



# THE NATIONAL MENTAL HEALTH ACT 2023:

Redefining Healthcare Standards  
and Societal Treatment for Mental  
Ill-Health.

THOUGHT LEADERSHIP



## INTRODUCTION

The Mental Health Act, which repealed the Lunacy Act of 1958, was signed into law on 5<sup>th</sup> January 2023.<sup>1</sup> Throughout this Act, we witness the drive towards empathy for persons with mental disorders and care for the total man. This Act is a significant legal reform of the framework for mental healthcare services and substance abuse care in Nigeria, while also delving into the manner in which the larger society deals with mental ill-health.

Given the large number of persons with varying degrees of mental disorders in Nigeria,<sup>2</sup> it has become imperative that health workers and institutions (whether treating mental ill-health or treating other medical conditions in a mentally ill person) as well as the general populace, keep abreast of this law. As the Act provides steep penalties for actions which are commonly considered to be part of the treatment protocol of the mentally ill in Nigeria, it is imperative that these provisions are not overlooked.

In this article, we would briefly review the path to the current mental health legislation and then enumerate some of the key provisions of the Act; throughout these discussions, we shall highlight some of the adjustments that individuals and organizations must make in dealing with persons with mental ill-health.

---

<sup>1</sup> Cap. 112

<sup>2</sup> The World Health Organization (WHO) estimates that about 20% of Nigerians, or around 40 million people, are affected by mental ill-health. Depression and Other Common Mental Disorders: Global Health Estimates. Geneva: World Health Organization; 2017. Licence: CC BY-NC-SA 3.0 IGO.

## TRAJECTORY OF LAWS FOR MENTALLY ILL PERSONS IN NIGERIA

The Lunacy Ordinance 1916 was the first law enacted in Nigeria on mental health; this Ordinance portrayed people with mental disorders as lunatics. The trajectory of the law worsened when its amendment birthed the Lunacy Act 1958 which was considered crude and oppressive.<sup>3</sup> Among its many questionable provisions, the law advocated for the forceful detention of persons with mental ill-health. The Lunacy Act considered the maintenance of law and order as its superordinate objective disdaining the rights and freedoms of people suffering from mental illnesses - this perhaps, exacerbated the stigma that still exists in Nigerian culture or was at least a reflection of how the society perceived mental ill-health.

As expected, people with mental health conditions faced barriers to accessing basic healthcare services,<sup>4</sup> employment and education. Sometimes, in the name of providing healthcare, these vulnerable persons were subjected to exploitation, as well as mental and physical abuse, due to the laxity of laws.

It may not be out of place to say that the Lunacy Act was “*a weapon fashioned against the mentally impaired*”. However, we now have the National Mental Health Act, which appears to be a weapon fashioned **for** the mentally impaired, hopefully not to be used against the persons providing care services.

## RESHAPING THE MENTAL HEALTH LANDSCAPE THROUGH LEGISLATION

The National Mental Health Act includes several significant elements targeted at positively altering the mental health landscape; provisions on the alteration and revision of terms, to sections relating to enhanced oversight of facilities and institutions as well as changing the laws on the use of restraint, this Act covers a wide breadth.

Some features of this statute will now be considered.

### 1.1. REVISION OF TERMS

Under the Act, there is a shift from the generalization of mental disorders as lunacy, madness or even ‘spiritual attacks’ from unnatural causes. Such misinformed perception has led to the stigma present today on mental health patients. Thus, the new Act tries to explain this by establishing a scientific definition of mental ill-health that is understandable to everyone.

The shift from stigmatic labelling is illustrated by the replacement of the term ‘Lunacy’ under the old Act with ‘Mental ill-health’ and ‘substance use disorders’; Rephrasing the

---

<sup>3</sup> Ude, LMSW, Paula. (2015). Policy Analysis on Nigerian Lunacy Act (1958): The Need for a New Legislation. *Journal of Psychiatry*, 19. 10.4172/2378-5756.1000343.

<sup>4</sup> Izibeloko Omi Jack-Ide et al. Barriers to Mental Health Services Utilization in the Niger Delta Region of Nigeria: Service Users’ Perspectives. *Pan African Medical Journal*. 2013;14:159. [doi: 10.11604/pamj.2013.14.159.1970]

title and terms under the Mental Health Act is a push towards changing the misconception against mentally ill persons.

