

CHAPTER 2

RIGHTS AND DUTIES OF USERS AND HEALTH CARE PERSONNEL

Emergency treatment

5 A health care provider, health worker or health establishment may not refuse a person emergency medical treatment.

User to have full knowledge

6 (1) Every health care provider must inform a user of-

- (a) the user's health status except in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to the best interests of the user;
- (b) the range of diagnostic procedures and treatment options generally available to the user;
- (c) the benefits, risks, treatments and consequences generally associated with each option; and
- (d) the user's right to refuse health services and explain the implications, risks, obligations of such refusal.

(2) The health care provider concerned must, where possible, inform the user as contemplated in subsection (1) in a language that the user understands and in a manner which takes into account the user's level of literacy.

Consent of user

7 (1) Subject to section 8, a health service may not be provided to a user without the user's informed consent, unless -

- (a) the user is unable to give informed consent and such consent is given by a person -
 - (i) mandated by the user in writing to grant consent on his or her behalf; or
 - (ii) authorised to give such consent in terms of any law or court order;
- (b) the user is unable to give informed consent and no person is mandated or authorised to give such consent, and the consent is given by the spouse or partner of the user or, in the absence of such spouse or partner, a parent, grandparent, an adult child or a brother or a sister of the user, in the specific order as listed;
- (c) the provision of a health service without informed consent is authorised in terms of any law or a court
- (d) failure to treat the user, or group of people which includes the user, will result in a serious risk to public health; or
- (e) any delay in the provision of the health service to the user might result in his/her death or irreversible damage to his or her health and the user has not expressly, impliedly or by conduct refused that service.

(2) A health care provider must take all reasonable steps to obtain the user's informed consent.

(3) For the purposes of this section "informed consent" means consent for the provision of a specified health service given by a person with legal capacity to do so and who has been informed as contemplated in section 6.

Participation in decisions

8 (1) A user has the right to participate in a decision affecting his or her personal health and treatment.

- (2) (a) If the informed consent required by section 7 is given by a person other than the user: such person must, if possible, consult the user before giving the required consent.
- (b) A user who is capable of understanding must be informed as contemplated in section 6 even if he or she lacks the legal capacity to give the informed consent required by section 7.

(3) If a user is unable to participate in a decision affecting his or her personal health and treatment, he or she must be informed as contemplated in section 6 after the provision of the health service in question unless the disclosure of such information would be contrary to the user's best interest.

Health service without consent

9 (1) Subject to any applicable law, where a user is admitted to a health establishment without his or her consent, the health establishment must notify the head of the provincial department in the province in which that health establishment is situated within 48 hours after the user was admitted of the user's admission and must submit such other information as may be prescribed.

(2) If the 48-hour-period contemplated in subsection (1) expires on a Saturday, Sunday or public holiday, the health establishment must notify the head of the provincial department of the user's admission and must submit the other information contemplated in subsection (1) at any time before noon of the next day that is not a Saturday, Sunday or public holiday.

(3) Subsection (1) does not apply if the user consents to the provision of any health service in that health establishment within 24 hours of admission.

Discharge reports

10 (1) A health care provider must provide a user with a discharge report at the time of the discharge of the user from a health establishment containing such information as may be prescribed.

(2) In prescribing the information contemplated in subsection (1), the Minister must have regard to-

- (a) the nature of the health service rendered;
- (b) the prognosis for the user; and
- (c) the need for follow-up treatment,

(3) A discharge report provided to a user may be verbal in the case of an outpatient, but must be in writing in the case of an inpatient

Health services for experimental or research purposes

11 (1) Before a health establishment provides a health service for experimental or research purposes to any user and subject to subsection (2), the health establishment must inform the user in the prescribed manner that the health service is for experimental or research purposes or part of an experimental or research project.

(2) A health establishment may not provide any health service to a user for a purpose contemplated in subsection (1) unless the user, the health care provider primarily responsible for the user's treatment, the head of the health establishment in question and the relevant health research ethics committee, or any other person to whom authority has been delegated, has given prior written authorisation for the provision of the health service in question.

Duty to disseminate information

12 The national department and every provincial department, district health council and municipality must ensure that appropriate, adequate and comprehensive information is disseminated on the health services for which they are responsible, which must include-

- (a) the types and availability of health services;
- (b) the organisation of health services;
- (c) operating schedules and timetables of visits;
- (d) procedures for access to the health services;
- (e) other aspects of health services which may be of use to the public;
- (f) procedures for laying complaints; and
- (g) the rights and duties of users and health care providers.

