



New Mental Health Law

More than 20 years after the approval of Law no. 36/98 of 24 July, the new Mental Health Law approved by Law no. 35/2023 of 21 July came into force on 20 August.

This new legal instrument revises the rules on the rights and duties of people in need of mental health care, in the light of progress in medical sciences and pharmacology and in accordance with the instruments of international, European and local law, namely the Health Basis Law, the legal regime of the Adult Accompanied and the regime of the Vital Will.

The new Mental Health Law enshrines the right of people in need of mental health care to:

- Access integrated, quality health care, from prevention to rehabilitation that includes responses to the various health problems of the patient and is suitable to their family and social environment;
- Have their will and preferences, expressed at the time or in advance, respected in the form of advance directives or through a health care proxy or an authorised representative for follow-up care;
- See their empowerment and autonomy promoted in the various areas of their lives, with respect for their will, preference, independence and privacy;
- Vote, with the sole exception of those incapacities provided for in general law;
- Not be subject to measures depriving or restricting freedom of unlimited or indefinite duration;
- Not be subject to coercive measures, including isolation and physical or chemical means of restraint, except under the terms provided for by law;
- Not to be subjected to transcranial magnetic stimulation without their written consent, save for the exceptional conditions laid down in the new law.

The diploma also recognises the right of the person in need of mental health care in the process of involuntary treatment, or in involuntary treatment, to:

- Participate in all procedural acts that directly concern him/her, being able to be heard by teleconference from the hospitalization unit where he/she is;
- Be accompanied by a suitable interpreter, whenever they do not know or speak Portuguese, are deaf or hearing-impaired or mute, in which case they may also respond in writing to questions formulated orally;
- Appoint a person of trust;
- Participate to the fullest extent of their capacity, in the preparation and execution of the respective care plan, being actively involved in decisions about the development of the therapeutic process.

The new regime also seeks to respond to a persistent gap regarding the protection of the management of the assets of the mentally ill, regulating the terms under which it is carried out. The option is, in this case, to provide for rules on the management of the assets of adults who are not covered by the accompanying measure provided for in the Portuguese Civil Code, applying, subsidiarily, the business management regime.

In the context of the execution of security measures for the internment of unimputable persons, the periodicity of the compulsory review of the situation of the person interned is reduced from two years to one year, thus complying with a recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Article 92(3) of the Penal Code was also repealed, which allowed, in certain cases, the successive extension of security measures for the internment of incapable persons. In fact, the continued existence of this regime, although anchored in Article 30(2) of the Constitution, has long been questionable, as it allows internment measures to have, in practice, an unlimited or even perpetual duration, contrary to the understanding that the rule that there can be no perpetual, unlimited or indefinite deprivation of liberty should prevail for all citizens - imputable and imputable alike.

The new Mental Health Law came into force on 20 August 2023 and intends to reflect the value framework in the light of which, today, all therapeutic approaches in this field should be understood, based on the dignity of the human person.

In this regard, it is worth mentioning the position taken by the National Ethics Council for Life Sciences (CNECV) in its Opinion no. 121/CNECV/2023, which states that the end of restrictive measures of liberty of unlimited duration must guarantee that "mental health care services will be appropriate to this model, in order to prevent the lack or impoverishment of resources and multidisciplinary teams, with possible asymmetries at regional level and with detriment to the monitoring of people with mental illness". The new legal framework must also guarantee equitable access to mental health care for those who need it, ensuring the necessary continuity of care.

In fact, the social inclusion dimension cannot be overlooked in this new regulatory framework, and it is particularly important in rehabilitation work. Although the outcome of psychosocial rehabilitation is the social inclusion of the rehabilitated person, a more concrete intervention is needed to achieve this goal.

This diploma also creates a commission to monitor the implementation of the legal regime applicable to involuntary treatment, which is composed of 3 psychiatrists, a judicial magistrate, a public prosecutor, a clinical psychologist, a nurse specialising in mental health, a social service technician, a representative of patient associations and another of family associations, appointed by the ministers of Health and Justice.

Public and private entities have a duty to co-operate with this commission and should provide it with relevant information to carry out its duties. And the commission must draw up an annual report on its activities and submit it to the Portuguese Government by 31 March each year.

For any doubt or question regarding this matter, please do not hesitate to contact the Health Law team at pbbr - Sociedade de Advogados, SP, RL.

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