



KWAZULU-NATAL PROVINCE
KWAZULU-NATAL PROVINSIE
ISIFUNDAZWE SA KWAZULU-NATALI

Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe

GAZETTE EXTRAORDINARY—BUITENGEWONE KOERANT—IGAZETHI EYISIPESELI

(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)
(Irejistiwee njengephephandaba eposihhovisi)

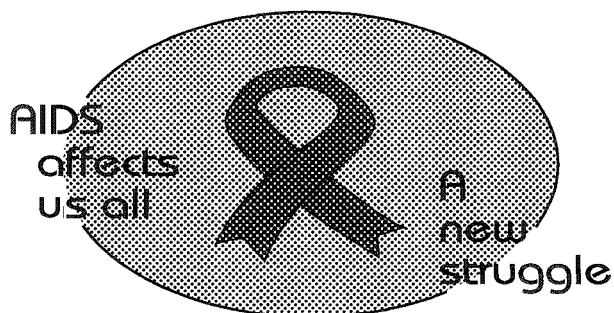
Vol. 1

PIETERMARITZBURG,

21 AUGUST 2007
21 AUGUSTUS 2007
21 kuNCWABA 2007

No. 27

We all have the power to prevent AIDS



Prevention is the cure

**AIDS
HELPLINE**

0800 012 322

DEPARTMENT OF HEALTH



CONTENTS

<i>No.</i>		<i>Page</i>
	GENERAL NOTICE	
19	KZN Health Care Bill, 2007: For public comment.....	3 27
	ALGEMENE KENNISGEWING	
19	KZN Gesondheidsorg Wetsontwerp, 2007: Vir publieke kommentaar	51 27
	IZAZISO SIKAWONKE-WONKE	
19	uMthethosivinyo wokunakehela ezeMpilo, 2007: For public comment.....	97 27

GENERAL NOTICE—ALGEMENE KENNISGEWING—ISAZISO SIKAWONKE-WONKE

No. 19**21 August 2007****DEPARTMENT OF HEALTH – KZN****KZN HEALTH CARE BILL, 2007**

I, Neliswa Nkonyeni, Member of the KwaZulu Natal Executive Council responsible for Health, hereby publish, in terms of section 154(2) of the Constitution of the Republic of South Africa, 1996, the KZN Health Care Bill, 2007 for public comment.

Organised local government, municipalities and other interested persons are invited to submit written representations or comments on the Bill, on or before **27 September 2007**, to:

To: The Head Department
Department of Health – KZN

Physical Address: Room 114, 9th Floor, South Tower
Natalia
330 Langalibalele Street
Pietermaritzburg

Postal Address: Private Bag X9051
Pietermaritzburg
3200

For Attention: Miss S. Moonsamy

Fax: (033) 845 0370

Email: sherlene.moonsamy@kznhealth.gov.za

Given under my hand at Pietermaritzburg this 24th day of July Two Thousand and Seven.

**MRS N. NKONYENI
MEC FOR HEALTH
KWAZULU NATAL**

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

**KWAZULU-NATAL
HEALTH CARE
BILL, 2007**

DRAFT 14 (18TH JULY 2007)

2
CONFIDENTIAL
NOT FOR DISTRIBUTION

BILL

To restructure provincial health care service delivery; to provide a framework for the development and implementation of provincial health policy, norms, frameworks and standards to achieve, within the Province's available resources, the progressive realisation of the right of access to health care services; to establish an integrated provincial health care system to be managed by appropriate structures in accordance with constitutional principles; to provide for accessible comprehensive provincial health care services; to facilitate improved management in the provision of public sector health service delivery; to provide for health care programmes, projects, service delivery agreements and service level agreements; to provide for funding arrangements; to provide for accreditation, licences, permits, authorisations and registrations for health care providers; to establish an inspectorate and to provide for the appointment of an ombudsperson in respect of provincial health care; to provide for a complaints and dispute resolution procedure; to establish a review and appeal structure and system; and to provide for transparency and accountability in the development and implementation of health policies and practices; and to provide for all matters connected therewith.

