

**DEPARTMENT OF SOCIAL DEVELOPMENT
NOTICE 426 OF 2017**

OLDER PERSONS ACT, 2006 (ACT NO. 13 OF 2006)

CALL FOR COMMENTS ON THE OLDER PERSONS AMENDMENT BILL, 2017

I Bathabile Olive Dlamini, responsible for Social Development, under Section 34 (1)(i) and (5) of the Older Persons Act, 2006 (Act No. 13 of 2006) intend to make amendments to the Older Persons Act, 2006 as set out in the Schedule.

Interested persons or organisations are hereby invited to submit written comments with regard to the draft Bill within 30 calendar days from the date of publication of this notice. Comments must be submitted by **16h00 on 30 June 2017** to Ms Naomi Maloba by:

- (a) Post to:**
Department of Social Development
Private Bag x901
Pretoria
0001;

(b) Hand to:

Directorate: Older Persons Services
134 Pretorius Street
HSRC Building
Pretoria
0001;

(c) Fax to:

+27 (0)86 527 3904; or

(d) By email to:

NaomiM@dsd.gov.za



B. O. DLAMINI (MP)

MINISTER OF SOCIAL DEVELOPMENT

DATE: 06.05.17

REPUBLIC OF SOUTH AFRICA

OLDER PERSONS AMENDMENT BILL, 2017

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill
I published in Government Gazette No. 40883 of 2 June 2017)
(The English text is the official text of the Bill)*
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(MINISTER OF SOCIAL DEVELOPMENT)

[B — 2016]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Older Persons Act, 2006, so as to insert new definitions; insert new provisions relating to the monitoring and evaluation of all services to older persons and for the removal of older persons to a temporary safe care without a court order; to tighten up the existing implementation and compliance measures; to effect some textual amendments for greater clarity and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 13 of 2006

1. Section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006) (hereinafter referred to as the principal Act) is hereby amended by —
- (a) The insertion of the following definition after the definition of "abuse":
- " **'assisted living facility'** means a residential care facility used for provision of affordable, safe and accessible accommodation with access to nursing care and support services to older persons that are partially independent, with or without assistive devices, and who need some form of supervision and assistance regarding their daily living activities."
- (b) the substitution for the definition of "care" of the following definition:
- " **'care'** means physical, psychological, social and includes but not limited to spiritual, nursing, first-aid care or material assistance to an older person, and **[includes]** services aimed at promoting and maintaining the comfort, quality of life and general well-being of an older person."
- (c) the substitution for the definition of "caregiver" of the following definition:
- " **'caregiver'** means any person who provides care;] and support services, whether at a community-based care, residential care facility or similar facility, and has been trained with an accredited South African Qualifications Authority or Sector Education Training Authority training, appropriate for the care of older persons."
- (e) the insertion of the following definition after the definition of "Director-General":
- " **'frail care facility'** means a residential care facility that is used primarily for the care of frail older persons that need 24 hour care services."

(f) the insertion of the following definition after the definition of "home-based care":

" **'independent living facility'** means a residential care facility used for the provisioning of affordable, safe and accessible accommodation to active older persons, who are fully independent with or without assistive devices and who do not need assistance regarding their daily living activities."

(g) the insertion of the following definition after the definition of "independent living facility":

" **'inter departmental structure'** means a structure consisting of the Departments of Social Development, Health, Basic Education, Sport and Recreation, Arts and Culture, Cooperative Governance and Traditional Affairs, Justice, Correctional Services, Human Settlements and South African Police Services at national level and where applicable, provincial and local levels of government and may include any stakeholder."

(h) the substitution for the definition of "manager" of the following definition:

" **'manager'** means the person responsible for the day-to-day management of a residential care facility [,**]** or similar facility, an institution or any programme for the rendering of services to older persons."

(i) the substitution for the definition of "older person" of the following definition:

" **'older person'** means a person who [**, in the case of a male, is 65 years of age or older and, in the case of a female, is 60 years of age or older]** is 60 years of age or older."