## **1.2. STRICT OBLIGATIONS FOR INVOLUNTARY ADMISSION**

The new Act provides that a person may only be admitted involuntarily for a mental health condition where it is confirmed that such person has inflicted or is likely to inflict harm on themselves or others, and the severity of the illness will lead to possible deterioration or irreversible treatment unless admitted.<sup>5</sup> The decision to involuntarily admit must be vetted by a qualified medical practitioner who corroborates that the criteria are met and may then request the admission of such persons into a mental facility alongside a written certification by two independent healthcare professionals stating the same.<sup>6</sup>

Furthermore, any person who conspires or assists in unwarranted involuntary admission is accorded a penalty of at least N200,000 or imprisonment for a term of at least five months; in the case of a company, and it should be noted that both individuals as well as facilities would both be held liable.<sup>7</sup>

The law also imposes significant penal sanctions for continued involuntary care or admission where the person admitted no longer requires same. Such involuntary care attracts a fine of N1,000,000 or 5 years imprisonment (for individuals) or N5,000,000 (for corporate person).<sup>8</sup>

It should be noted that the law protects law enforcement officers or designated personnels transporting individuals to and from such facility. Accordingly, such persons are excluded from the consent requirement.

## **1.3. RESTRICTION AGAINST USE OF RESTRAINTS AND SECLUSION IN MENTAL HEALTH FACILITIES**

The use of restraints and seclusion have commonly been considered in public and private health institutions to be part of the treatment plan for mental disorders.<sup>9</sup> However, this treatment method is now significantly limited by the Act which precludes the use of forced treatment, seclusion and any other method of restraint in facilities, including physical, chemical and mechanical restraints and mandates the

---

<sup>5</sup> Section 28(1) of the National Mental Health Act

<sup>6</sup> Section 28(7) of the National Mental Health Act

<sup>7</sup> Section 51(3) of the National Mental Health Act

<sup>8</sup> Section 30(3) of the National Mental Health Act

<sup>9</sup> Deborah Oyine Aluh, Olaniyi Ayilara, Justus Uchenna Onu, Barbara Pedrosa, Manuela Silva, Ugné Grigaitė, Margarida Santos-Dias, Graça Cardoso & José Miguel Caldas-de-Almeida (2023) Use of Coercion in Mental Healthcare Services in Nigeria: Service Providers' Perspective, Journal of Mental Health, DOI: 10.1080/09638237.2023.2182426

implementation of de-escalation guidelines as well as triggers and sensitivities management.<sup>10</sup>

Use of seclusion or restraints would only be permitted where such persons have received care for over 48 hours after which two medical officers and the facility head confirm it is warranted.

It is important to note that such measures must be carried out by a facility that has been accredited by a Federal or State Ministry. However, where the facility does not have a trained psychiatrist, the patient must be transferred to a facility that does within 48 hours of being restrained.<sup>11</sup>

The penalty for failure to adhere to this provision is pegged at least N2,000,000 or imprisonment for a term not more than five years or both.<sup>12</sup>

#### **1.4. COURT-ORDERED INTERVENTION**

A person is permitted under the Act to seek a court order for the involuntary temporary admission and treatment of a person who has severe mental disorder if such person is a personal or public risk, or where there is a risk of deterioration. Such order is to be given upon recommendation under oath by a medical practitioner, indicating necessity of the treatment, why such person is a proper subject, observations, absence of capacity of such person, etc. Before a decision is reached, such court shall ensure legal representation, independent psychiatric evaluation, reasonable discoveries, and examination of witnesses. Records in such proceedings are to be confidential. It should be noted that the pendency of such proceedings shall not be a bar to patient's discharge.

#### **1.5. ESTABLISHMENT OF THE DEPARTMENT OF MENTAL HEALTH SERVICES**

In a bid to ensure the objectives of the new Act are realized, this law also institutes the Department of Mental Health Services to implement and facilitate the provisions enacted in the Act for primary mental healthcare.<sup>13</sup> Though anticipated to operate as a body within the Federal Ministry of Health, this Department will facilitate mental health policies, undergo collaborative projects with other agencies, guarantee access to mental healthcare services. This department is to safeguard the rights of persons with such illnesses and related disorders.

