of Section 32 shall have effect on the reception, death or departure of an involuntary patient received into a mental health facility.

Notice of Sudden Death of Patient.

31. Where death occurs within twenty-four (24) hours of admission, or where sudden death occurs of any Mentally Distressed patient on admission or where the cause of death of any Mentally Distressed person on admission is unclear, the normal regulations with regards to sudden death in accordance with the State's Coroner's Law shall apply.

Power to take Mentally Distressed Person into Custody.

32. (1) A Police Officer, who is Crisis Intervention Trained, and above the rank of an Inspector may take or cause to be taken into custody, any person whom the officer believes –

- (a) is mentally distressed and found within his jurisdiction;
- (b) is dangerous to himself or to others, or who, because of the person's mental health acts or is likely to act in a manner offensive to public decency; or
- (c) is Mentally Distressed and is not under proper care and control, or is being cruelly treated or neglected by any relative or other person having charge of the Mentally Distressed person.

- (2) A person taken into custody under subsection (1) of this Section, shall be immediately taken to a mental health facility by the officer.

- (3) Where immediate admission to a mental health facility is impracticable, the person shall be received and admitted in safe custody for period not

exceeding forty-eight (48) hours pending transfer to a mental health facility and the burden of proving that the person was taken into a mental health facility within the time shall be on the officer.

- (4) The head of a mental health facility shall admit the person for a period not exceeding seventy- two (72) hours for the purpose of examination and making necessary arrangements for treatment and care.
- (5) The head of the mental health facility may after examination under subsection (4) of this Section, hand the person admitted into the mental health facility over to the care of any relative or admit the person in the mental health facility as an involuntary patient.

Procedure for Certificate of Urgency.

- 33.** (1) Notwithstanding the provision of Section 33, in case of emergency, a Certificate of Urgency may be issued to admit a Mentally Distressed person into a mental health facility where it is expedient for –
- (a) the welfare of the Mentally Distressed person; and
 - (b) public safety.
- (2) A registered medical practitioner under the supervision of a Consultant Psychiatrist shall examine the person at the mental health facility and if the person meets the criteria for treatment as an emergency case, the medical practitioner shall issue a Certificate of Urgency and place the person under care, observation and treatment.

Persons with Mental Disorder or Illness Found in Public Places.

- 34.** (1) The Ministry of Environment, Ministry of Women Affairs & Social Development and the Ekiti State Office for Disability Affairs shall be responsible for the well-being of Mentally Distressed persons found in public places within the State.
- (2) The Ministry of the Environment shall liaise with the Police, social welfare and health authorities to remove Mentally Distressed persons found in public places that are dangerous to themselves and to others to a mental health facility for treatment and rehabilitation.
- (3) The Social Welfare Department of the Ekiti State Office for Disability Affairs shall, in consultation with the appropriate agencies ensure that

Mentally Distressed persons found in public places are adequately rehabilitated and integrated back into the society after treatment.

Warrant to Search and Remove Mentally Distressed Persons.

35. (1) Where it appears to a Court on information given on oath by a person that there is a reasonable cause to suspect that a person believed to be suffering from mental disorder or illness is –
- (a) or has been ill-treated, neglected or kept under improper control in a place within the jurisdiction of the court; or
 - (b) living alone in a place and is unable to provide self-care, the court may issue a warrant to remove that person to a place of safe custody or make any other arrangement for the treatment or care of that person.
- (2) The custody of a person in the execution of a warrant issued under the provision of this Section shall not exceed forty-eight (48) hours.
- (3) In executing the warrant, the Police officer shall, where practicable, be accompanied by a psychiatric welfare officer or a community psychiatric nurse.

Treatment Plan.

36. (1) A patient, whether voluntary or involuntary shall have a treatment plan which shall be subject to regular review and revision.
- (2) An involuntary patient shall not be subjected to irreversible treatment such as psychosurgery.
- (3) The treatment plan for a patient on involuntary admission shall be for one (1) month after which it may be reviewed.
- (4) A patient and the care-giver of the patient shall be involved in the treatment plan of the patient.

Order for Long-Term Treatment.

37. (1) A psychiatrist or head of a mental health facility may recommend the placement of a person under a short-term treatment or a long-term treatment in a mental health facility if the psychiatrist is of the opinion that the severity of the condition warrants it.