PREAMBLE

WHEREAS the Province of KwaZulu-Natal, in accordance with the Constitution, international conventions and treaties, and 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 a 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 each 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;

3
CONFIDENTIAL
NOT FOR DISTRIBUTION

- to an environment that is not harmful to their health or well-being;
- to be provided with quality health care services; and
- of every child to basic health care services.

in order to maintain, and within appropriate circumstances, to experience a sustained improvement in their personal health;

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 Legislature of the Province of KwaZulu-Natal, as follows –

ARRANGEMENT OF SECTIONS

Section

CHAPTER 1

DEFINITIONS

1. Definitions

CHAPTER 2

APPLICATION, GUIDING PRINCIPLES, OBJECTS AND RIGHTS

2. Application
3. Guiding principles for interpretation and implementation of Act
4. Establishment of KwaZulu-Natal provincial health services
5. Objects of Act
6. Rights and duties of health care users
7. Rights and duties of health care providers

CHAPTER 3

INTERGOVERNMENTAL AND OTHER RELATIONS

8. Applicability of intergovernmental relations framework policy and legislation
9. Health care structures
10. Composition of KwaZulu-Natal Provincial Health Council
11. Functions of KwaZulu-Natal Provincial Health Council
12. Division of health districts into subdistricts
13. Composition of district health councils
14. Functions of district health councils
15. Health services to be provided by municipalities
16. Provincial Monitoring of Municipalities

4

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

17. Transfer of administration of certain health care matters to local government
18. Relations with state-supported institutions
19. Relations with private sector
20. Relations with statutory health-related bodies
21. Relations with Chapter 9 and other non-health statutory institutions
22. Relations with international and regional governmental health care structures
23. Relations with international and regional non-governmental health care structures
24. Relations with South African community-based non-profit organisations
25. Relations with non-South African institutions and entities
26. Relations with donors and providers of donations and other forms of support

CHAPTER 4**INSTITUTIONAL ARRANGEMENTS**

27. Powers, functions, duties and responsibilities of the MEC
28. Conclusion of agreements by the MEC
29. Powers, functions and duties of the Head of Department
30. Governance and other structures
31. Categories of structures
32. Functions of structures
33. Dissolution and reconstitution of structures

CHAPTER 5**HEALTH CARE PROGRAMMES, PROJECTS, FUNDING, GRANTS,
AND SERVICE LEVEL AGREEMENTS**

34. National norms and standards
35. Provincial norms and standards
36. Categories of beneficiaries
37. Compliance by health care establishments and providers
38. Health care delivery standards
39. Health care programmes
40. Health care projects
41. Conditional grants
42. Service level agreements

CHAPTER 6**FUNDING AND OTHER ARRANGEMENTS**

43. Acquisition and allocation of funding
44. Promotion of access to information

5

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

- 45. Use of public facilities by private medical practitioners, private health care users and non-South Africans excluded from public health care facilities and services
- 46. Funding made available by other departments for emergencies
- 47. Funding and other resources made available to other departments, public entities and civil society

CHAPTER 7**ACCREDITATION, LICENCES, PERMITS, AUTHORISATIONS
AND REGISTRATIONS**

- 48. Categories of public health care establishments
- 49. Establishment of general public health care establishments
- 50. Establishment of specialised public health care establishments
- 51. Accreditation of public and private health care establishments
- 52. Accreditation of public and private sector non-health care establishments rendering health care services
- 53. Licences
- 54. Certificate of registration of specified categories of health care providers not provided for in terms of national legislation

CHAPTER 8**REVIEW AND APPEAL**

- 55. Internal Appeal
- 56. Referral of matters to MEC
- 57. Decision on Appeal to MEC
- 58. Impact of applicable national and provincial legislation
- 59. Inherent powers of the High Court

CHAPTER 9**COMPLIANCE, HEALTH OFFICERS AND THE INSPECTORATE FOR
HEALTH ESTABLISHMENTS**

- 60. Administrative Compliance
- 61. Appointment of health officers
- 62. Duty of health officers
- 63. Routine inspections
- 64. Environmental health investigations
- 65. Entry and search of premises with warrant
- 66. Identification prior to entry, and resistance against entry
- 67. Entry and search of premises without warrant

