

KwaZulu-Natal, South Africa

## KwaZulu-Natal Health Act, 2009

Act 1 of 2009

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# KwaZulu-Natal South Africa

## KwaZulu-Natal Health Act, 2009

### Act 1 of 2009

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## ACT

To provide for the restructuring of the provincial health care service delivery system; to provide a framework for the development and implementation of provincial health policy, provincial norms and standards; to provide for the achievement of the progressive realisation of the right of access to health care services through the provision of accessible comprehensive provincial health care services within the available resources of the Province; to create an enabling environment for the realization of mutually respectful rights and duties for health care users and personnel; to provide for the establishment of an integrated provincial health care system to be managed by appropriate structures in accordance with constitutional principles; to provide for the facilitation of improved management in the provision of public sector health care service delivery; to provide for community participation in the formulation of provincial policy, legislation and provincial health priorities; to provide for accreditation, licences, permits and authorisations for health care providers; to provide for the establishment of an inspectorate for Health Establishments; to provide for the powers, duties and functions of the Inspectorate for Health Establishments; to provide for the establishment of a complaints and dispute resolution mechanism; to provide for an appeal mechanism; to provide for transparency and accountability in the development and implementation of health policies and practices; and to provide for matters connected therewith.

(English text signed by the Premier)

WHEREAS the Province of KwaZulu-Natal, in accordance with the Constitution, international conventions and treaties, national policy and statutory health framework, acknowledges the basic need for the provision of health care in the Province,

AND WHEREAS the Constitution obliges the Province to respect, protect, promote and fulfil the rights enshrined in the Bill of Rights, which is the cornerstone of democracy in South Africa; and in particular, within the context of the general health and well-being of the people of South Africa, the constitutional obligation on the Provincial Government to take all reasonable legislative and other measures within its available resources to achieve the progressive realisation of the inalienable right of every person-

- to have their dignity respected and protected;
- to have access to health care services, including reproductive health care;
- not to be refused emergency medical treatment; and
- to an environment that is not harmful to their health or well-being, in order to maintain, and within appropriate circumstances, to experience a sustained improvement in their personal health,

AND WHEREAS the three spheres of government, organs of state, as well as structures, institutions and service providers established, licensed, authorised and recognised in terms of this Act, within the framework for intergovernmental relations and cooperative government and, to the extent that they are involved in the provision of health care services in the Province, are obliged to-

- respect the integrity of, and cooperate with, institutions supporting constitutional democracy, as contemplated in Chapter 9 of the Constitution; and
- respect the integrity of, and cooperate with, any other institution established by national or provincial legislation,

AND WHEREAS the Constitution obliges the Province to respect, protect, promote and fulfil every child's right to basic health care services,

AND WHEREAS the Province must respect, protect, promote and fulfil, and, in a progressive manner, take the necessary steps to realise these rights,

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

## Chapter 1 Definitions

### 1. Definitions

In this Act any word or expression to which a meaning has been assigned in the National Health Act, 2003 (Act No. 61 of 2003), must, unless clearly inappropriate, bear that meaning, and, unless the context indicates otherwise-

“**ambulance services**” means the provision of emergency medical services and the transportation of patients through the utilisation of the appropriate mode of transport;

“**available resources**” means financial, human or other resources available to the Province for health services;

“**clinic**” means a provincial health facility at and from which a range of primary health care services is provided and that is normally open at least five days a week for eight or more hours a day based on the needs of the community to be served;

“**community health centre**” means a facility that normally provides a range of primary health care services, seven days a week, including but not limited to 24 hour maternity, accident and basic emergency services and beds where health care users can be observed for a maximum of 48 hours and which normally has a procedure room but not an operating theatre;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Department**” means the Provincial Department of Health for the Province of KwaZulu-Natal;

“**district council**” means the council of a district municipality;

“**district health care system**” means a comprehensive district health care service based on primary health care established to improve access to basic health care by disadvantaged individuals, to reduce past disparities and inequities in health care service delivery and to provide improved and integrated service delivery to meet the healthcare needs of all persons within a particular district or metropolitan area;

“**district health council**” means a council established in terms of section 23;

“**district hospital**” means a health care facility at which a range of outpatient and inpatient services are offered, mostly within the scope of general medical practitioners which has a functional operating theatre in which operations are performed regularly under general anaesthesia;

“**district municipality**” means a municipality contemplated in section 151 (1) of the Constitution and section 12(1) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**emergency medical services**” means the on-site medical evaluation, triaging, treatment and transportation of an ill or injured health care user by an emergency medical incident and the continuation

of evaluation, treatment and care of the health care user during the transportation of the health care user to or between health care establishments;

“**Gazette**” means the official *Provincial Gazette* of the Province of KwaZulu-Natal;

“**Head of Department**” means the person appointed as head of the Department of Health in terms of section 12 of the Public Service Act, (Proclamation 103 of 1994);

“**health care establishment**” means the whole or part of public or private institution, facility, building or place, whether for profit or not, that is operated or designed to provide inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health services;

“**health care personnel**” means health care providers and health workers;

“**health care services**” means health services including reproductive health care and emergency medical treatment contemplated in section 27 of the Constitution;

“**health care structure**” means any committee, board, forum or council established in terms of national or provincial legislation to advise the responsible Member of the Executive Council on health care related matters and carry out specified functions in terms of national and provincial legislation;

“**health care user**” means a person who uses or benefits from the use of health care services, including reproductive health care and emergency medical treatment contemplated in section 27 of the Constitution;

“**hospital board**” means the board established in terms of section 36;

“**hospital services**” means health care services provided by a district hospital, a regional hospital, a tertiary hospital and a specialised hospital;

“**KwaZulu-Natal provincial health sector**” includes public and private health care establishments, providers and practitioners within the Province of KwaZulu-Natal;

“**levels of care**” means the different levels of health care provided at a primary health care facility, a community health centre, a district hospital, a regional hospital, a tertiary hospital and a specialised hospital;

“**metropolitan municipality**” means a municipality contemplated in section 151 (1) of the Constitution and section 12(1) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**Minister**” means the Cabinet member responsible for health in the national sphere of government;

“**National Health Act**” means the National Health Act, 2003 (Act No. 61 of 2003);

“**organised local government**” means an organised local government as contemplated in section 2(1) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), to represent local government nationally or provincially;

“**prescribed**” means prescribed by regulation under section 74 and “prescribe” has a corresponding meaning;

“**Province**” means the Province of KwaZulu-Natal, and “provincial” has a corresponding meaning;

“**provincial health care system**” means a comprehensive provincial health care service established to improve access to health care, to reduce past disparities and inequities in health care service delivery and to provide improved and integrated service delivery to meet the healthcare needs of all persons within the Province;

“**Provincial Health Information Systems Committee**” means the committee established in terms of section 29;

“**Provincial Health Research and Ethics Committee**” means the committee established in terms of section 9;

“**regional hospital**” means a health care facility that provides care requiring the intervention of specialists as well as general medical practitioner services;

“**responsible Member of the Executive Council**” means the member of the Executive Council for the Province of KwaZulu-Natal responsible for health;

“**specialised hospital**” means any health care institution which provides specialized care or treatment;

“**state aided institution**” means a private institution which is totally or partially funded by the State;

“**tertiary hospital**” means a health care facility that provides specialist and subspecialist care;

“**this Act**” includes the regulations.

## **Chapter 2**

### **Application, guiding principles , objects and rights**

#### **2. Application of Act**

This Act applies to a person who is-

- (a) a South African citizen;
- (b) the registered holder of a permit indicating permanent residency; or
- (c) entitled to public health care services in terms of international and bi-national conventions, treaties and agreements to which the Republic of South Africa is a signatory; or
- (d) a resident of, or physically present in, the Province.