- (2) The recommendation under subsection (1) of this Section shall take into consideration the welfare of that person and the safety of the public.
- (3) The recommendation shall specify in full details the –
 - (a) reasons why that person is considered a proper patient for long term treatment;
 - (b) nature and severity of the diagnosed mental disorder or illness, the likelihood of complete or partial recovery, and the period which, in the opinion of the psychiatrist or head of the mental health facility, is reasonably required to effect a complete or partial recovery; and
 - (c) facts on which the opinion is based, distinguishing facts observed personally from facts communicated by others.

Length of Long-Term Treatment Order.

38. The period of a long-term treatment order shall not exceed six (6) months at a time.

Custody of Person under Admission.

39. (1) Where a person is placed under the care, observation or treatment in a mental health facility, that person is lawfully in the custody of the facility and shall not leave the facility without the consent of the psychiatrist or head of the mental health facility.
- (2) Where the patient leaves the mental health facility without being discharged or before the expiration of the period specified on admission, the psychiatrist or head of the health facility or any other person assigned shall report to the Police and the patient shall be taken and returned to the mental health facility for the specified period.

Non-Accredited Facilities and Involuntary Patients.

40. A facility which is not accredited under the Ekiti State Health Sector Law or a body not recognized by the Commissioner shall not admit involuntary patients for treatment.

Short-Term Discharge of Involuntary Patient.

41. The psychiatrist or head of a mental health facility may discharge an involuntary patient temporarily for a maximum period of fifteen (15) days.

Discharge of Involuntary Patient.

42. (1) An involuntary patient shall be discharged on the expiration of the period specified by mental health facility or by the court, provided that such patient is no longer dangerous to self and members of the public.
- (2) Where the psychiatrist or head of mental health facility is satisfied that the involuntary patient requires earlier discharge, the involuntary patient shall be discharged.

Referred Patient who has been Satisfactorily Treated.

43. (1) Where a referred patient who has been satisfactorily treated is facing trial and is fit to stand trial, the head of the mental health facility shall report the patient to the nearest Police station for the patient to be sent to the source of referral and the referring authority shall fetch the patient from the mental health facility within fifteen (15) days of the report.
- (2) Where the patient is not fetched by the referring authority within thirty (30) days of the report, the head of the mental health facility shall report the case of the Steering Committee which may discharge the patient.

Seclusion and Restraint.

44. (1) A person may be placed in involuntary seclusion only when there is imminent danger to the patient or others and tranquilization is not appropriate or not readily available.
- (2) The seclusion or restraint shall be authorized by the psychiatrist or head of the mental health facility or the senior nurse in charge of the ward acting on behalf of the head of the mental health facility.
- (3) The documentation of the seclusion and restraint shall be placed immediately in the clinical notes of the patient by the psychiatrist or head of the mental health facility or the nurse in charge of the ward.
- (4) The seclusion or restraint shall be practiced under strict instructional guidelines and shall not be used as punishment or for the convenience of staff.

Non-Discrimination.

45. (1) A mentally distressed person is entitled to Fundamental Human Right as enshrined in the Constitution.
- (2) A person with past or present Mental Distress history has the same fundamental rights as other citizens and shall not be subjected to discrimination no matter the cause, nature or degree of the Mental Distress.
- (3) A mentally distressed person is entitled to respect and dignity and shall not be subjected to torture, cruelty, forced labour and any other inhuman treatment.
- (4) A tenant who develops a Mental Distress shall not be evicted from the place of residence merely on the basis of suffering from mental disorder or illness.

Incapacity and Human Rights.

46. A Mentally Distressed person, who is unable to give consent shall not be deprived of medical treatment, education or any other social economic benefit.

Standard of Treatment.

47. (1) A Mentally Distressed person shall –
- (a) have the right to the highest attainable standard of mental health care in the State;
 - (b) be entitled to the same standard of care as a person with physical health problems and shall be treated on an equal basis, including the quality of in-patient food, bedding, sanitation, buildings, levels and quality of staff;
 - (c) have access to psychotropic drugs or essential medicines and any other psychosocial rehabilitative interventions at different levels of care as appropriate;
 - (d) receive treatment, which addresses holistically their needs through a multidisciplinary care plan approach;
 - (e) receive treatment in the least restrictive environment and restrictive manner;
 - (f) be protected from torture, cruel, inhuman and degrading treatment;
 - (g) receive aftercare and rehabilitation, where possible, in the community in order to facilitate their social inclusion;

- (h) have access to bio-psychosocial rehabilitative interventions at different levels of care as appropriate;
 - (i) actively participate in the formulation of the multidisciplinary treatment plan for themselves; and
 - (j) continued monitoring by a medical social worker.
- (2) Intrusive and irreversible treatment like Electro-Convulsive Therapy and psychosurgery shall not be used for emergency cases, except -
- (a) in cases of severe depression in a mother who has just been delivered of a baby;
 - (b) in cases of acute mania in a patient that has been exhausted and may likely die of exhaustion due to self-deprivation of water; and
 - (c) in such other exceptional cases where this treatment will be required for emergency.