Obligation to keep record

13 Subject to National Archives of South Africa Act, 1996 (Act No. 43 of 1996), and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the person in charge of a health establishment must ensure that a health record containing such information as may be prescribed is created and maintained at that health establishment for every user of health services.

Confidentiality

14 (1) All information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment, is confidential.

(2) Subject to section 15, no person may disclose any information contemplated in subsection 1 unless:

- (a) the user consents to that disclosure in writing;
- (b) a court order or any law requires that disclosure; or
- (c) non-disclosure of the information represents a serious threat to public health.

Access to health records

15 (1) A health worker or any health care provider that has access to the health records of a user may disclose such personal information to any other person, health care provider or health establishment as is necessary for any legitimate purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interests of the user.

(2) For the purpose of this section, "personal information" means personal information as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

Access to health records by health care provider

16 (1) A health care provider may examine a user's health records for the purposes of:

- (a) treatment with the authorisation of the user; and
- (b) study, teaching or research with the authorisation of the user, head of the health establishment concerned and the relevant health research ethics committee.

(2) If the study, teaching or research contemplated in subsection (1)(b) reflects or obtains no information as to the identity of the user concerned, it is not necessary to obtain the authorisations contemplated in that subsection.

Protection of health records

17 (1) The person in charge of a health establishment in possession of a user's health records must set up control measures to prevent unauthorised access to those records and to the storage facility in which, or system by which, records are kept.

(2) Any person who-

- (a) fails to perform a duty imposed on them in terms of subsection (1);
- (b) falsifies any record by adding to or deleting or changing any information contained in that record;
- (c) creates, changes or destroys a record without authority to do so;
- (d) fails to create or change a record when properly required to do so;
- (e) provides false information with the intent that it be included in a record;
- (f) without authority, copies any part of a record;
- (g) without authority connects the personal identification elements of a user's record with any element of that record that concerns the user's condition, treatment or history;
- (h) gains unauthorised access to a record or record-keeping system, including intercepting information being transmitted from one person, or one part of a record-keeping system, to another;
- (i) without authority, connects any part of a computer or other electronic system on which records are kept to-
 - (i) any other computer or other electronic system; or
 - (ii) any terminal or other installation connected to or forming part of any other computer or other electronic system; or
- (j) without authority, modifies or impairs the operation of-
 - (i) any part of the operating system of a computer or other electronic system on which a user's records are kept; or
 - (ii) any part of the programme used to record, store, retrieve or display information on a computer or other electronic system on which a user's records are kept, commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

Laying of complaints

18 (1) Any person may lay a complaint about the manner in which he or she was treated at a health establishment and have the complaint investigated.

(2) The relevant member of the Executive Council and every municipal council must establish a procedure for the laying of complaints within those areas of the national health system for which they are responsible.

(3) The procedures for laying complaints must-

- (a) be displayed by all health establishments in a manner that is visible for any person entering the establishment and the procedure must be communicated to users on a regular basis;
- (b) in the case of a private health establishment, allow for the laying of complaints with the head of the relevant establishment;
- (c) include provisions for the acceptance and acknowledgment of every complaint directed to a health establishment, whether

or not it falls within the jurisdiction or authority of that establishment; and

(d) allow for the referral of any complaint that is not within the jurisdiction or authority of the health establishment to the appropriate body or authority.

(4) In laying a complaint, the person contemplated in subsection (1) must follow the procedure established by the relevant member of the Executive Council or the relevant municipal council, as the case may be.

Duties of users

19 A user must-

- (a) adhere to the rules of the health establishment when receiving treatment or using health services at the health establishment;
- (b) subject to section 14 provide the health care provider with accurate information pertaining to his or her health status and co-operate with health care providers when using health services;
- (c) treat health care providers and health workers with dignity and respect; and
- (d) sign a discharge certificate or release of liability if he or she refuses to accept recommended treatment

Rights of health care personnel

20 (1) Health care personnel may not be unfairly discriminated against on account of their health status.

(2) Despite subsection (1) but subject to any applicable law, the head of the health establishment concerned may in accordance with any guidelines determined by the Minister impose conditions on the service that may be rendered by a health care provider or health worker on the basis of his or her health status.

(3) Subject to any applicable law, every health establishment must implement measures to minimise-

- (a) injury or damage to the person and property of health care personnel working at that establishment; and
- (b) disease transmission

(4) A health care provider may refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her.

Reference

1. National Health Act 2004, No 61 of 2003. Government Gazette, RSA; Vol.469, No 26595; 23 July 2004: 11 - 15.