(j) the substitution for the definition of "person" of the following definition:

" **'person'** includes a trust and for the purposes of registration and operation of community-based care and support services, home-based care and residential care facilities, means a juristic person or a trust only.";

(k) the insertion of the following definition after the definition of "prescribed":

" **'private residential facility'** means a residential care facility registered in terms of the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988.)";

(l) the substitution for the definition of "rehabilitation" of the following definition:

" **'rehabilitation'** means a process by which an older person is enabled to reach and maintain his or her optimal physical, sensory, intellectual, psychiatric, spiritual or social functional level, and includes measures to restore functions or compensate for the loss or absence of a function, but excludes medical care.";

(m) the insertion of the following definition after the definition of "rehabilitation":

" **'residential care facility'** means a building or structure that is used primarily for the 24 hour care, accommodation and provision of services to older persons in both public and private residential care facilities and it includes assisted-living, independent- living, frail care facilities.";

(n) the insertion of the following definition after the definition of "social worker":

" **'stakeholder'** means a person, civil society organisation or the public and private sector that has an interest in programmes or services rendered to older persons.; and

(o) "**Temporary safe care**" means, in relation to older person, a shelter or any other place where an older person can be accommodated for as long as it is safe for him or her to remain there.

Amendment of section 2 of Act 13 of 2006

2. Section 2 of the principal Act is hereby amended by —

(a) The substitution for paragraph (b) of the following paragraph:

"(b) recognise, maintain and protect the rights of older persons [;] in line with any laws and national policies on vulnerability, ageing, disability and families."; and

(b) the substitution for paragraph (e) of the following paragraph:

"(e) prevent and combat the abuse of older persons.".

Amendment of section 3 of Act 13 of 2006

3. Section 3 of the principal Act is hereby amended by —

(a) The substitution for subsection (1) of the following subsection:

"(1) Subject to this Act allocating roles and responsibilities, the Act must be implemented by all organs of state and any other stakeholders rendering services to older persons **[in the national, provincial and, where applicable, local sphere of government]** in an integrated, co-ordinated and uniform manner.";

(b) the substitution for subsection (2) of the following subsection:

"(2) Recognising that competing social and economic needs exist, such organs of state and stakeholders must take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of this Act.";

(c) the substitution for subsection (3) of the following subsection:

"(3) To achieve the implementation of this Act in the manner contemplated subsections (1) and (2), all organs of state and stakeholders must co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to older persons [."]; and

(d) the addition of the following subsections "(4) and (5)":

"(4) There must be an inter-departmental structure to integrate, co-ordinate and monitor the effective implementation of this Act as prescribed; and

(5) The Offices of the Premier must facilitate and support the co-ordination and integration of the provincial plans and the implementation of this Act as prescribed."

Amendment of section 4 of Act 13 of 2006

4. Section 4 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) All organs of state and all officials, employees and representatives of organs of state and stakeholders must respect, protect and promote the rights of older persons contained in this Act."

Amendment of section 5 of Act 13 of 2006

5. Section 5 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) all proceedings, actions and decisions by any organ of state and stakeholders in any matter concerning an older person or older persons in general."

Amendment of section 11 of Act 13 of 2006

6. Section 11 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(c) information, education and counselling services, including HIV and AIDS, care for orphans, Alzheimer's, Non communicable chronic disease, dementia and basic emergency care;"

Amendment of section 13 of Act 13 of 2006

7. Section 13 of the principal Act is hereby amended by —

(a) the insertion after subsection (1) of the following subsection:

"(1A). Only a juristic person or a trust may be registered to provide community-based care and support services to older persons."

(b) the substitution for subsection (2) of the following subsection:

"(2) The Minister must prescribe conditions for the registration of community-based care and support services, including application for registration, approval of registration, temporary registration or conditional registration, duration of registration, withdrawal and termination of registration, and any matter contemplated in subsection (4).";

(c) the substitution for subsection (4) of the following subsection:

"(4) If the provider of a service for any reason intends to **[stop]** terminate or suspend the provision of service or the Department for any reason relating to the safety, health and non-compliance with the registration requirements, intends to terminate or suspend the service provider from providing the service, the service provider or the Department, as the case may be, must, prior to **[stopping]** the termination or suspension of the service or the service provider in question —

- (a) notify the manager of the service provider or the Director-General of the intention, reasons and the implications of such termination or suspension on the affected older persons;
- (b) inform the affected older persons and families of the intended termination or suspension of the service, the reasons for the intended termination or suspension; and
- (c) take reasonable steps to ensure that the older persons benefiting from the services are not adversely affected or put at risk and, where appropriate, are referred to a facility or institution providing similar services."