Confidentiality.

48. (1) A Mentally Distressed person has the right to confidentiality.
- (2) Records which identify a person, the manner of behavior of the person, as well as the diagnosis and treatment, shall not be disclosed to another person or agency without the person's written consent or the written consent of the personal representative of the person where the person is unable to give consent.
- (3) Notwithstanding the provisions of subsection (2) of this Section written consent to provide confidential information may be waived where there is risk of imminent danger to another person or where the disclosure is required by Law.
- (4) A patient, care-giver or the personal representative of the patient has the right to appeal to the Steering Committee against waiving the right of the patient to non-disclosure of information.

Access to Information.

49. (1) A patient shall have free and full access to information about the mental disorder or illness and the treatment plan unless, in the opinion of the mental health professional, revealing such information may cause harm to the person's health or put at risk the safety of others.

- (2) Where the patient is incapable of understanding the treatment, the personal representative of that patient shall have access to the information.
- (3) Access to information may be granted or denied by the clinical representative of the head of the mental health facility if the information is harmful to the well-being of the patient.
- (4) A care-giver shall have access to information about the mental disorder or illness of the patient except where the patient objects.
- (5) The objection may not apply if the information is absolutely essential in the interest of the patient or for the safety of the care-giver.
- (6) A patient shall be informed about the mental state of health and the multidisciplinary services available to cater for the needs, the treatment options and the treatment plan available.
- (7) A patient shall be entitled to consent any decision to withhold any information either personally or through a legal representative of choice.

Privacy and Autonomy.

50. A Mentally Distressed person has the right to –

- (a) receive in private, visits from Legal Practitioners, relatives and any other visitor, unless the attending psychiatrist or head of the mental health facility considers it unsafe;
- (b) be examined in private and in the absence of observers other than the psychiatrist or medical staff specifically required for the consultation or examination;
- (c) give free and informed consent, where possible, before any treatment or care is provided and such consent shall be recorded in the patient's clinical record;
- (d) withdraw consent;
- (e) confidentiality of all information about themselves, illness and treatment in whatever form stored and such information shall not be disclosed to third parties without the consent unless –
 - (i) there is life-threatening emergency when information is urgently required to save lives,
 - (ii) it is in the interest of public safety,
 - (iii) it is ordered by a court of competent jurisdiction, or

- (iv) the person requesting for such information is entitled by law to receive it; and
- (f) not be used for research purpose without informed consents.

Employment Rights.

51. (1) An employer shall not dismiss or terminate the appointment of a worker merely on the grounds of present or past Mental Distress or while the worker is receiving treatment for mental disorder or illness.
- (2) Where an employer has reasonable cause to believe that a worker is suffering from mental disorder or illness severe enough to affect the work output, the employer may assist the worker to seek medical advice in accordance with the prescribed procedure.
- (3) The employer may engage the worker at a level where the worker can best perform for medical reasons, but where the worker is found to be unfit for employment, the employer may terminate the contract of employment of the worker in accordance with the prescribed procedure.
- (4) The provisions of the Pension Reform Law, shall apply to pensions, on the termination of a contract of employment.
- (5) The employer or another person may follow the procedure for a Certificate of Urgency under this Law where the situation of a worker is suspected to be severe enough to be treated as an emergency case or where the worker is at personal risk or risk to others or property.

Female Patients.

52. (1) Female patients in a mental health facility shall have separate sleeping accommodation from male patients.
- (2) Female patients with mental disorder or illness shall have the same treatment as men with mental disorder or illness in matters relating to civil, political, economic, social and cultural rights.
- (3) Female patients shall not be discriminated against with respect to treatment, community care, voluntary and involuntary treatment.

- (4) Special provision of accommodation shall be made for female patients whose conduct may at any time be harmful to the patient or other patients.