#### **3. Guiding principles for interpretation and administrative compliance**

- (1) This Act must be interpreted and implemented within the context of the Constitution, national policy framework, national legislative framework, national and provincial norms and standards as well as transversal provincial legislation and policy relating to health matters.
- (2) All administrative actions, decisions taken, rulings made, allocations and awards made, transfers of funds and grants effected, reports made, or any other action undertaken or task performed in terms of this Act, must be in accordance with national framework policy, national legislation, provincial policy and provincial legislation, as well as any other applicable laws relating to compliance in respect of the following-
  - (a) basic values and principles governing public administration and governance;
  - (b) financial management;
  - (c) risk management;
  - (d) quality assurance management;
  - (e) any other matter as provided for in this Act requiring compliance; and
  - (f) any other matter that the Head of Department may determine.

#### **4. Objects of Act**

The objects of this Act are-

- (a) to give effect to the right to the progressive realisation of access to health care services conferred by section 27 of the Constitution and within the available resources of the Province;



- (b) to give effect to the right of children to basic health care as provided for in section 28 of the Constitution and within the available resources of the Province;
- (c) to give effect to the right to an environment that is not harmful to the health or well-being of the people in terms of section 24 of the Constitution;
- (d) to give effect to the inalienable right of every person to have their dignity respected and protected, and to be provided with health care services in order to improve their quality of life in a sustainable manner;
- (e) to create the framework for the development and implementation of provincial health policies, frameworks, provincial norms and standards in accordance with the national health legislation and policies, frameworks, national norms and standards, international conventions and treaties;
- (f) to rationalise the structuring and implementation of the district health system in accordance with national legislation and policies, including but not limited to supervision, monitoring and evaluation of the district health system and the management thereof; and
- (g) to create an integrated provincial health care framework and health care service delivery in accordance with national and provincial health policies and legislation.

## **5. Powers and functions of responsible Member of Executive Council**

- (1) Having regard to the co-ordinating role of the national government in the delivery of health care services, the responsible Member of the Executive Council must, in the spirit of co-operative government referred to in Chapter 3 of the Constitution, endeavour to promote and facilitate the delivery of health care services in the Province within the framework of national policy framework, national legislative framework, and national norms and standards relating to health matters.
- (2) In addition to the other powers vested in the responsible Member of the Executive Council by this Act, the responsible Member of the Executive Council must-
  - (a) after consultation with the KwaZulu-Natal provincial health sector;
  - (b) with due regard to national norms and standards on the delivery of health care services; and
  - (c) within 12 months of the commencement of this Act, determine provincial policy, provincial norms and standards for the delivery of health care services in the Province.
- (3) The provincial norms and standards contemplated in subsection (2) must include-
  - (a) equitable access to health care services;
  - (b) the commission, development and accreditation of health care establishments;
  - (c) the monitoring and evaluation of all health care establishments; and
  - (d) any other matter that the responsible Member of the Executive Council may determine.
- (4) The responsible Member of the Executive Council must establish frameworks-
  - (a) for the provision of environmental health services, including, but not limited to, port health, malaria and hazardous waste;
  - (b) for the transfer of health care users from-
    - (i) one public health care establishment to another; and
    - (ii) a public health care establishment to a private health care establishment;
  - (c) for the inter-provincial transfer of health care users;
  - (d) for the provision of approved health care services by South African and international medical students and other trainee health professionals;

- (e) for the relationship with nursing training colleges and similar institutions;
  - (f) for an effective relationship with agencies responsible for the placement on a permanent, temporary, full-time or part-time basis of health care providers;
  - (g) for the recognition of traditional healers registered in terms of applicable national legislation and the provision of approved health care services by them;
  - (h) after consultation with the responsible Member of the Executive Council for local government, for the establishment, management, quality control, and inspection of cemeteries, crematoria and funeral parlours; and
  - (i) to promote sound relations between the Department and the following structures
    - (i) international and regional non-governmental health care structures;
    - (ii) South African community based non-profit organisations functioning within the health sector and registered in terms of applicable national legislation;
    - (iii) the KwaZulu-Natal provincial health sector;
    - (iv) non-South African institutions and entities functioning within the health sector;
    - (v) providers of donations and other forms of support;
    - (vi) registered tertiary educational institutions, which are accredited to provide health care training; and
    - (vii) to the extent that they are involved in the provision of health care services in the Province, the three spheres of government, organs of state, as well as structures, institutions and service providers established, licensed, authorised and recognised in terms of this Act.
- (5) The responsible Member of the Executive Council must, within the available financial resources of the Province, provide sufficient financial, human, infrastructural and other support in order to enable the effective functioning of the KwaZulu-Natal Health Operations Centre established in terms of section 34.
- (6) The responsible Member of the Executive Council may, within the available financial resources of the Province and subject to the provisions of section 3(3) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), do any other thing necessary to give effect to the provisions of this Act.

## 6. Responsibility of health statutory institutions

- (1) Subject to the national framework policy, national norms and standards and eligibility criteria determined in terms of subsection (2), all health-related statutory institutions, including the Department must, within the available financial resources of the Province, provide comprehensive health care services to-
- (a) all persons contemplated in section 2; and
  - (b) any other category of health care user as may be determined by the responsible Member of the Executive Council, in accordance with the provisions of this Act.
- (2) The Department must-
- (a) within six months of the commencement of this Act; and
  - (b) in accordance with the national framework policy, national norms and standards, determine the criteria for eligibility for the provision of the comprehensive health care services to persons contemplated in subsection (1).

## 7. Rights and duties of health care users

- (1) A health care user has a right-
  - (a) to health care services;
  - (b) to participate in the decision-making affecting their personal health and treatment;
  - (c) to access available public health care services;
  - (d) to grant their informed consent prior to any health care service, including health treatment rendered, unless the user is unable to give informed consent in which case the provisions of section 7 of the National Health Act will then be applicable;
  - (e) to emergency medical services at any health care establishment;
  - (f) to refuse health treatment: Provided that the condition concerned does not pose a serious risk to the health of the public in general;
  - (g) to confidential treatment of all information, in written, verbal or electronic form regarding the user's general health, any medical condition, diagnosis, prognosis and related health treatment;
  - (h) to an environment that is not harmful to their health; and
  - (i) to lodge a complaint in respect of health care services rendered as provided for in national legislation and in this Act, and have their complaint investigated and addressed,
- (2) A health care user must-
  - (a) adhere to the rules of the health care establishment concerned when receiving treatment or using health care services;
  - (b) subject to subsection (1), provide the health care provider with accurate information pertaining to their health status and co-operate with health care providers when using health care services;
  - (c) treat health care providers with dignity and respect;
  - (d) sign a certificate on discharge from the health care establishment concerned; and
  - (e) sign a release of liability or a discharge certificate if they refuse to undergo health treatment as recommended by the health care provider concerned.

## 8. Rights and duties of health care personnel

- (1) Health care personnel-
  - (a) must be treated with dignity and respect;
  - (b) must be provided with a healthy and safe working environment;
  - (c) must take all reasonable steps to obtain a health care user's informed consent prior to administering any health care service to the health care user;
  - (d) must assist the health care user to understand all information relating to the treatment of the user.
  - (e) may not be unfairly discriminated against on account of their health status, race, gender, pregnancy, sex, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or any other basis.
- (2) Notwithstanding the provisions of subsection (1)(e), and subject to any applicable national and provincial legislation, the head of the health care establishment concerned may, in accordance with

any guidelines determined by the Minister or the responsible Member of the Executive Council, impose conditions on the health care service that may be rendered by a health care personnel on the basis of the health care provider's health status.