As part of its regulatory functions, this arm has supervisory and administrative roles such as conducting routine checks on mental health facilities, vetting professionals

---

<sup>10</sup> Section 34 of the National Mental Health Act

<sup>11</sup> Section 34(3) of the National Mental Health Act

<sup>12</sup> Section 34(10) of the National Mental Health Act

<sup>13</sup> Section 2 of the National Mental Health Act

and adequate personnel in the industry, and ensuring quality treatment and provision of mental healthcare services and substance use related practice.<sup>14</sup>

However, since the enactment of the Act, there is yet to be a confirmation that the body has been set up. Nonetheless, this will aid the enforcement of the new Act.

## **1.6. MENTAL HEALTH ASSESSMENT COMMITTEE**

The Mental Health Assessment Committee is an adjudicatory body to be set up by the Governing Board of the Department of Mental Health Services.<sup>15</sup> This Tribunal will be constituted by persons with diverse interests and perspectives on mental health rights and treatments, including legal practitioners, psychiatrists, medical social workers, representatives of civil societies focused on mental health as well as a religious or traditional leader.

This body is expected to hear and investigate complaints on persons detained contrary to the provisions of the Act as well as to review and monitor involuntary admission and treatment, long-term voluntary admission, treatments that require a second opinion, amongst others.

## **1.7. INTOLERANCE FOR DISCRIMINATION AND PROTECTION OF HUMAN RIGHTS OF THE MENTALLY IMPAIRED**

The law guarantees that persons with mental ill-health and substance use disorders are not subjected to discrimination, whether in terms of access to healthcare or even in the exercise of their cultural, social, and religious rights.<sup>16</sup>

Also, the new Act entrenches the human rights protection for mentally ill persons such that they can live as humane, decent, and normal a life as possible, including access to education, vocational training, leisure and recreation, employment, and participation in civil, economic, social, cultural and political activities.

The Act also guarantees humane treatment within and without a facility. Within a facility, such persons have a right to have possessions (within certain limits), to be permitted to spend with their own money (if not in conflict with the treatment plan), to be informed of their rights and entitlement to a legal practitioner.<sup>17</sup>

Penalties of N200,000, N500,000 and even imprisonment are imposed on persons who run afoul of the above.<sup>18</sup>

---

<sup>14</sup> Sections 4 and 5 of the National Mental Health Act

<sup>15</sup> Section 9 of the National Mental Health Act

<sup>16</sup> Section 12 of the National Mental Health Act

<sup>17</sup> Section 22 of the National Mental Health Act

<sup>18</sup> Section 51 of the National Mental Health Act

## **1.8. RIGHT TO PRIVACY, CONFIDENTIALITY AND AUTONOMY**

The Act also dictates that persons with mental disorders are entitled to receive visits from family members, legal representatives, or other persons at the request of the patient in a mental facility, provided that such patient has not shown tendency to violence.<sup>19</sup> The Act further provides that a person with a mental disorder may give free and informed consent where possible before treatment; conversely, they may also withdraw said consent at will.<sup>20</sup>

They may express themselves freely and have the right to privacy and confidentiality of medical records or related information to their illnesses. Such information may not be disclosed without their consent but may be exempted in life-threatening cases, or by a court order.<sup>21</sup>

Furthermore, the patients are also required to give consent and receive explanation for treatments that would have required explanation of known risk in other patients as well as consent to surgical operations for destroying brain tissue or its function. Thus, the doctors are not to proceed with the treatment without the medical officer certifying that the patient is capable of giving informed consent and has so consented, or that although such patient cannot consent for reason of incapacity, yet such treatment is necessary to alleviate or prevent deterioration of the condition.