Children Receiving Treatment.

53. (1) A child receiving mental health care treatment shall be treated in a least restrictive environment.
- (2) In cases where children receiving mental health care treatment require admission, they shall be accommodated separately from adults, and their developmental needs shall be taken care of.
- (3) The parent or guardian of children under the age of eighteen (18) years receiving mental health care treatment shall represent them in matters concerning the mental well-being of the children including consent to treatment.
- (4) Special provision for accommodation shall be made for children whose conduct may at any time be harmful to them or other patients.
- (5) Irreversible treatments such as psychosurgery for mental disorder shall not be administered to children.
- (6) Opinions of children and their guardian shall be taken into consideration on issues of treatment and care.

Aged Patients.

54. (1) An aged patient who requires treatment for mental disorder shall be accommodated separately, and be entitled to free treatment in accordance with age exemption policy of the State.
- (2) Special provisions for accommodation shall be made for the aged whose conduct may at any time be harmful to them or other aged patients.
- (3) Irreversible treatment for mental disorder shall not be administered on the aged patient.

Persons with Mental Retardation.

55. (1) A person shall not be admitted to a mental health facility merely for mental retardation unless there is evidence of gross misbehavior or other evidence of mental disorder.
- (2) A person with mental retardation admitted to a mental health facility shall have separate accommodation for mental health care.
- (3) Intrusive or irreversible treatment shall not be administered on a person with mental retardation unless authorized by the Steering Committee.

Protection of a Mentally Distressed Person.

56. A Mentally Distressed person who is unable to manage personal affairs due to mental disorder shall be protected in matters of finances, business, occupation, marriage, the right to treatment of choice, testamentary capacity and other legal issues for the benefit of that person.

Appointment of a Guardian.

57. (1) A family member or a medical social worker may apply to court for the appointment of a guardian for a patient.
- (2) An application shall be made to the court for the appointment of a guardian where it is believed that the affairs of a Mentally Distressed person are being managed by others in a detrimental way.
- (3) The Court shall appoint another person as guardian where the applicant is found incompetent or lacks mental capacity upon an examination by a clinical team of mental health professionals that includes a psychiatrist in matters referred to in Section 62.
- (4) For the purpose of subsection (3) of this Section, a person lacks capacity and is unable to make a decision if the person is unable to –
- (a) understand the information in order to make the decision;
 - (b) retain that information;
 - (c) use or weigh that information as part of the procedure, making the decision; or
- (5) A person for whom a guardian is being appointed has the right, in person or through a representative to consent the application for guardianship.

- (6) A guardian shall consult with the Mentally Distressed person where possible and shall be responsible for making decision on treatment, financial and any other welfare on behalf of the Mentally Distressed person using a high standard of substituted judgments.
- (7) In the event of death, incapacitation or absence of guardian, a family member or medical social worker shall apply to the court for the appointment of a guardian.

Limited Guardianship.

- 58.** Where a person's incapacity only requires assistance in decision making in a specific area, a limited guardian may be appointed by the court through the same procedure stated in Section 62 and 63 and the court shall specify the areas of guardianship reserving those areas in which the person remains incapacitated.

Review of Guardianship.

- 59.** (1) A decision on the need for continuous guardianship may be reviewed annually or earlier by the court on the recommendation of a mental health professional.
- (2) The person whose capacity is in issue, his personal representative or any other interested person has the right to appeal against the decision of the Court.

Special Treatment.

- 60.** (1) A Mentally Distressed person shall not undergo sterilization, major medical or surgical procedure without his informed consent or the informed consent of a personal representative if that person is incapable of giving the consent.
- (2) In cases where inability to consent is likely to be long term, the head of the mental health facility shall refer the matter to the Steering Committee.
- (3) Electro-convulsive therapy shall not be administered on a patient without consent, and where the patient or a personal representative is

incapable of giving consent, such consent shall be obtained from the Steering Committee.

- (4) Where a delay in obtaining the informed consent may be dangerous to the life of that person, the procedure may be carried out and the Steering Committee shall be duly informed at the earliest possible time after the procedure.
- (5) The state of a Mentally Distressed person shall not in itself be used as a reason for an abortion of pregnancy.

Psycho-Social Rehabilitation.

61. The Commissioner for Youth and Sports Development shall make provision for psycho-social rehabilitation and occupational rehabilitation of Mentally Distressed person(s) in the State.

Medical Social Workers.