6
CONFIDENTIAL
NOT FOR DISTRIBUTION

- 68. Disposal of items seized by health officer
- 69. Miscellaneous provisions relating to health officers, inspectors and compliance procedures
- 70. Establishment and functions of Inspectorate for Health Establishments
- 71. Inspections by the Inspectorate

CHAPTER 10
GENERAL PROVISIONS

- 72. Complaints and dispute resolution
- 73. Assets, liabilities and resources
- 74. Public participation and coordination
- 75. Provincial Health Operations centre
- 76. Establishment, maintenance and confidentiality of patient records
- 77. Establishment of systems for proper patient admission and billing systems
- 78. Monitoring, evaluation and impact assessment
- 79. Delegation of powers, assignments, powers of attorney, agency and service delivery agreements
- 80. Delegation of powers and assignment of duties by the MEC
- 81. Delegation of powers by the Head of Department
- 82. Cross-boundary arrangements
- 83. Transitional arrangements and savings
- 84. Validation
- 85. Performance auditing and inspectorate
- 86. Regulations and notices
- 87. Liability of the Department
- 88. Offences and penalties
- 89. Repeal of laws
- 90. Commencement
- 91. Short title

SCHEDULES

- Schedule 1: Repeal of Legislation
- Schedule 2: Codes of Conduct

7
**CONFIDENTIAL
NOT FOR DISTRIBUTION**

**CHAPTER 1
DEFINITIONS**

Definitions

1. In this Act, unless the context indicates otherwise –

“ambulance services” means the provision of emergency medical services through the utilisation of vehicles equipped for this purpose;

“authorised institution” means an institution contemplated in section 54 of the National Health Act 61, 2003;

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

“central hospital” means a central hospital as defined in section 1 of the National Health Act, 2003;

“certificate of need” means a certificate of need as defined in section 1 of the National Health Act, 2003;

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

“communicable disease” means a communicable disease as defined in section 1 of the National Health Act, 2003;

“community health centres” means a facility that normally provides primary health care services, 7 days a week, 24 hour maternity, accident and 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;

“comprehensive provincial health care services” means health care services, including but not limited to primary health care services, as prescribed by regulation and available to all health care users in the Province;

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

“demarcation act” means the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

“demarcation board” means the demarcation board established in section 2 of the Local Government: Demarcation Act, 1998;

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

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

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

8
CONFIDENTIAL
NOT FOR DISTRIBUTION

“district municipality” means a municipality contemplated in section 151(1) of the Constitution, 1996 and section 12(1) of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

“emergency medical services” means emergency medical services prescribed by regulation and included in the package of essential health services;

“essential health services” means essential health services as defined in section 1 of the National Health Act, 2003;

“Gazette” means the Provincial Gazette;

“head of department” means the administrative head and accounting officer for the Department as contemplated in section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“health care provider” means a health care provider as defined in section 1 of the National Health Act, 2003;

“health district” - means a health district as defined in section 1 of the National Health Act, 2003;

“health care establishment” means a health care establishment as defined in section 1 of the National Health Act, 2003;

“health nuisance” means a health nuisance as defined in section 1 of the National Health Act, 2003;

“health officer” means a health officer as defined in section 1 of the National Health Act, 2003;

“health worker” means any person who is involved in the provision of health services to a health care user, but does not include a health care provider;

“hospital” means a hospital as defined in section 1 of the National Health Act, 2003;

“inspectorate for health establishment” - means an inspectorate as defined in section 1 of the National Health Act, 2003;

“MEC” means the member of the Executive Council for the Province of KwaZulu Natal responsible for health;

“municipal health services” means municipal health services as defined in section 1 of the National Health Act, 2003;

“municipality” means a municipality as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

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

“non-communicable diseases” means a non-communicable disease as defined in section 1 of the National Health Act, 2003;

“primary health care services” means primary health care services as defined in section 1 of the National Health Act, 2003;