## **1.9. EMPLOYMENT AND HOUSING RIGHTS**

The new Act proposes that an employee shall not be discharged from his duties by his employer merely on the grounds of mental disorder or said employee is receiving treatment for a mental disorder. The Act further provides that where the disorder affects the employee's workflow, the employer may assist the employee in obtaining medical advice or treatment as deemed fit.<sup>22</sup>

The Act also deems it illegal for a tenant to be evicted from his residence solely on the grounds of mental disorder or related illnesses.<sup>23</sup>

## **1.10. PROTECTION OF CHILDREN WITH MENTAL ILL-HEALTH**

Under this law, children with mental ill-health are further protected, as the Act provides that children are to be segregated from adults and treated in a least restrictive environment; Also, irreversible treatments, such as sterilization, are

---

<sup>19</sup> Section 19 of the National Mental Health Act

<sup>20</sup> Section 26 of the National Mental Health Act

<sup>21</sup> Section 21 of the National Mental Health Act

<sup>22</sup> Section 13 of the National Mental Health Act

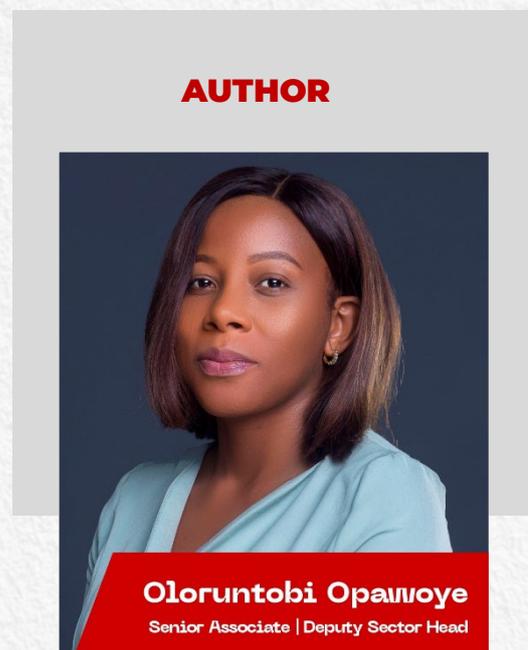
<sup>23</sup> Section 14 of the National Mental Health Act

prohibited.<sup>24</sup> Informed consent is also to be obtained from parents or guardians, but the opinions of such children are considered. A relative or professional may be appointed as a temporary guardian if the position taken by the parent is not in best interests of child.

The Act also provides that the involuntary admission of a minor is only to be permitted in circumstances where the mental ill-health is of such severity that it requires such admission, the admission is in the best interest of the minor, and cannot be fulfilled unless admitted, the community-based alternatives have failed or shown to be unsuitable.<sup>25</sup>

## **CLOSING THOUGHTS**

The National Mental Health Act forms a new model for protecting mentally ill persons. Given the severity of the sanctions imposed for any form of violation of the rights of individuals with mental health conditions, it is crucial that all persons and businesses carefully review their exposure to liabilities. From healthcare facilities that are also required to review their treatment protocol to employers that must reevaluate their treatment of mentally impaired employees, this Act should not be trifled with.



---

<sup>24</sup> Section 39 of the National Mental Health Act

<sup>25</sup> Section 28 of the National Mental Health Act

## Key Contacts

For further information, kindly reach the key contacts below:



### CHINYERE OKOROCHA

Partner, Co-Sector Head,  
Health & Pharmaceuticals.

(234) 02 4626841/3

E: chinyere.okorochoa@jee.africa



### TOYOSI ODUNMBAKU

Partner, Co-Sector Head,  
Health & Pharmaceuticals.

(234) 02 4626841/3

E: toyosi.odunmbaku@jee.africa

#### Victoria Island

RCO Court,  
3-5 Sinari Daranijo Street,  
Victoria Island,  
Lagos, Nigeria

#### Tel

+234 (02) 014626841/3,  
+234-(02) 012806989

#### Email

jee@jee.africa

#### Abuja

42, Moses Majekodunmi Crescent,  
Utako, FCT, Abuja

#### Ikeja

1st floor, ereke house,  
Plot 15, CIPM Avenue  
CBD Alausa Ikeja  
Lagos Nigeria

#### Accra

3 Emmause, 2nd Close  
Akosombo House  
Labone, Accra, Ghana  
P.O. Box 14951  
Accra, Ghana

#### Yaoundé

3rd Floor, Viccui Building  
Apt. 15-16, Carr Street  
New Town, Yaoundé  
Cameroon

#### Harare

38 Clairwood Road,  
Alexandra Park,  
Harare,  
Zimbabwe.