62. The medical social workers in mental health facilities in the State shall –
 - (a) collaborate with mental health practitioners to improve patients' health and ensure that such patients are advised and availed necessary services that are available;
 - (b) assist to resolve emotional problems that keep patient from attaining satisfactory level of adjustment to recover from mental illness;
 - (c) connect patient and nearest relative to necessary resources and support in the community; and
 - (d) counsel in and out patients in all mental health facilities where the doctors deem it necessary for relevant cases.

Provision of Mental Health and Substance Abuse Services.

63. (1) There shall be provision for integrated mental health counseling and substance abuse services at all public health facilities at all levels in the State.
- (2) There shall be provision for voluntary admission for Substance Use Disorder patients at the secondary and tertiary Mental Health facilities.

Refusal to Supply Information.

64. A person who fails or refuses to supply any information required by the patient or personal representative in exercise of powers under this Law commits an offence and is liable on conviction, in the case of a body corporate to a fine of Five Hundred Thousand Naira (₦500,000.00) and in the case of an individual to a fine of Two Hundred and Fifty Thousand naira (₦250,000.00) or one (1) month imprisonment or three (3) months community service order or both fine and imprisonment or fine and community service order.

Sexual Relationship with a Patient.

65. (1) It shall be an offence under the provisions of this Law for an officer, staff employed in or one of the managers of a mental health facility to have sexual intercourse or any form of sexual relationship or abuse with a woman or a man as the case may be who is:
- (a) for the time being receiving treatment for mental and substance abuse related disorder in that facility; and
 - (b) for the time being receiving treatment as an out-patient
- (2) Any person who commits an offence under this Section commits the offence of rape and shall be liable on conviction, to imprisonment for life.
- (3) The conviction in subsection (2) above shall not be prejudicial to any other sanctions that such a person may be liable to from bodies to which the person may belong as a member.

Offender with Mental Disorder.

66. (1) A person arrested for a criminal act and in police custody shall be assessed by a mental health practitioner within forty-eight (48) hours if there is suspicion of mental disorder.
- (2) An offender suspected to be Mentally Distressed at the time of the commission of the offence shall be sent to a mental health facility for assessment and if the court is satisfied upon the written or oral evidence of a consultant psychiatrist that there is reason to suspect that the offender is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment, be committed to treatment.
- (3) An offender undergoing treatment at a mental health facility shall have the same rights as a non-offender in treatment, and the right to judicial review by the Court.

- (4) An offender assessed and found not fit to stand trial shall have the proceeding of the trial stayed while undergoing treatment.
- (5) An offender who is Mentally Distressed, and who has been certified so upon the written and oral evidence of two (2) registered psychiatrists at the sentencing stage shall not be imprisoned but be given probation in the form of a health facility order to be treated at a mental health facility or security psychiatric health facility depending on the severity of the crime and the risk to the public.
- (6) An offender assessed and found to have a mental disorder or illness at the time of commission of the offence and found by the court not to be responsible for a criminal act due to his mental disorder or illness, but who on re-assessment by the mental health facility is found to be free from mental disorder or illness such offender shall be discharged, and if the offence is a minor offence, a report shall be made to the court for further directive.
- (7) A convicted prisoner serving a sentence who becomes mentally ill to warrant in-patient treatment shall be transferred to a security psychiatric health facility (where available) for treatment.
- (8) A prisoner in a mental health facility shall not be kept longer than sentenced unless civil commitment procedures are followed
- (9) A court may order a psychiatric assessment on a person who attempts to commit suicide.
- (10) The court shall not commit an offender to a mental health facility under this Section unless satisfied on the written or oral evidence of the registered medical practitioner who would be responsible for making the report or of some other person representing the mental health facility that arrangements have been made for his admission to it within the period of Seven (7) days beginning from the date he is committed, and if the court is so satisfied it may pending his admission give directions for his conveyance and detention in a place of safety.
- (11) An offender committed to a mental health facility by the court shall be entitled to obtain at his own expense an independent report on his mental condition from a registered psychiatrist chosen by him, and to apply to the court on the basis of it for his committal to be terminated under subsection (2) above.

- (12) Where an offender absconds from a hospital to which he has been committed under this Section, or while being conveyed to or from that hospital, he may be arrested without warrant by a police officer, and shall after being arrested be brought as soon as practicable before the court that committed him, and the court may thereupon terminate the committal and deal with him if he had not been committed under this Section.