- (3) Subject to any applicable national or provincial legislation, every health care establishment must implement reasonable measures to-
  - (a) promote the safety and security of health care personnel; and
  - (b) minimise the risk of-
    - (i) injury or damage to the person and property of health care personnel working at that health care establishment; and
    - (ii) disease transmission to the health care personnel.

### **Chapter 3**

## **Kwazulu-Natal Provincial Health Research and Ethics Committee**

### **9. Establishment of KwaZulu-Natal Provincial Health Research and Ethics Committee**

- (1) A body to be known as the KwaZulu-Natal Provincial Health Research and Ethics Committee is hereby established.
- (2) The KwaZulu-Natal Provincial Health Research and Ethics Committee is not a juristic person.

### **10. Composition of KwaZulu-Natal Provincial Health Research and Ethics Committee**

- (1) The KwaZulu-Natal Provincial Health Research and Ethics Committee must comprise of-
  - (a) the Head of Department or his or her nominee as chairperson;
  - (b) two officials from the Department designated by the Head of Department;
  - (c) three representatives from registered tertiary educational institutions, which have been accredited to provide health care training within the Province;
  - (d) a representative from the private health sector in the Province;
  - (e) a representative from organised local government in the Province;
  - (f) a representative from each health research ethics committee registered with the National Health Research Ethics Council as contemplated in section 73 of the National Health Act in the Province;
  - (g) two medical practitioners employed at public health care establishments within the Province who are specialists in a particular medical field;
  - (h) a representative of traditional health practitioners in the Province; and
  - (i) any other representative which the responsible Member of the Executive Council may deem necessary.
- (2) In addition to the members contemplated in subsection (1), the committee may also include-
  - (a) a representative from the Medical Research Council;
  - (b) a representative from the pharmaceutical industry in the Province;
  - (c) one representative from each of the seven statutory health professional councils; and
  - (d) one representative each from the National Health Research Committee and from the National Health Research Ethics Council.

## **11. Functions of KwaZulu-Natal Provincial Health Research and Ethics Committee and reimbursement for subsistence and travelling expenses**

- (1) The KwaZulu-Natal Provincial Health Research and Ethics Committee must-
  - (a) assist in the development of health research priorities in the Province;
  - (b) co-ordinate health research in accordance with prevailing provincial priorities in respect of health research;
  - (c) review research proposals and protocols in order to ensure that research conducted at any health establishment in the Province generally, promotes health, contribute to the prevention of communicable or non-communicable diseases or disability or result in cures for communicable or non-communicable diseases;
  - (d) review preliminary and final research reports to ensure alignment with the provincial health research priorities;
  - (e) grant approval for research by any establishment in instances where research proposals and protocol meet the ethical standards of the provincial health research ethics committee; and
  - (f) perform functions and carry out duties and responsibilities imposed by this Act.
- (2)
  - (a) A member of the Provincial Research and Ethics Committee may, in respect of his or her functions as a member, only receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Provincial Research and Ethics Committee.
  - (b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

## **12. Meetings of KwaZulu-Natal Provincial Health Research and Ethics Committee**

The KwaZulu-Natal Provincial Health Research and Ethics Committee may meet as often as necessary, but at least once a year, at such places and times as the Head of Department may determine.

## **13. Procedure for referral of research proposals**

- (1) The responsible Member of the Executive Council must within 12 months after the coming into operation of this Act, prescribe in terms of this Act, the procedure for the referral of research proposals to the KwaZulu-Natal Provincial Health Research Ethics Committee.
- (2) All health research ethics committees contemplated in section 73 of the National Health Act-
  - (a) operating within the Province; and
  - (b) attached to any health care establishment in the Province,must submit all research proposals received by such committee to the Provincial Research and Ethics Committee for approval prior to the commencement of the research at the relevant health care establishment.

## **14. Administrative support to KwaZulu-Natal Provincial Health Research and Ethics Committee**

The Department must provide administrative and secretarial support to the KwaZulu- Natal Provincial Health Research and Ethics Committee.

## **Chapter 4**

### **Kwazulu-Natal Provincial Health Council**

#### **15. Establishment of KwaZulu-Natal Provincial Health Council**

- (1) A council to be known as the KwaZulu-Natal Provincial Health Council is hereby established.
- (2) The KwaZulu-Natal Provincial Health Council is not a juristic person.
- (3) The KwaZulu-Natal Provincial Health Council is the council referred to in section 26 of the National Health Act.

#### **16. Composition of KwaZulu-Natal Provincial Health Council**

Section 26 of the National Health Act applies with regard to the composition of the KwaZulu-Natal Provincial Health Council.

#### **17. Functions of KwaZulu-Natal Provincial Health Council and reimbursement for travelling and subsistence expenses**

- (1) Section 27 of the National Health Act applies with regard to the functions of the KwaZulu-Natal Provincial Health Council.
- (2)
  - (a) A member of the KwaZulu-Natal Provincial Health Council may, in respect of his or her functions as a member, only receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the KwaZulu-Natal Provincial Health Council.
  - (b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

#### **18. Administrative support to KwaZulu-Natal Provincial Health Council**

The Department must provide administrative and secretarial support to the KwaZulu- Natal Provincial Health Council.

## **Chapter 5**

### **Kwazulu-Natal Provincial Consultative Health Forum**

#### **19. Establishment of KwaZulu-Natal Provincial Consultative Health Forum**

- (1) A body to be known as the KwaZulu-Natal Provincial Consultative Health Forum is hereby established.
- (2) The KwaZulu-Natal Provincial Consultative Health Forum is not a juristic person.
- (3) The KwaZulu-Natal Provincial Consultative Health Forum is the forum referred to in section 28 of the National Health Act.

#### **20. Composition of KwaZulu-Natal Provincial Consultative Health Forum**

Section 28 of the National Health Act applies with regard to the composition of the KwaZulu-Natal Provincial Consultative Health Forum.

## **21. Functions of KwaZulu-Natal Provincial Consultative Health Forum and reimbursement for travelling and subsistence expenses**

- (1) Section 28(2) of the National Health Act applies with regard to the functions of the KwaZulu-Natal Provincial Consultative Health Forum.
- (2)
  - (a) A member of the KwaZulu-Natal Provincial Consultative Health Forum may, in respect of his or her functions as a member, only receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the KwaZulu-Natal Provincial Consultative Health Forum.
  - (b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

## **22. Governance Framework**

The responsible Member of the Executive Council must prescribe the governance framework for the KwaZulu-Natal Provincial Consultative Health Forum, which must include-

- (a) procedure for appointment of members;
- (b) the procedure for meetings of the forum; and
- (c) any other matter relevant to the administration of the forum.

## **Chapter 6 District Health Councils**

### **23. Establishment of District Health Councils**

- (1) The responsible Member of the Executive Council must, within the area of a metropolitan or district municipality, and in accordance with the provisions of section 31 (1) of the National Health Act, establish a District Health Council.
- (2) A District Health Council is not a juristic person.
- (3) A District Health Council contemplated in subsection (1) is the council referred to in section 31 of the National Health Act.

### **24. Composition of District Health Council**

Section 31(2) of the National Health Act applies with regard to the composition of district health councils.