“private health establishment” means a private health establishment as defined in section 1 of the National Health Act, 2003;

“provincial department” means a provincial department as contemplated in section 1 of the

9
CONFIDENTIAL
NOT FOR DISTRIBUTION

National Health Act, 2003;

“public health establishment” means a public health establishment as defined in section 1 of the National Health Act, 2003;

“regional hospital” means a facility that provides care requiring the intervention of specialists as well as general medical practitioner services. A general level 2 hospital should provide and be staffed permanently in the following 6 basic specialities of surgery, medicine, orthopaedics, paediatrics and gynaecology and psychiatry, **plus** diagnostic radiology and anaesthetics.

“statutory health professional council” means a statutory health professional council as defined in section 1 of the National Health Act, 2003.

“tertiary hospital” means a facility that provides specialist and sub-specialist care as defined for level 3 services.

CHAPTER 2
APPLICATION, GUIDING PRINCIPLES, OBJECTS AND RIGHTS

Application

2.(1) 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 services in terms of international and bi-national conventions, treaties and agreements to which the Republic of South Africa is a signatory; and

(2) either a resident of, or physically present in, the Province:

provided that such a person also satisfies the requirements as set out in section 36 (1) and notices that may be published from time to time in terms of section 87.

Guiding principles for interpretation and implementation of Act

3. This Act must be interpreted and implemented within the context of the Constitution, national policy framework, national legislative framework, national norms and standards as well as transversal provincial legislation and policy relating to health matters, as amended from time to time.

Establishment of KwaZulu-Natal provincial health services

4. The KwaZulu-Natal provincial health services are hereby established as provided for in the Constitution and in national legislative framework.

Objects of Act

5. The objects of this Act are to -

10

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

- (a) give effect to and regulate the inalienable right of each person to have their dignity respected and protected, and to be provided in appropriate cases with health care services in order to improve their quality of life in a sustainable manner;
- (b) respect, protect, promote and fulfil the right to the progressive realisation of access to health care services conferred by section 27 of the Constitution, subject to available resources;
- (c) respect, protect, promote and fulfil the right of children to basic health care conferred by section 28(1)(c) of the Constitution;
- (d) give effect to the right to an environment that is not harmful to the health or well-being of the people in the Province in terms of section 24 of the Constitution;
- (e) determine and provide for the development and implementation of provincial health policies, frameworks, norms, and standards in accordance with the national health legislation and policies, frameworks, norms and standards, international conventions, treaties and the Health Act, 2003;
- (f) structure and provide for the implementation of a district health system in accordance with national and provincial health policies, including but not limited to supervision, monitoring, evaluation and review of the district health system and the management thereof;
- (g) structure and provide for the implementation of an integrated provincial health care framework and health care service delivery in accordance with national and provincial health policies and legislation, subject to available resources;
- (h) define health care user rights and obligations;
- (i) define health care provider rights and obligations; and
- (j) define rights and duties of public and private health care establishments.

Rights and duties of health care users**6.(1) A health care user is entitled to –**

- (a) health care services according to the Province's available resources;
- (b) the participation in decision-making affecting their personal health and treatment;
- (c) access available public health care services, including, but not limited to, primary health care services, in the Province;
- (d) grant their informed consent prior to any health care service, including, but not limited to, health treatment rendered, unless the user is unable to give informed consent and such consent is given by a person -
 - (i) mandated by the user in writing to grant consent on their behalf; or
 - (ii) authorised to give such consent in terms of any law or court order;
- (e) emergency medical services for any life threatening condition at any public health care establishment;

11

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

- (f) refuse health treatment, provided that the condition concerned does not pose a serious risk to the health of the public in general;
- (g) 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) an environment that is not harmful to their health; and
- (i) 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 section 6(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.

Rights and duties of health care providers

7.(1) A health care provider is entitled to be treated -

- (a) with dignity and respect; and
- (b) in accordance with national and provincial occupational health and safety legislation, to a healthy and safe working environment.

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

(3) Health care providers may not be unfairly discriminated against on account of their health status.