Amendment of section 14 of Act 13 of 2006

8. Section 14 of the principal Act is hereby amended by the deletion of subsection (4) of the Act.

Substitution of section 15 of Act 13 of 2006

9. The following section is hereby substituted for section 15 of the principal Act:

“Monitoring and evaluation of community-based care and support services

15. Subject to section 22 of the Act and to the extent which that section is applicable, monitoring and evaluation of community-based care and support services may be conducted as prescribed.”

Amendment of section 18 of Act 13 of 2006

10. Section 18 of the principal Act is hereby amended —

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) Subject to section 35, no person may operate a residential facility, including a private residential facility, assisted living facility or similar facility unless such facility has been registered under this section.”;
and

(b) by the substitution for subsection (2) of the following subsection:

“(2) A juristic person **[who wishes]** or a trust wishing to operate a residential facility must, in the prescribed manner, apply to the Minister for registration thereof.

Amendment of section 25 of Act 13 of 2006

11. Section 25 of the principal Act is hereby amended by the deletion of "or" just after the end of paragraph (g) and the insertion of paragraph (i) and (j) in subsection (5):

"(i) has been or is being maltreated, abused, neglected or degraded by a caregiver or family member; or

(j) has been accused of practicing witchcraft or blamed by the community for inexplicable events."

12. Insertion of section 25A into Act 13 of 2006

(a) The following section is hereby inserted after section 25 of the principal Act:

"Removal of older person to temporary safe care without court order

25A. (1) A social worker or health care worker in the employ of the State or a police official must with the consent of an older person or duly authorised person in the event the older person is incapable of providing such consent, remove such older person and place that older person in a temporary safe care without a court order, if there are reasonable grounds for believing —

(a) that the older person —

(i) is in need of care and protection as contemplated for in section 25 (5) of the Act; and

(ii) needs immediate emergency protection; and

“(b) that the delay in obtaining a court order for the removal of an older person to temporary safe care may jeopardise the safety and well-being of the older person;” and

(c) that the removal of the older person from his or her home or unsafe environment is the best way to secure the safety and well-being of that older person.

(2) (a) If a social worker or health care worker has removed an older person and placed the older person in temporary safe care as contemplated in subsection (1), the social worker or health care worker must report the matter to the relevant provincial department of social development; and

“(b) without delay but within 24 hours inform the family of the older person of such removal and the place where the older person has been moved to.”

(3) If a police official has removed an older person and placed the older person in temporary safe care as contemplated in subsection (1), the police official must —

(a) without delay but within 24 hours inform the family of the older person of such removal; and

(b) without delay but within 24 hours notify the provincial department of social development of the removal of the older person and of the place where the older person has been placed.

(4) Misuse of a power referred to in subsection (1) by a social worker employed in terms of the Public Service Act (Proclamation 103 of 1994) or any other law or by a Non-Profit Organisation constitutes unprofessional or improper conduct as is contemplated for in section 27 (1) (b) of the Social Service Professions Act, 1978 (Act No. 110 of 1978) by that social worker.

(5) Misuse of a power referred to in subsection (1) by a police official constitutes grounds for disciplinary proceedings against such police official as contemplated for in section 40 of the South African Police Service Act, 1995 (Act No. 68 of 1995).; and

“(6) Misuse of a power referred to in subsection (1) by a health care worker constitutes grounds for disciplinary proceedings against such health care worker in accordance with section 23 of the Allied Health Professions Act, 1982 (Act No. 63 of 1982), section 3(n) of the Health Professions Act, 1974 (Act No. 56 of 1974), section 46 of the Nursing Act, 2005 (Act No. 33 of 2005), section 39 of the Pharmacy Act, 1974 (Act No. 53 of 1974) and section 35 of the Dental Technicians Act, 1979 (Act No. 19 of 1979), whichever Act is applicable.”