### **25. Functions of District Health Council and reimbursement for travelling and subsistence expenses**

- (1) Section 31(3) of the National Health Act applies with regard to the functions of district health councils.
- (2)
  - (a) A member of the District Health Council may, in respect of his or her functions as a member, only receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the District Health Council.
  - (b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

## 26. Financial support to District Health Council

- (1) The responsible member of the Executive Council may, depending on the availability of resources, contribute financial or other resources for the provision of health care services.
- (2)
  - (a) In deciding to contribute the financial or other resources contemplated in subsection (1), the responsible Member of the Executive Council must after consultation with the municipal councils of the metropolitan or district municipality, as the case may be, approve the budget and performance targets for health services in each health district.
  - (b) Should any dispute in relation to the approval process contemplated in paragraph (a), arise between the responsible Member of the Executive Council and the municipal councils of the metropolitan or district municipality, such dispute must be resolved in accordance with the provisions of Chapter 4 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).
- (3) The responsible Member of the Executive Council must ensure that each health district and each health sub-district is effectively managed as provided for in the district health plans and on an annual basis.

## 27. Advisory committees of district health councils

For the purposes of establishing advisory committees to district health councils, the provisions of section 31 (4) of the National Health Act apply.

## 28. Division of health districts into sub-districts

For the purposes of determining the division of health districts into sub-districts and related matters, the provisions of section 30 of the National Health Act, apply.

## Chapter 7

### Kwazulu-Natal Provincial Health Information Systems Committee

## 29. Establishment of KwaZulu-Natal Provincial Health Information Systems Committee

- (1) A committee to be known as the KwaZulu-Natal Provincial Health Information Systems Committee is hereby established.
- (2) The KwaZulu-Natal Provincial Health Information Systems Committee is not a juristic person.
- (3) The KwaZulu-Natal Provincial Health Information Systems Committee is the committee contemplated in section 75 of the National Health Act.

## 30. Composition of KwaZulu-Natal Provincial Health Information Systems Committee

The KwaZulu-Natal Provincial Health Information Systems Committee comprises of-

- (a) the responsible Member of the Executive Council or his or her nominee as chairperson;
- (b) a representative from the private health sector in the Province;
- (c) a representative from each medical school in the Province;
- (d) a representative from the medical research council;
- (e) two officials from the information technology directorate in the Department;
- (f) a representative from the State Information Technology Agency (SITA);
- (g) an official from the Infection Control Unit in the Department;



- (h) an official from the Geographical Information Systems unit in the Department; and
- (i) any other member as may be determined by the responsible Member of the Executive Council from time to time.

### **31. Functions of KwaZulu-Natal Provincial Health Information Systems Committee and reimbursement for subsistence and travelling expenses**

- (1) The KwaZulu-Natal Provincial Health Information Systems Committee must establish, maintain, facilitate and implement health information systems at provincial and local level as contemplated in section 75 of the National Health Act.
- (2)
  - (a) A member of the KwaZulu-Natal Provincial Health Information Systems Committee may, in respect of his or her functions as a member, only receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the KwaZulu-Natal Provincial Health Information Systems Committee.
  - (b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

### **32. Meetings of KwaZulu-Natal Provincial Health Information Systems Committee**

The KwaZulu-Natal Provincial Health Information Systems Committee may meet as often as necessary, but at least three times a year, at such places and times as the chairperson may determine.

### **33. Administrative support to KwaZulu-Natal Provincial Health Information Systems Committee**

The Department must provide administrative and secretarial support to the KwaZulu-Natal Provincial Health Information Systems Committee.

## **Chapter 8 Kwazulu-Natal Health Operations Centre**

### **34. KwaZulu-Natal Provincial Health Operations Centre**

- (1) A body to be known as the KwaZulu-Natal Provincial Health Operations Centre is hereby established.
- (2) The KwaZulu-Natal Provincial Health Operations Centre is not a juristic person.

### **35. Functions of KwaZulu-Natal Provincial Health Operations Centre**

- (1) The KwaZulu-Natal Provincial Health Operations Centre must provide a professional, effective and efficient operations support service to internal and external customers of the Department in respect of-
  - (a) forensic pathology services support service;
  - (b) emergency rescue services support line;
  - (c) institutional monitoring and reporting Service;
  - (d) employee assistance programme help line service;
  - (e) antiretroviral post exposure prophylaxis help line service;
  - (f) customer complaints line service;

- (g) chaplain service support line;
  - (h) information management and help line for health care users;
  - (i) whistle blowing hotline service;
  - (j) hotline links to other organs of government; and
  - (k) hotline support to hospitals, clinics, emergency services and crisis centres.
- (2) The KwaZulu-Natal Provincial Health Operations Centre may do any other thing that is necessary to realize the objects of this Act.

## Chapter 9

### Hospital boards and clinic or community health committees

#### 36. Establishment of hospital boards

- (1) The responsible Member of the Executive Council must, by notice in the *Gazette* and within six months of the coming into operation of this Act, establish a hospital board for each hospital or for a group of hospitals in the Province.
- (2) Hospital boards contemplated in subsection (1) are not juristic persons.

#### 37. Powers and functions of hospital boards and reimbursement for subsistence and travelling expenses

- (1) A hospital board contemplated in section 36(1), must-
- (a) oversee the administration of human resources, financial resources, assets, facilities and the general affairs of a hospital;
  - (b) report any maladministration of a hospital to the responsible Member of the Executive Council;
  - (c) provide the responsible Member of the Executive Council with bi-annual reports on the performance of hospitals;
  - (d) act as a link in ensuring collaboration with stakeholders in all provincial and national health related initiatives;
  - (e) perform the functions and carry out the duties and responsibilities imposed by this Act; and
  - (f) perform any other function or carry out any other duty imposed by any other law.
- (2) (a) A member of the hospital board may, in respect of his or her functions as a member, only receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the hospital board.
- (b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

#### 38. Composition of hospital boards

- (1) The responsible Member of the Executive Council-
- (a) must, based on nominations received in terms of section 40(1) and recommendations by the selection panel contemplated in section 40(3), appoint not less than six and not more than 15 persons as members of each hospital board; and

- (b) must designate one such member to be the chairperson of the hospital board to preside at the meetings of the hospital board and perform other duties related thereto.
- (2) The members of each hospital board contemplated in subsection (1) must include-
- (a) one representative from each education institution associated with the relevant hospital;
  - (b) one designated representative from the Department;
  - (c) at least one person possessing proven knowledge or experience in the field of financial management;
  - (d) at least three persons who are members of the community served by the relevant hospital, including special interest groups representing health care users; and
  - (e) not more than five designated representatives of staff and management of a hospital, who may not vote at a meeting of the hospital board.
- (3) The membership contemplated in subsection (1)(a) may also include persons with expertise in areas such as-
- (a) accounting;
  - (b) human resource management;
  - (c) information management; or
  - (d) legal matters.
- (4) Save for the representatives of staff and management of a hospital, a person is disqualified from being appointed to the hospital board or from remaining on the hospital board, by reason that he or she-
- (a) is or becomes an unrehabilitated insolvent;
  - (b) is or has been declared by a competent court to be of unsound mind;
  - (c) is directly or indirectly interested in any contract with a hospital and fails to declare his or her interest and the nature thereof in the manner required by this Act;
  - (d) is a person under curatorship;
  - (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud; and
  - (f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon a person who is nominated for appointment disclosing full details of an offence in an affidavit, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution: Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed.
- (5) The responsible Member of the Executive Council may designate an official of the Department as a member as his or her representative to the hospital board, and who-
- (a) must facilitate liaison between the responsible Member of the Executive Council and the hospital board; and
  - (b) may attend meetings of the hospital board and participate in discussions, but does not have the right to vote when a decision of the hospital board is being taken.

### **39. Term of office of member of hospital boards**

- (1) A member of the hospital board holds office for a period not exceeding three years, and may be reappointed.
- (2) No member may be appointed for more than two consecutive terms.

