

# The Involuntary Admission of Persons to Mental Health Facilities: Understanding the Legal Framework

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## INTRODUCTION

The involuntary admission of individuals to mental health facilities is a complex and sensitive process governed by specific legislation. This article aims to provide an overview of the procedures outlined in the Mental Health Care Act 17 of 2002 (“the Act”) which dictate how individuals can be involuntarily admitted for care, treatment, and/or rehabilitation.

## THE LEGISLATION

Section 26 of the Act outlines the conditions under which a mental health care user may be admitted without their consent. The criteria includes the belief that the individual is suffering from a mental illness or severe mental disability and is incapable of making an informed decision regarding their need for care, treatment, and rehabilitation services.

## THE APPLICATION PROCESS (Section 27)

Section 27 dictates the application process for involuntary admission. Of note is that application can only be made by spouses, next of kin, partners, associates, parents, or guardians. The application must be made in the prescribed manner, providing details about:

1. the relationship between the applicant and the mental health care user;
2. the grounds for the belief in the necessity of services; and
3. the date, time, and place of the mental health care user’s last sighting.

Upon receiving the application, the head of the health establishment concerned must arrange for the examination of the mental health care user by two mental health care practitioners.

These mental health care practitioners must not be the persons making the application and at least one of them must be qualified to conduct physical examinations.

On completion of aforesaid examination, the mental health care practitioners must submit their written findings to the head of the health establishment concerned as to whether the mental health care user should receive assisted care, treatment and rehabilitation services as an outpatient or inpatient. If the findings of the two mental health care practitioners differ, the head of the health establishment concerned must cause the mental health care user to be examined by another mental health care practitioner.

The head of the health establishment may only approve assisted care, treatment and rehabilitation of a prospective user as an inpatient if, (a) the findings of two mental health care practitioners concur that conditions for inpatient care, treatment and rehabilitation exist and (b) if they are satisfied that the restrictions and intrusions on the rights of the mental health care user to movement, privacy and dignity are proportionate to the care, treatment and rehabilitation services required.

## THE REVIEW PROCESS (Section 28)

Following the head of the health establishment’s decision, within 7 (seven) days, a copy of the application must be sent to the relevant Review Board. The Review Board then conducts an investigation within 30 (Thirty) days to assess the user’s incapacity and the circumstances surrounding their care. The board may recommend continuing care, treatment, and rehabilitation or discharge according to accepted clinical practice.

## INVOLUNTARY CARE WITHOUT CONSENT (Section 32)

Section 32 outlines specific conditions under which involuntary care, treatment, and rehabilitation can be provided without the mental health care user’s consent. This includes situations where serious harm is likely to be inflicted or when protection of the user’s financial interests or reputation is necessary.

## **INVOLUNTARY CARE APPLICATION (Section 33)**

Section 33 mirrors the application process under Section 27 but includes additional steps. If approved, the head of the health establishment must admit the mental health care user, conduct a 72-hour assessment by medical and mental health care practitioners, and seek further approval from the Review Board if continued involuntary care is deemed necessary.

## **CONCLUSION**

Involuntary admission to mental health facilities is a serious matter governed by comprehensive legal provisions. Contrary to a court application, individuals must apply directly to the relevant health care facility using a specific form, emphasising the importance of adherence to the legal framework outlined in the Mental Health Care Act. Whether under Section 26 or 32, the consistent use of Form MHCA 04 highlights the standardised approach to safeguarding the rights and well-being of mental health care users in need of involuntary care.



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