

MAJOR HIGHLIGHTS OF THE NATIONAL MENTAL HEALTH ACT, 2021



The backdrop of inadequate laws and policies protecting persons with mental health disorders and the discrimination suffered by such persons necessitated the enactment of The National Mental Health Act, 2021 which replaces the over four decades old Lunacy Act of 1964. The National Mental Health Act, 2021 (subsequently referred to as “The Act”) is the main piece of legislation that covers the assessment, treatment, and rights of persons with mental health disorders. The Act seeks to provide direction for a coherent, rational, and unified response to the challenges relating to the delivery of mental health and substance abuse services in Nigeria, protect the rights and freedoms of persons with mental ill-health and substance abuse services in Nigeria, protect persons with mental and substance abuse disorders from discrimination, victimization and unfair treatment by employers, academic institutions and other agencies¹, amongst others.

This article examines some compelling provisions introduced by the Act.

1. An Expansive Definition of “Mental Health”

The Act redefines mental health in Nigeria, taking a detour from the stigmatizing term ‘lunatic’ to the more internationally acceptable term, ‘mental health’. The rationale behind this is to change the perception of mental health and create a better understanding of mental health which will eventually prevent the inhumane and stigmatizing usually received by mental health patients. The Act further defines mental health conditions as “impairments, activity limitations, and individual and participatory restrictions arising from diagnostic disorders which involve significant changes in thinking, emotion and behaviour”²

¹ Section 1 of the Mental Health Act

² Section 57 of the Act

³ Section 9 of the Act

2. Establishment of Mental Health Assessment Committee

The Act mandates the Minister of Health to constitute the Mental Health Assessment Committee³ which will consist of an experienced legal practitioner who is 10 years and above at the bar, a consultant psychiatrist, a medical and social worker with at least 10 years of experience, representatives of the civil society organization working in the area of mental health, community gatekeepers who may be either religious or traditional leaders. This committee will serve as an accountability mechanism to ensure that quality mental health care service is being provided, and the rights of persons with mental health disorders are being protected from infringement, amongst others.

3. Establishment of an Integrated Implementation Structure

Unlike the old position prior to the enactment of the Act whereby laws and policies remain on paper without implementation, the Act has introduced a well-defined structure to ensure the implementation of the provisions of the Act.

This lack of implementation lacuna was addressed by the establishment of “The Department of Mental Health Services”⁴ in the Federal Ministry of Health which will be responsible for jacking the letters of the Act into manifestation. It is also to serve as a clearing house to the Ministry of Health for the licensing, development, and implementation of minimum standards for the delivery of mental health and substance abuse services in health facilities providing mental health or substance abuse services in Nigeria.⁵

Apart from these, the Department is also empowered by the Act to formulate policies, develop and implement guidelines on mental health and substance-related issues in consultation with relevant stakeholders, and develop a comprehensive and integrated national plan and program on mental health and substance-related issues.

The Act also establishes an integrated Mental Health Service Delivery whereby the Department utilizes existing facilities at the primary, secondary, and tertiary levels of health care to promote the principle of integrated multi-disciplinary services in communities,⁶ facilities, prisons, homes, educational establishments, and other areas of the need to promote, prevent and treat mental disorder and rehabilitate and counsel persons with mental health disorder.

4. Creation of the Mental Health Fund to Address the Critical Funding Gap

One of the crucial steps for effective implementation of the provisions of the Act is Funding. Therefore, the creation of the mental health fund under the Act⁷ is a big step forward to ensuring stability and certainty for mental health initiatives and ensuring that there are sufficient resources to resolve this funding gap. The Fund will be realized from voluntary contributions by individuals, organizations, and the private sector, money approved by National Assembly for payment into the Fund, grants from bilateral and multilateral sources, and money from any other source approved by the Ministry responsible for Finance.⁸

⁴ Section 2 of the Act

⁵ Section 5 of the Act

⁶ Section 24 of the Act

⁷ Section 6 of the Act

⁸ Section 7 of the Act

5. Protection of the Human Rights of persons with mental health disorders

The stigma, discrimination, and unfair treatment of persons with mental health disorders and the failure of the Lunacy Act 1958 to promote and protect their rights form the underlining reasons for the provisions of the Mental Health Act, 2022 which is designed to “promote and protect the fundamental human rights and freedom of all persons with mental health conditions.”⁹

The Act provides for the non-discrimination of the civil, social, religious, educational and cultural rights of persons in need of mental health and substance abuse services on grounds of physical disability, age, gender, race, language, religion, ethnicity, or nationality of the patient¹⁰. The Act further guarantees that such persons are entitled to Fundamental Human rights and freedoms as provided in the Constitution and basic human rights.

Some of the basic human rights enunciated by the Act include; the right to enjoy a decent life as normal and as full as possible; right to education, vocational training, leisure, recreational activities, full employment and participation in civil, economic, cultural and political activities; right to humane and dignified treatment; right to have access to and spend personal money for personal purchases unless the mental capacity of such a person does not allow that¹¹; right to appoint a legal representative¹²; right to be informed personally or through legal representative of admission to a facility within twenty-four(24) in a language the patient understands¹³;

The Act also guarantees a patient’s right to standard and quality treatment, subject to exceptions, the right to privacy and autonomy right to the confidentiality of all information¹⁴, employment rights¹⁵ and access to housing.¹⁶

CONCLUSION

The Mental Health Act is a bold step forward in moving the Nigerian health care system forward. However, it is important for the relevant stakeholders to work hand in hand to bring the provisions of the law to life. There is need for a collaboration between all tiers of government, legal practitioners, health care service providers, civil society organizations, and the public. While Nigeria still has a long way to go in the development of the healthcare sector, the National Mental Health Act, 2021 is a step in the right direction.

⁹ Section 1 of the Act

¹⁰ Section 12 of the Act

¹¹ Section (16)(2) of the Act

¹² Section 17 of the Act

¹³ Section 22 & 35 of the Act

¹⁴ Section 21 of the Act

¹⁵ Section 13 of the Act

¹⁶ Section 14 of the Act



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