### **40. Nominations for membership of hospital boards**

- (1) The responsible Member of the Executive Council must, by notice in the *Gazette* and at least two newspapers circulating in the Province, invite nominations of persons to be appointed as members of each hospital board for each hospital, in terms of subsection (2)(a) to (c).
- (2) The invitation for nominations in terms of subsection (1) must specify the-
  - (a) nomination procedure;
  - (b) requirements for nomination; and
  - (c) date by which a nomination must be received by the responsible Member of the Executive Council.
- (3) The responsible Member of the Executive Council must appoint a selection panel comprising-
  - (a) no more than three Departmental senior officials; and
  - (b) no more than three persons with experience in health matters, to review all nominations and make recommendations regarding the nominees.

### **41. Meetings of hospital boards**

A hospital board may meet as often as necessary, but at least three times a year, at such places and times as the chairperson may determine.

### **42. Establishment of clinic or community health centre committees**

- (1) The responsible Member of the Executive Council must, by notice in the *Gazette* and within 12 months after the coming into operation of this Act, establish a clinic or community health centre committee for each clinic or community health centre or for a group of clinics or community health centres in the Province.
- (2) The clinic or community health centre committees contemplated in subsection (1) are not juristic persons.

### **43. Powers and functions of clinic or community health centre committees and reimbursement for subsistence and travelling expenses**

- (1) A clinic or a community health centre committee contemplated in section 42(1) must-
  - (a) oversee the administration of human resources, financial resources, assets, facilities and the general affairs of a clinic or community health centre;
  - (b) report any maladministration of a clinic or community health centre to the responsible Member of the Executive Council;
  - (c) provide the responsible Member of the Executive Council with bi-annual reports on the performance of clinic or community health centres;
  - (d) act as a link in ensuring collaboration with stakeholders in all provincial and national health related initiatives;

- (e) perform the functions and carry out the duties and responsibilities imposed by this Act; and
  - (f) perform any other function or carry out any other duty imposed by any other law.
- (2) (a) A member of the clinic or a community health centre committee may, in respect of his or her functions as a member, only receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the clinic or a community health centre committee.
- (b) The Member of the Executive Council responsible for finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

#### **44. Composition of clinic or community health centre committees**

The members of the clinic or community health centre committees established under section 42(1) must include-

- (a) one or more local government councillors;
- (b) one or more members of the community served by a clinic or community health centre; and
- (c) the head of a clinic or community health centre in question.

#### **45. Term of office of member of clinic or community health centre committee**

- (1) A member of a clinic or a community health centre committee holds office for a period not exceeding three years, and may be reappointed.
- (2) No member may be appointed for more than two consecutive terms.

#### **46. Meetings of clinic or community health centre committees**

A clinic or community health centre committee may meet as often as necessary, but at least three times a year, at such places and times as the chairperson may determine.

### **Chapter 10** **Accreditation, licences, permits, authorisations** **and registrations of health care establishments**

#### **47. Categories of public health care establishments**

The following categories of public health care establishments are recognised-

- (a) clinics;
- (b) community health centres;
- (c) district hospitals;
- (d) regional hospitals;
- (e) tertiary hospitals;
- (f) specialised hospitals;
- (g) central hospital; and
- (h) any other category of public health care establishments that may be determined by the Minister by notice in the national *Government Gazette*.

#### 48. Accreditation of public and private health care establishments

No public health care establishment or private health care establishment may provide, or continue to provide, any health care services prior to it having being accredited in terms of national or provincial legislation.

#### 49. Accreditation of public and private sector non-health care establishments rendering health care services

The responsible Member of the Executive Council may prescribe-

- (a) minimum standards and requirements for the provision of health care services in locations other than health establishments, including but not limited to schools, defence force facilities, correctional services facilities, childcare facilities or frail care facilities; and
- (b) penalties for any contravention or failure to comply with any such standards and requirements.

#### 50. Licences

- (1) Any private health care establishment must, prior to providing health care services in the Province, make an application to the Head of Department in the prescribed manner, for approval to construct or develop a private health care establishment.
- (2) After obtaining the approval to construct or develop a private health care establishment in terms of subsection (1), and prior to providing the health care services contemplated in subsection (1), a private health care establishment must make an application to the Head of Department in the prescribed manner, for the approval of a licence to provide such service(s).
- (3) No private health care establishment, providing health care services in the Province may function without a licence.
- (4)
  - (a) The Head of Department must advertise, in the prescribed format, an application for-
    - (i) a licence for a new private health care establishment providing health care services;
    - (ii) the amendment or extension of any licence issued as contemplated in this section, or
    - (iii) the amendment of any condition attached to said licence, within 30 days subsequent to the receipt of such application.
  - (b) The advertisement contemplated in paragraph (a) must-
    - (i) be by notice in the *Gazette*, a provincial and a local newspaper circulating in the district concerned; and
    - (ii) provide for the submission of written comments within 30 days of the date of publication.
- (5) The responsible Member of the Executive Council may make regulations regarding-
  - (a) the format, required contents and fees payable for all applications;
  - (b) the procedure to consider any comment submitted as contemplated in subsection (4)(b)(ii);
  - (c) the process to obtain further relevant information in respect of the comments received; and
  - (d) the process and criteria to be applied for the consideration of any application.
- (6) The Head of Department may, taking into account the equitable provision of health care services and, after considering the application contemplated in subsections (1), (2) and any comments received-
  - (a) approve or approve with conditions; or

- (b) reject, the application made in terms of subsection (1).
- (7) The Head of Department must, upon request provide reasons to the applicant or any other person adversely affected by that decision, in respect of an application made in terms of subsection (1).
- (8) Where the applicant is not satisfied with the decision of the Head of Department, the applicant or any person adversely affected by that decision may appeal against the decision, in writing, to the responsible Member of the Executive Council.
- (9) An appeal in terms of subsection (8) must be lodged with the office of the responsible Member of the Executive Council, within 30 days of the decision contemplated in subsection (6) being communicated to the appellant.
- (10) The appeal must clearly state-
  - (a) full details of the decision against which the appeal is lodged; and
  - (b) the grounds on which the appeal is based.
- (11) The responsible Member of the Executive Council may confirm, vary or set aside the decision taken by the Head of the Department and must inform the appellant of the outcome of the appeal within 60 days of the lodging of the appeal.

#### **51. Compliance by health care establishments and providers**

The Head of the Department must ensure that all accredited and authorised private and public health care establishments contemplated in section 48, providing specified health care services to beneficiaries contemplated in section 2, are registered in terms of applicable national legislation.

#### **52. Framework for use of public facilities by private health care users and transfer of public healthcare users to private healthcare facilities**

- (1) The responsible Member of the Executive Council must, by notice in the *Gazette*, provide a framework for the use of the general and specialised public sector health care facilities and health care services by private health care users and the transfer of public healthcare users to private healthcare facilities.
- (2) The framework contemplated in subsection (1) must provide for-
  - (a) the format for any application to use general or specialised public sector health care facilities;
  - (b) the categories of public sector health care facilities and health care services that may be applied for;
  - (c) the procedure for the submission of the application contemplated in paragraph (a);
  - (d) the procedure for the consideration of the application contemplated in paragraph (a);
  - (e) the criteria to be considered in evaluating the application contemplated in paragraph (a);
  - (f) any conditions that may be imposed;
  - (g) reporting criteria;
  - (h) the circumstances under which public health care users may be transferred to private healthcare facilities; and
  - (h) any other relevant requirements that is necessary to achieve the objects of this provision.

## **Chapter 11**

### **Health officer and the inspectorate for health establishments**

#### **53. Designation of health officer**

- (1) Subject to any other law, the responsible Member of the Executive Council may-
  - (a) designate any person in the employ of the Department; or
  - (b) request the National Commissioner of the South African Police Service to designate a member of the Service, as the health officer for the Province.
- (2) The responsible Member of the Executive Council must issue to the health officer a certificate in the prescribed form certifying that he or she has been designated as the health officer in the Province for a specified period.