Offences and Penalties.

67. (1) Any person who –
- (a) deliberately neglects a Mentally Distressed person or subject a Mentally Distressed person to discrimination contrary to the provisions of Section 51;
 - (b) with intent to deceive, forges or willfully makes false entry or statements in documents related to giving lawful effect to this Law;
 - (c) induces or knowingly assist any other person being lawfully admitted in a mental health facility to escape from custody or knowingly harbours a patient who escapes from mental health facility and is liable to be taken back into custody commits an offence and is liable on summary conviction to a fine of Five Hundred Thousand Naira (₦500,000.00) or to a term of two (2) years imprisonment or both.
- (2) Any person employed in a designated facility or private mental health facility, or any other person having charge of a patient, who ill-treats, assaults or willfully neglects a patient, commits an offence and is liable on conviction to a fine of Five Hundred Thousand naira (₦500,000) or to a term of two (2) years imprisonment or both.
- (3) As from the commencement of this Law, it is an offence to parade on the streets or any other place person(s) with mental disorder or illness.
- (4) Any person that contravenes the provision of subsection (3) of this Section, commits an offence and is liable on conviction to a fine of Two Hundred and Fifty Thousand Naira (₦250,000.00) or six (6) months imprisonment or both.

Accounts.

- 68.** (1) The Committee shall establish and maintain a fund from which it shall defray, all its expenditure.
- (2) There shall be paid to the fund –
- (a) such sums as appropriate to the Mental Health Service by the State;
 - (b) all monies paid to the Mental Health Service by way of grants, subsidies, donations, gifts, charges, fees, subscriptions, interests and royalties;
 - (c) all monies which may be vested with the Mental Health Service under any enactment; and
 - (d) all other sums or properties which may become payable to or vested in the Committee in respect of any matter incidental to its powers or functions under this Law.

Annual Estimates.

- 69.** (1) The Committee shall, in accordance with the State Administrative Guidelines not later than 31st day of March in each year prepare and submit to the Governor through the Commissioner a report of its activities and operations with a certified copy of the audited accounts of the Mental Health Service and the Auditor's report on same.
- (2) The Mental Health Service shall submit to the Governor through the Commissioner, an annual estimate of its expenditure in accordance with budgeting guidelines in the State.

Audit.

- 70.** The Mental Health Service shall –
- (a) keep proper account and records of its transactions in such form as the State Auditor-General may direct in conformity with standards accounting practices; and
 - (b) prepare at the end of each financial year, statement of account which shall be audited annually by the Auditor appropriated by the Auditor-General of the State not later than three (3) months after the end of each financial year in accordance with the Audit Law of the State.

Power to Accept Gifts, Donations, Grants and Endowment.

71. (1) The Committee may, on behalf of the Mental Health Service accept grants, gifts, endowments, donations, testamentary dispositions or any other property in furtherance of the objectives of the Mental Health Service.
- (2) The Mental Health Service shall keep a register of donors and donations to the Mental Health Service.
- (3) All properties, monies or fund donated and received for an approved purpose shall be applied and administered solely for that purpose.

Power to make Regulations.

72. The Mental Health Service shall with the approval of the Commissioner make regulations in accordance with the Regulation Approval Law for carrying into effect the provisions of this Law.

Repeal.

73. The Lunacy Law Cap L16, Laws of Ekiti State is hereby repealed

Interpretation.

74. In this Law, except as the context otherwise requires:

"Care-giver" means a person who maintains a close personal relationship with a patient and manifest concern for the patient's welfare;

"Certificate of Urgency" means a certificate issued by a medical practitioner for involuntary admission initiated by the Police or a Medical Practitioner or Medical Social Worker for an urgent or emergency case;

"Child" means a person under the age of eighteen (18) years;

"Commissioner" means the Commissioner for Health or a member of the State Executive Council charged with the responsibility for the management of the Health Sector in the State;

"Discharge" means an official release from hospital care or from a medical care facility by a physician or other medical care worker;

"Governor" means the Governor of Ekiti State;

"Guardian" means someone legally appointed to take care of the interest of a Mentally Distressed person;

"House" means the Ekiti State House of Assembly;

"In-patient care" includes provision of quality shelter, sanitation, food, lighting, beds and essential medicines;

"Involuntary Patient" means a person who is taken to a mental health facility for treatment without consent under a court order or certificate of urgency;

