

REPUBLIC OF SOUTH AFRICA

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# OLDER PERSONS AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill and  
prior notice of its introduction published in Government Gazette No. 46032 of 11 March 2022)  
(The English text is the official text of the Bill)*

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(MINISTER OF SOCIAL DEVELOPMENT)

[B 11—2022]

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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.

# BILL

To amend the Older Persons Act, 2006, so as to insert new definitions; to 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.

**B**E 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— 5

- (a) by the insertion after the definition of “abuse” of the following definition:
 

“**assisted living facility**” means a residential facility used for the provision of safe and accessible accommodation with access to care and support services to older persons who are partially independent, with or without assistive devices, and who need some form of supervision and assistance with their activities of daily living;”;
- (b) by the substitution for the definition of “care” of the following definition:
 

“**care**” means physical, psychological, social, spiritual, nursing, first-aid or material assistance to an older person, and includes services aimed at promoting **[the]** and maintaining the comfort, quality of life and general well-being of an older person;”;
- (c) by 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 facility, residential facility or similar facility and who has been accredited with a National Qualifications Framework training qualification, appropriate for the care of older persons;”;
- (d) by the substitution for the definition of “Director-General” of the following definition:
 

“**Director-General**” means the Director-General of the Department of Social Development;”;
- (e) by the insertion after the definition of “Director-General” of the following definition:
 

“**frail care facility**” means a residential facility that is used primarily for the care of frail older persons in need of 24-hour care services;”;

- (f) by the insertion of the following definitions after the definition of “home-based care”:
- “**independent living facility**” means a residential facility used for the provisioning of safe and accessible accommodation to active older persons, who are fully independent with or without assistive devices and who do not need assistance with their activities of daily living; 5
- “**inter-departmental structure**” means a structure consisting of the Departments of Social Development, Health, Basic Education, Human Settlements, Water and Sanitation, Sport and Recreation, Arts and Culture, Cooperative Governance and Traditional Affairs, Justice and Correctional Services and South African Police Services at national level and, where applicable, provincial and local levels of government, and may include any stakeholder;” 10
- (g) by the substitution for the definition of “manager” of the following definition: 15
- “**manager**” means the person responsible for the day-to-day management of a residential facility or similar facility, institution or programme for the rendering of services to older persons;”;
- (h) by the substitution for the definition of “older person” of the following definition: 20
- “**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;”;
- (i) by the substitution for the definition of “person” of the following definition: 25
- “**person**” includes a trust and for the purposes of the registration and operation of community-based care and support services, home-based care and residential facilities, means a juristic person or a trust only;”;
- (j) by the insertion after the definition of “prescribed” of the following definition: 30
- “**private residential facility**” means a residential facility established or registered in terms of the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988);”;
- (k) by the substitution for the definition of “rehabilitation” of the following definition: 35
- “**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 levels, and includes measures to restore functions or compensate for the loss or absence of a function, but excludes medical care;”;
- (l) by the substitution for the definition of “residential facility” of the following definition: 40
- “**residential facility**” means a building or other structure that is used primarily for [the purposes of providing] 24-hour care, accommodation and [of providing a 24-hour service] the provision of services to older persons in both public and private residential facilities, and includes assisted-living, independent-living, frail care and similar facilities;” and 45
- (m) by the insertion after the definition of “social worker” of the following definitions: 50
- “**stakeholder**” means a civil society organisation or a person in the public or private sector, that works with or has an interest in programmes or services rendered to older persons;”;
- “**temporary safe care**” means, in relation to older persons, a shelter or any other place where an older person is protected and safely accommodated, for a period not exceeding six months;”.

## Amendment of section 2 of Act 13 of 2006

2. Section 2 of the principal Act is hereby amended— 55
- (a) by the substitution for paragraph (b) of the following paragraph: 55
- “(b) recognise, maintain and protect the rights of older persons in terms of any laws and policies on vulnerability, ageing, disability, families and other applicable legislation;” and
- (b) by the substitution for paragraph (e) of the following paragraph: 60
- “(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—

##### (a) by 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.”; 5

##### (b) by 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.”; 10

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

“(3) To achieve the implementation of this Act in the manner contemplated in 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 15

##### (d) by the addition of the following subsections after subsection (3): 20

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

(5) The Office of the Premier in each province must, together with the provincial department of social development, facilitate and support the co-ordination and integration of provincial plans and the implementation of this Act, as may be prescribed.”. 25

### 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: 30

“(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— 35

##### (a) 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.”; and 40

##### (b) by the addition after subsection (3) of the following subsection:

“(4) Anyone dealing with an older person must take all the measures necessary to eliminate harmful traditional practices, including witchcraft accusations, which may affect the welfare, health, life and dignity of that older person.”. 45

### Insertion of sections 7A and 7B in Act 13 of 2006

#### 6. The following sections are hereby inserted in the principal Act after section 7:

##### “Responsibilities of older person

##### 7A. An older person may not be denied the right to—

- (a) mentor and pass on knowledge and experience to a younger person;
- (b) foster and facilitate inter-generational dialogue and solidarity within his or her family or community; and
- (c) play a role in mediation and conflict resolution. 50

**Protection of rights to property, inheritance and physical abuse of older person**

- 7B.** An older person has the right to protection against—
- (a) any form of violence, sexual abuse and discrimination based on gender;
  - (b) abuse related to property and land rights; and
  - (c) abuse related to the right to inheritance.”.

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**Amendment of section 11 of Act 13 of 2006**

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

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- “(c) information, education and counselling services, including HIV and AIDS, care for orphans, Alzheimer’s, non-communicable chronic diseases, dementia and basic emergency care;”.

**Amendment of section 13 of Act 13 of 2006**

**8.** Section 13 of the principal Act is hereby amended—

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- (a) by 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) by 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).”; and

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

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“(4) If the **[provider of a]** service provider for any reason intends to **[stop providing the service]** terminate or suspend the provision of a service, or the Department for any reason intends to terminate or suspend the service provider from providing a service, **[the provider]** the service provider or the Department, as the case may be, must, prior to **[stopping]** the termination or suspension of the service in question—

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- (a) notify the Director-General or the manager of the service provider of the intention, reasons and the implications of such **[stoppage]** termination or suspension **[for]** on the affected older persons;

- (b) inform the older persons affected of the intended **[stoppage]** termination or suspension of the service, and the reasons for the intended termination or suspension; and

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- (c) take reasonable steps to ensure that the older persons benefiting from the service are not adversely affected or put at risk and, where appropriate, are referred to **[a person]** an alternative registered facility or institution providing similar services.”.

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**Amendment of section 14 of Act 13 of 2006**

**9.** Section 14 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

“**Persons providing home-based care and frail care**”;

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- (b) by the substitution for subsection (1) of the following subsection:

“(1) Any person who provides home-based care and frail care must ensure that caregivers receive the prescribed training.”; and

- (c) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

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“(a) The Minister must keep a register of all caregivers providing home-based care and frail care and must prescribe a code of conduct for such caregivers.”.