#### **54. Duty of health officer**

A health officer must monitor and enforce compliance with this Act in the manner set out in sections 56 to 61.

#### **55. Termination of designation of health officer**

- (1) The responsible Member of the Executive Council may, on reasonable grounds, terminate the designation of a health officer contemplated in section 53(1)(a).
- (2) The designation of a health officer in terms of section 53(1)(b) is terminated-
  - (a) automatically in the event that he or she is removed from or leaves the employment of the South African Polices Service; or
  - (b) upon written request, by the responsible Member of the Executive Council for such termination, to the National Commissioner of the South African Police Service.

#### **56. Routine inspections**

- (1) A health officer may enter any premises, excluding a private dwelling, at any reasonable time and-
  - (a) inspect such premises in order to ensure compliance with the provisions of this Act;
  - (b) question any person whom he or she believes may have information relevant to the inspection;
  - (c) require the person in charge of such premises to produce, for inspection or for the purpose of obtaining copies or extracts thereof or there from, any document that such person is required to maintain in terms of any law; and
  - (d) take samples of any substance or remove any article that is relevant to the inspection.
- (2) A health officer may be accompanied by an interpreter and any other person reasonably required to assist the health officer in conducting the inspection.
- (3) A health officer may issue a compliance notice to the person in charge of the premises if a provision of this Act has not been complied with.
- (4) A compliance notice remains in force until the relevant provision of the Act has been complied with and the health officer has issued a compliance certificate in respect of that notice.
- (5) A health officer who removes any article from the premises must-
  - (a) issue a receipt for it to the person in charge of the premises; and



- (b) subject to the provisions of the Criminal Procedure Act, 1977 (Act 51 of 1977), return it as soon as practicable after achieving the purpose for which it was removed.
- (6) Any substance or article contemplated in subsection 1(d) must be disposed of in terms of section 61.

### **57. Environmental health investigations**

- (1) If a health officer has reasonable grounds to believe that any condition exists which-
  - (a) constitutes a violation of the right contained in section 24(a) of the Constitution;
  - (b) constitutes pollution detrimental to health;
  - (c) is likely to cause a health nuisance; or
  - (d) constitutes a health nuisance, he or she must investigate such condition.
- (2) If the investigation reveals that a condition contemplated in subsection (1) exists, the health officer must endeavour to determine the identity of the person responsible for such condition.
- (3) The health officer must issue a compliance notice to the person determined to be responsible for any condition contemplated in subsection (1) to take appropriate corrective action in order to minimise, remove or rectify such condition.
- (4) Any person aggrieved by a determination or instruction in terms of subsection (2) or (3) may, within a period of 14 days from the date on which he or she became aware of the determination or instruction, in the manner prescribed in terms of this Act, lodge an appeal with the responsible Member of the Executive Council.

### **58. Entry and search of premises with warrant**

- (1) A health officer accompanied by a police official may, on the authority of a warrant issued in terms of subsection (5) and subject to the provisions of section 60, enter any premises specified in the warrant, including a private dwelling, and-
  - (a) inspect, photograph, copy, test and examine any document, record, object or material, or cause it to be inspected, photographed, copied, tested and examined;
  - (b) seize any document, record, object or material if he or she has reason to suspect that it might be used as evidence in a criminal trial; and
  - (c) examine any activity, operation or process carried out on the premises.
- (2) A health officer who removes anything from the premises being searched must-
  - (a) issue a receipt for it to the owner or person in control of the premises; and
  - (b) unless the possession of an item is prohibited in terms of this Act, or the National Health Act, or other applicable legislation, return it as soon as practicable after achieving the purpose for which it was removed, unless he or she is unable to do so in terms of an order of court.
- (3) Upon the request of a health officer acting in terms of a warrant issued in terms of subsection (5), the occupant and any other person present on the premises must-
  - (a) make available or accessible or deliver to the health officer any document, record, object or material which pertains to an investigation contemplated in subsection (1) and which is in the possession or under the control of the occupant or other person;
  - (b) furnish such information as he or she has with regard to the matter under investigation; and

- (c) render such reasonable assistance as the health officer may require to perform his or her functions in terms of this Act or the National Health Act, efficiently.
- (4) Before questioning any person at the premises in question, the health officer or police official must advise that person of his or her right to be assisted at the time by an advocate or attorney, and allow that person to exercise that right.
- (5) A warrant contemplated in subsection (1) may be issued by a judge or a magistrate-
  - (a) in relation to premises on or from which there is reason to believe that a contravention of this Act or the National Health Act has been or is being committed; and
  - (b) if it appears from information on oath or affirmation that there are reasonable grounds to believe that there is evidence available in or upon such premises of a contravention of this Act or the National Health Act.
- (6) The warrant issued in terms of this section may impose restrictions on the powers of the health officer.
- (7) A warrant issued in terms of this section-
  - (a) remains in force until-
    - (i) it is executed;
    - (ii) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority;
    - (iii) the expiry of one month from the day of its issue; or
    - (iv) the purpose for the issuing of the warrant has lapsed, whichever occurs first, and
  - (c) must be executed by day unless the person who issues the warrant authorises the execution thereof by night.

## **59. Identification prior to entry and resistance against entry**

- (1) A health officer who has obtained a warrant in terms of section 58(5) or a member of the South African Police Service accompanying him or her must immediately before entering the premises in question-
  - (a) audibly announce that he or she is authorised to enter the premises and demand admission to the premises; and
  - (b) notify the person in control of the premises of the purpose of the entry, unless there are reasonable grounds to believe that such announcement or notification might defeat the purpose of the search.
- (2) The health officer must-
  - (a) hand to the person in control of the premises a copy of the warrant or, if such person is not present, affix such a copy to a prominent place on the premises; and
  - (b) on request of the person in charge of such premises, show his or her certificate of appointment as health officer to that person.
- (3) A health officer or a member of the South African Police Service contemplated in subsection (1) may overcome resistance to the entry and search by using such force as is reasonably required, including the breaking of a door or window of the premises.
- (4) Before using force, the health officer or a member of the South African Police Service must audibly demand admission and must announce the purpose of the entry, unless there are reasonable grounds to believe that doing so might defeat the purpose of the search.

## 60. Entry and search of premises without warrant

A health officer accompanied by a member of the South African Police Service may without a warrant exercise any power referred to in section 58(1) if-

- (a) the person who is competent to do so consents to such exercise; or
- (b) there are reasonable grounds to believe that a warrant would be issued in terms of section 58(5) and that the delay in obtaining the warrant would defeat the object of the warrant.

## 61. Disposal of articles seized by health officer

- (1) The health officer must deliver anything seized in terms of section 58(1)(b) without delay to a member of the South African Police Service contemplated in section 30 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), who must deal with and dispose of the seized item in the manner provided for in Chapter 2 of that Act.
- (2) When a member of the South African Police Service acts in terms of section 30(a) or (b) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in respect of an item contemplated in subsection (1), he or she must do so after consultation with the health officer.

## 62. Miscellaneous provisions relating to health officers, inspectors and compliance procedures

For the purposes of this Act or the National Health Act, the Head of Department and the head of a health department of a municipality must be regarded as being-

- (a) the owner and occupier of any premises that the national or provincial department or the municipality occupies or uses; and
- (b) the employer of persons in the service of that national or provincial department or municipality if, as an employer, the national or provincial department or municipality-
  - (i) performs any duty imposed upon an employer by or under this Act or the National Health Act; or
  - (ii) exercises any power conferred upon an employer by or under this Act or the National Health Act.