Amendment of section 26 of Act 13 of 2006

13. Section 26 of the principal Act is hereby amended by —

(a) the substitution for subsection (1) of the following subsection:

"(1) Any person who suspects that an older person has been abused or suffers from an abuse-related injury must immediately notify the

Director-General, a social worker or a police official or the facility manager, if applicable of his or her suspicion."; and

(b) the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) the Director-General, social worker, police official or facility manager must investigate the matter and if the suspicion is substantiated by the investigation, section 25(4) applies with necessary modifications."

Amendment of section 28 of Act 13 of 2006

14. Section 28 of the principal Act is hereby amended by the following insertion in paragraph (b) of subsection (6):

"(b) refuses to furnish to a social worker or a health care provider any information in connection with the alleged abuse of an older person at his or her disposal which such officer requires for the purposes of an investigation referred to in subsection (3)[.] to the extent that-

(i) the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrate's court shall apply in relation to the questioning of a person for purposes of that investigation: Provided that such a person shall not be entitled to refuse to answer any question upon the ground that the answer would tend to expose him or her to a criminal charge; and

(ii) no evidence regarding any questions and answers for purposes of an investigation referred to in subsection (3) shall be admissible

in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

Amendment of section 30 of Act 13 of 2006

15. Section 30 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) **'physical abuse'** means any act or threat of physical violence towards an older person [;] unlawful detention or shackling, deprivation of nutrition, neglect or exploitation of an older person;"

Amendment of section 31 of Act 13 of 2006

16. Section 31 of the principal Act is hereby amended by the addition of the following subsection":

"(3) An application to the Minister for the removal of a name from the register may be brought by any person after the criminal record of the offender whose name appears in the register has been expunged in accordance with the provisions of sections 217A, 217B, 217C or 217D of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)."

Substitution of section 33 of Act 13 of 2006

17. (a) The following section is hereby substituted for section 33 of the principal Act:

“Penalties

33.(1) Any person convicted of an offence in terms of —

- (a) section 12(2), **[14(4)]**, 18(1), 18(8), 18 (9), 19(4), 22(5)(a), (b) or (c) or 28(6)(a) or (b) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment; or
- (b) section 21(8), 26(3), 27 (8)(a) or (b), 29(11) or 30(1) is liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

(2) Notwithstanding the provisions of this section and any provision of this Act, any person designated by the Director-General shall have the power to close down any unregistered or illegal community-based care or residential care facility services or any similar services to older persons, and

—

(a) such designated person may in writing direct any person operating unregistered or illegally to close down operations, immediately or within 24 hours;

(b) where necessary enlist the assistance of the police to effect the closure;

(c) in instances where there is a material contravention of this Act by a registered community-based care services provider or residential facility operator, he or she may recommend to the Director-General that it be deregistered and closed; and

(d) in instances where a person refuses to cooperate with, obstructs, defeats or misrepresents any fact to a social worker, health care worker, police official or any official exercising any reporting, enforcement and or monitoring powers conferred by this Act, such designated person may, upon receipt of such information recommend to the Director-General that the institution or facility concerned be deregistered or that the registration of the institution or facility be revoked; and

(b) the addition of the following subsection:

“3. If a person designated by the Director-General has directed that a community-based care or residential care facility be closed down, deregistered or the registration of a community-based care or residential care facility be revoked, such designated person must –

(a) notify the person in charge of the community-based care or residential care facility in writing of the intention to deregister the facility or the intention to revoke the registration of such facility;

(b) afford the person in charge of the community-based care or residential care facility an opportunity of no less than 30 days to make written

representations in respect of such closure, deregistration or revocation of registration;

(c) consider the representations made by the person in charge of the community-based care or residential care facility with regard to such closure, deregistration or revocation of registration; and

(d) in writing, notify the person in charge of the community-based care or residential care facility of the decision regarding the closure, deregistration or revocation of registration of the facility.”

Amendment of section 34 of Act 13 of 2006

18. Section 34 of the principal Act is hereby amended by the following substitution for subsection (3) of the following subsection:

"(3) Any regulation made in terms of subsection (1) which affect the South African Police Service must be made after consultation with the **[Minister for Safety and Security]** Minister of Police."

Short title and commencement

19. (1) This Act is called the Older Persons Amendment Act, 2016 and takes effect on a date fixed by the President by Proclamation in the *Gazette*.

(2) Different dates may, under subsection (1), be so fixed in respect of different provisions of this Act.

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