"Irrevocable treatment" means a medical or surgical treatment procedure which primarily results in a permanent anatomical change in the persons;

"Least restrictive" means a regime of treating a Mentally Distressed person in a situation or environment where the freedom, association and choice of the person is minimally constrained;

"Legal/ personal representative" means a substitute decision-maker charged by law with the duty of representing patient in any specified undertaking or of exercising specified rights on the patient's behalf or a person appointed in writing by the patient to act on the patient's behalf, provided that where the patient lacks mental capacity, or otherwise fails to appoint a legal representative in writing the legal representative shall be appointed to be in the following order –

- (a) the spouse, if any, unless permanently separated from the patient or has deserted or has been deserted by the patient;
- (b) son or daughter over the age of eighteen (18) years;
- (c) either parent by mutual consent; and
- (d) a person appointed by a Court to represent the patient.

"Less restrictive option" means offering an option for treatment or a setting for treatment which –

- (i) meets the person's treatment needs; and
- (ii) imposes the least restriction on the person's rights.

"Mental Distress" means any disease or condition affecting the brain that influences the way a person thinks, feels, behaves or relates to others and to his or her surroundings;

"Mentally Distressed person" means a person with a condition of the mind in which there is a clinically significant disturbance of mental or behavior functioning associated with distress or interference of daily life and manifesting as disturbance of speech, perception, mood, thought, volition, orientation or other cognitive functions to such degree as to be considered pathological but excludes social deviance without personal dysfunction;

"Mental disability" means impairments, activity limitation, of an individual and participatory restrictions demoting dysfunctional aspects of interaction between an individual and the individual's environment;

"Mental Health" means a state of psychological and emotional well-being or a state of well-being in which every individual realizes the individual's own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a meaningful contribution to his or her community;

"Mental Health Professional" means any formally educated and trained mental health professional such as Psychiatrists, Clinical Psychologists, Psychiatric Nurses, Occupational Therapists, Recreational Therapists, Medical Social Workers.

"Medical Social Workers" means trained advocates engaged in mental health promotion and services working with medical professionals, which includes psychiatric social workers;

"Mental ill-health" means mental or psychiatric disorder characterized by the existence of recognizable changes in the thoughts, feelings and general behavior of an individual brought about by neurological or psychosocial factors causing psychological, intellectual or social dysfunction;

"Mental or Psychological incapacity" means the inability to –

- (a) understand the information given concerning the nature of the disorder;
- (b) understand the consequences the decisions and actions have for own life or health and for the life and health of others, which may be serious and irreversible;

- (c) understand that treatment might mitigate or remedy the condition and that lack of treatment might aggravate it;
- (d) understand the information about the nature of treatment proposed, including the means of treatments, its direct effects and its possible side effects; and
- (e) effectively communicate with others regarding the patient's condition and his or her consent to treatment or hospitalization;

"Nearest relative" in relation to a patient includes a husband or wife, son or daughter, father or mother, brother or sister, grandparent or grandchild, uncle or aunt, nephew/ niece, cousin or guardian;

"Patient" means a person receiving or utilizing mental health care and treatment from a mental health care facility or clinic;

"Psychiatrist" means a medical practitioner that specializes in the diagnosis and treatment of mental illnesses or mental disorders;

"Psychiatric emergencies" means conditions which may present a serious threat to a person's well-being or that of others requiring immediate psychiatric interventions such as in cases of attempted suicide, acute intoxication, severe depression, acute psychosis, or violent behavior;

"Psychosocial problem" means a condition that indicates the existence of disturbances in the individual's behavior; thoughts and feelings brought about by sudden, extreme or long term stressors in the physical or social environment;

"Psycho surgery" means an irreversible surgical treatment for Mentally Distressed persons;

"Restrain" means immobilization of an acutely disturbed person with a Mental Distress often through physical measures for a limited period for purposes of preventing harm to the person or others for administration of medication or transfer to a place of seclusion or to another mental health facility;

"Service user" means a person who has received or is receiving mental health care;

"State" means Ekiti State of Nigeria;

"Substance Abuse" means the habitual and excessive intake of psychoactive substances in such a manner as to constitute harm to self and or significant others; and

"Voluntary patient" means a person who goes to a mental health facility for treatment with or without referral.

Citation.

75. This law may be cited as the Ekiti State Mental Health Law, 2021.

EKITI STATE MENTAL HEALTH LAW, 2021