## 63. Establishment and functions of Inspectorate for Health Establishments

- (1) The responsible Member of the Executive Council must, by notice in the *Gazette*, and within 12 months of the commencement of this Act, establish an inspectorate to be known as the Inspectorate for Health Establishments.
- (2) The Inspectorate contemplated in subsection (1) is not a juristic person.
- (3) The Inspectorate contemplated in subsection (1) must include an Ombudsperson appointed by the responsible Member of the Executive Council.
- (4) The Inspectorate for Health Establishments must-
  - (a) monitor and evaluate compliance with this Act and the National Health Act, by health establishments and health agencies in the Province;
  - (b) submit a quarterly report on its activities and findings to the Head of Department;
  - (c) keep the Head of Department informed of the quality of health care services provided throughout the Province as measured against prescribed health standards;

- (d) advise the Head of Department on national norms and standards for quality in health care services;
  - (e) advise the Head of Department on national norms and standards for the certificate of need processes;
  - (f) recommend to the Head of Department any changes which should be made to the prescribed health standards;
  - (g) recommend to the Head of Department new systems and mechanisms to promote quality of health care services;
  - (h) monitor compliance with prescribed health standards by health establishments, health care providers and health agencies;
  - (i) monitor compliance by a health establishment, health agency and health care personnel with any condition that may have been imposed on such establishment, agency or provider, as the case may be, in respect of certificates of need issued in terms of this Act;
  - (j) report to the Head of Department any violation of a prescribed health care standard where such violation poses an immediate and serious threat to public health and make recommendations to the responsible Member of the Executive Council on the action to be taken in order to protect public health;
  - (k) report to the Head of Department non-compliance with a quality assurance norm, standard or system, and make recommendations to the responsible Member of the Executive Council on the action to be taken;
  - (l) prepare an annual report to the Head of Department concerning its findings with regard to compliance with prescribed standards and with conditions imposed in respect of certificates of need;
  - (m) institute monitoring activities and processes for quality assurance in health establishments;
  - (n) provide advice to the Department on quality of care provided by health establishments, health agencies, health workers and health care providers;
  - (o) inspect a health establishment or health agency in order to determine levels of compliance with prescribed health standards and conditions imposed by certificates of need; and
  - (p) instruct a health officer or person designated by the National Commissioner of the South African Police Service in terms of section 53(1)(b) to inspect health establishments and health agencies in order to-
    - (i) investigate any complaint, allegation or suspicion relating to the observation of prescribed health standards; and
    - (ii) report to the Head of Department on the findings of any investigation contemplated in subparagraph (i).
- (5) The Head of Department must submit quarterly and annual reports to the responsible Member of the Executive Council on the activities, findings and recommendations of the Inspectorate for Health Establishments, and of actions taken by the Department.
- (6) Notwithstanding the provisions of subsection (5) the Head of Department must immediately report any violation that poses an immediate and serious threat to public health as contemplated in subsection (4)(j) to the responsible Member of the Executive Council.
- (7) The responsible Member of the Executive Council must submit an annual report to the Minister on activities and findings of the Inspectorate for Health Establishments established in the Province.

#### 64. Inspections by Inspectorate

- (1) The Inspectorate or its agents must inspect every health establishment and health agency at least once every three years to ensure compliance with this Act and the National Health Act.
- (2) In addition to the inspection contemplated in subsection (1) the Inspectorate may conduct announced or unannounced inspections of a health establishment or a health agency at any reasonable time.
- (3)
  - (a) The Inspectorate may order the total or partial closure of a health establishment or a health agency if a certificate of need was not issued in respect of that health establishment or health agency prior to any activities being undertaken.
  - (b) An order issued in terms of paragraph (a) must be-
    - (i) in writing; and
    - (ii) issued to the head of the health establishment or health agency in question.
- (4) If the Inspectorate orders the total or partial closure of a health establishment, the responsible Member of the Executive Council must ensure, within a reasonable period from the date of such closure, that reasonable alternative and accessible health care services are available to any community affected by the closure.
- (5) The Inspectorate must issue a written notice of non-compliance to the head of a health establishment if the Inspectorate determines that-
  - (a) the health establishment does not comply with-
    - (i) any provision of this Act and the National Health Act;
    - (ii) any condition imposed in a certificate of need;
    - (iii) building regulations; or
    - (iv) the provisions of any other law; or,
  - (b) a health care provider or health worker associated with the health establishment is engaged in certain prescribed business or health care service practices upon the basis of perverse incentives.
- (6) The notice contemplated in subsection (5) must also be issued to the person deemed to be responsible for any situation contemplated in subsection (5) (a) or (b)-
  - (a) stating the nature and extent of the non-compliance; and
  - (b) directing the appropriate corrective action to be taken within a specified period in respect of the prescribed business or health care service practice or to minimise or rectify the non-compliance.
- (7) A notice of non-compliance contemplated in subsection (5) remains in force until the relevant provisions of the legislation have been complied with and the Inspectorate has issued a compliance certificate in respect of that notice.
- (8) The Inspectorate, in the event of failure to comply with the requirements of a notice of non-compliance, may-
  - (a) temporarily suspend the operation of, or shut down, the whole or a part of the health establishment or health agency, pending compliance with the notice of non-compliance;
  - (b) advise the Head of Department that a recommendation be made to the Director General that the certificate of need of the health establishment or health agency be withdrawn; or

- (c) advise the Head of Department that a recommendation be made to the Director General that an application for the renewal of a certificate of need in respect of the health establishment or health agency be refused.

## **65. Lodging of complaints**

The responsible Member of the Executive Council must establish a procedure for the lodging of complaints contemplated in section 18 of the National Health Act

## **66. Appointment and functions of Ombudsperson**

- (1) The responsible Member of the Executive Council must appoint a suitably qualified, skilled and experienced person as Ombudsperson.
- (2) The Ombudsperson referred to in subsection (1), is an employee of the Department and is responsible for-
  - (a) resolving issues related to non-compliance and general issues raised by the health care users;
  - (b) attending to all public health service delivery complaints;
  - (c) liaising with stakeholders to address specific health service delivery concerns;
  - (d) liaising with members of the Department to obtain information in order to respond to complaints;
  - (e) identifying emerging trends in the health care sector and informing the Head of Department accordingly, in order to facilitate corrective action timeously;
  - (f) investigating adverse events on the request of the Head of Department or the responsible Member of the Executive Council and reporting thereon; and
  - (g) conducting compliance inspections, in consultation with the Inspectorate for Health Establishment, at health establishments identified by complainants.

## **Chapter 12 Appeals**

## **67. Appeals to responsible Member of Executive Council**

- (1) A person affected by a decision taken by the Department and who wishes to appeal against the decision, must lodge a notice of intention to appeal with the responsible Member of the Executive Council within 10 days after that person has been notified of the decision.
- (2) The appellant must serve on each person, health care structure or organ of state which was an interested and affected party in relation to the application, a copy of the notice referred to in subsection (1).
- (3) The responsible Member of the Executive Council may, in writing and on good cause, extend the period within which a notice of intention to appeal must be submitted.
- (4) An appeal must be-
  - (a) on an official form prescribed in terms of this Act by and obtainable from the department; and
  - (b) accompanied by-
    - (i) a statement setting out the grounds of appeal;

- (ii) supporting documentation which is referred to in the appeal and which is not in the possession of the Department; and
  - (iii) the prescribed appeal fee, if any.
- (5) An appeal must be submitted to the responsible Member of the Executive Council within 30 days of the lodging of the notice of intention to appeal referred to in subsection (1).
- (6) The responsible Member of the Executive Council must consider an appeal lodged in terms of subsection (1) within 30 days of receipt of such appeal.
- (7) When the responsible Member of the Executive Council has reached a decision on an appeal, the appellant must be notified in writing, of the decision and the extent to which the decision appealed against is upheld or overturned.
- (8) Written reasons for the decision must be given to the appellant upon written request.
- (9) The powers vested in the responsible Member of the Executive Council in terms of this section may not be delegated.
- (10) The responsible Member of the Executive Council in his or her discretion may, however, refer the appeal as contemplated in subsection (1) to any other responsible Member of the Executive Council in the Province for a decision if-
- (a) the responsible Member of the Executive Council is of the opinion that the decision would be better made by that other responsible Member of the Executive Council in the Province; or
  - (b) the appellant in subsection (1) has requested that the decision be made by someone other than the responsible Member of the Executive Council and the appellant has provided valid reasons for such a request.

## **Chapter 13**

### **Patient records and billing systems**

#### **68. Establishment, maintenance and confidentiality of patient records**

In addition to, and complying with, any national legislation providing for the establishment, maintenance and confidentiality of patient records of public health care users and access to personal information, the responsible Member of the Executive Council must, within the available financial resources of the Province-

- (a) establish a provincial system for the management of patient records;
- (b) establish a database at each individual public sector health care establishment;
- (c) determine provincial norms and standards, systems and procedures for the maintenance and confidentiality of all records of public health care users;
- (d) provide for access to any public health care user or their duly authorised representative in respect of personal information kept in the databases as contemplated in paragraph (a) or (b); and
- (e) regulate any other related matter that the responsible Member of the Executive Council may deem necessary.

#### **69. Establishment of systems for proper patient admission and billing systems**

The responsible Member of the Executive Council must, in respect of the admission to public health care establishments or the use of public health care services and within the available financial resources of the Province-

- (a) establish systems for the effective functioning for such admission or use, as the case may be;

- (b) establish, implement and maintain an appropriate billing system for such admission or use, as the case may be;
- (c) establish, implement and maintain an appropriate recovery system for all unpaid invoices for such admission or use, as the case may be; and
- (d) regulate any related matter that the responsible Member of the Executive Council may deem necessary.

## **Chapter 14**

### **General provisions**

#### **70. Public participation and coordination**

- (1) The responsible Member of the Executive Council must in respect of health care, as regards-
  - (a) the formulation of policy;
  - (b) the drafting of legislation;
  - (c) the determination of priorities; and
  - (d) the establishment of structures, implement systems to provide for consultation and inclusive participation of civil society, communities, individuals, and organs of state.
- (2) The responsible Member of the Executive Council must in respect of the development and coordination of health care within the Province, take into consideration the national policy and statutory framework, the transversal provincial policy and statutory framework, decisions taken by the KwaZulu-Natal Provincial Executive Council, as well as development related strategies of local government.

#### **71. Assignment of administration of health care services to municipalities**

The responsible Member of the Executive Council may, subject to sections 126 and 156(4) of the Constitution and section 32 of the National Health act, assign the administration of health services to a municipality within the Province.

#### **72. Delegation of powers and duties**

- (1) The responsible Member of the Executive Council may, subject to such conditions as he or she may determine, in writing delegate any power or any duty conferred on him or her by or under this Act and the National Health Act, other than-
  - (a) the power to publish a notice contemplated in section 74; and
  - (b) the power to make regulations contemplated in section 74, to the Head of Department or an official in the Department.
- (2) The delegation does not prevent the exercise of the relevant power or the performance of the duty by the responsible Member of the Executive Council.
- (3) The responsible Member of the Executive Council may at any time withdraw or amend, in writing, a delegation as contemplated in subsection (1).
- (4) The delegation of any power or any duty does not divest the responsible Member of the Executive Council of the accountability concerning the exercise of the delegated power or the performance of the duty.
- (5) The Head of Department may in writing delegate to any employee of the Department any power or duty given to him or her in terms of this Act.



- (6) Any employee to whom a power or duty has been delegated in terms of subsection (5), must exercise that power or perform that duty subject to the conditions determined by the Head of Department.
- (7) Any delegation of a power or duty under subsection (5)-
  - (a) does not prevent the Head of Department from exercising that power or performing that duty; and
  - (b) may at any time be amended or withdrawn in writing by the Head of Department.
- (8) The delegation of any power or duty does not divest the Head of Department of the accountability concerning the exercise of the delegated power or duty.

### **73. Transitional arrangements and validation**

- (1) Anything done or deemed to have been done under any provision of a law repealed by section 76 and which may or must be done in terms of this Act, must be regarded as having been done in terms of the corresponding provision of this Act.
- (2) Any rights accrued or obligations incurred in terms of a law repealed by section 76, remain in force as if the law concerned has not been repealed: Provided that any renewal must be in accordance with the provisions of this Act.
- (3) All executive and administrative actions performed by the Provincial Government in good faith relating to developmental health care services or related services, before the coming into operation of this Act, are hereby deemed to have been validly performed as if the required legal basis, including, but not limited to, delegations, assignments, powers of attorney, service level agreements or service delivery agreements, had been in existence at the time of such actions being performed.

### **74. Regulations and notices**

- (1) The responsible Member of the Executive Council may, by notice in the *Gazette*, make regulations and issue notices in respect of anything which may or must be prescribed in terms of this Act, including-
  - (a) the introduction and implementation of a system of performance management for all health care service providers, hospitals, clinics or other facilities providing one or more health care services in the Province;
  - (b) any administrative or procedural matter necessary to give effect to the provisions of this Act;
  - (c) uniform provincial norms and standards for service delivery; and
  - (d) any other matter which the responsible Member of the Executive Council may deem necessary or expedient in order to achieve the objects of this Act.
- (2) The responsible Member of the Executive Council may, after consultation with the Provincial Health Council, District Health Councils, as the case may be, make regulations concerning a Code of Conduct for health organisations rendering health care services.

### **75. General offences and penalties**

- (1) Any person is guilty of an offence if he or she directly or indirectly accepts any unauthorised fee or reward from any person in respect of or in connection with any service rendered or anything done in terms of this Act.
- (2) Any person is guilty of an offence if he or she, in respect of or in connection with any service rendered or anything done or offered in terms of this Act, bribes or attempts to bribe, or corruptly

influences or attempts to corruptly influence, any member of staff of the Department, any adviser, agent or other person employed by or acting on behalf of the Department.

- (3) Any person convicted of an offence in terms of subsection (1) or (2), is liable to a fine or to imprisonment for a period not exceeding that determined by national legislation for corruption.

## 76. Repeal of laws

The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the said Schedule.

## 77. Short title and commencement

- (1) This Act is called the KwaZulu-Natal Health Act, 2009, and comes into operation on a date to be determined by the responsible Member of the Executive Council by notice in the *Gazette*.
- (2) Different parts or sections of this Act may be brought into effect on different dates.

### Schedule (Section 77)

#### Repeal of laws

Number and year of law	Title	Extent of repeal
Ordinance No. 17 of 1946	Provincial Hospitals Ordinance, 1946	The whole
Ordinance No. 13 of 1955	Provincial Hospitals and General Services Pensions Ordinance, 1955	The whole
Ordinance No. 13 of 1961	Provincial Hospitals Ordinance, 1961	The whole
Ordinance No. 269 of 1968	Sanitary Regulations in Rural Black Areas, 1968	The whole
Ordinance No. 5 of 1985	Provincial Hospitals Amendment Ordinance, 1985	The whole
Ordinance No. 11 of 1986	KwaZulu Medical and Surgical Treatment Ordinance, 1986	The whole
Act No. 4 of 2000	KZN Health Act, 2000	The whole