(4) Notwithstanding subsection (3), 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 MEC, impose conditions on the health care service that may be rendered by a health care provider on the basis of their health status.

(5) Subject to any applicable national or provincial legislation, every health care establishment must implement reasonable measures, subject to the availability of resources, to -

- (a) promote the safety and security of health care providers; and
- (b) minimise the risk of -
 - (i) injury or damage to the person and property of health care providers working at that health care establishment; and

12
CONFIDENTIAL
NOT FOR DISTRIBUTION

- (ii) disease transmission to the health care provider.

CHAPTER 3
INTERGOVERNMENTAL AND OTHER RELATIONS

Applicability of intergovernmental relations framework policy and legislation

8. All intergovernmental relations in respect of health matters between the Department and the KZN provincial health sector are governed by relevant national policy framework and legislation, as well as provincial transversal policy framework and legislation regulating intergovernmental relations.

Health care structures

9.(1) All health care structures, as contemplated in section 31, functioning in the Province at the commencement of this Act, whether established or recognised in terms of national or provincial legislation, will continue to function in terms of the relevant enabling legislation.

(2) In order to give effect to the constitutional, policy and legislative principles relating to cooperative government, sound intergovernmental relations and public administration with respect to health care, the following structures, as provided for in national legislation -

(a) are recognised -

- (i) the KwaZulu-Natal Provincial Health Council;
- (ii) the KwaZulu Natal Provincial Health Consultative Forum;
- (iii) district health councils;
- (iv) clinic and community health centre committees;
- (v) the KwaZulu Natal Infection control Committee
- (vi) health research ethics committees which are registered with the National Health Research Ethics Council as contemplated in section 73 of the Health Act, 2003; and
- (vii) Health Information Systems Committee at provincial and municipal level; and
- (viii) Hospital Boards, Mental Health Review Boards, EMRS Board.

(b) must be established by the MEC, within twelve months of the commencement of this Act, by notice in the *Gazette*.

(3) The district health councils for the jurisdictional areas of each of the district municipalities must be established in consultation with the MEC for local government.

(4) The MEC must, within twelve months of the commencement of this Act, by notice in the *Gazette*, ensure compliance by each health structure recognised or established in terms of this Act, with national legislation and provisions of this Act.

(5) The MEC may, after consideration of a report by the Department as contemplated in section 30(2) following a request by the KwaZulu-Natal health care sector, by notice in the *Gazette*, establish an *ad hoc* intergovernmental relations structure.

13
CONFIDENTIAL
NOT FOR DISTRIBUTION

Composition of KwaZulu-Natal Provincial Health Council

10. The KwaZulu-Natal Provincial Health Council consists of -

- (a) the MEC, or their nominee, who acts as chairperson;
- (b) one Councillor from each of the metropolitan municipalities in the Province;
- (c) one Councillor from each of the district municipalities in the Province;
- (d) the Head of Department;
- (e) not more than three representatives involved in the management of local government, appointed by SALGA and KWANALOGA; and
- (f) such number of other persons as the MEC may consider appropriate.

Functions of KwaZulu-Natal Provincial Health Council

11.(1) The KwaZulu-Natal Provincial Health Council must advise the MEC on -

- (a) policy concerning any matter that will protect, promote, improve and maintain the health of the population within the province, including -
 - (i) responsibilities for health within the province by individuals and the public and private sector;
 - (ii) targets, priorities, norms and standards within the province relating to the equitable provision and financing of health services;
 - (iii) efficient co-ordination of health services within the province and between neighbouring provinces;
 - (iv) human resources planning, production, management and development;
 - (v) development, procurement and use of health technology within the province;
 - (vi) equitable financial mechanisms for the funding of health services within the province;
 - (vii) the design and implementation of programmes within the province to provide for effective referral of users between health establishments or health care providers or to enable integration of public and private health establishments;
 - (viii) financial and other assistance received by the Province from foreign governments and intergovernmental or nongovernmental organisations, the conditions applicable to receiving such assistance and the mechanisms to ensure compliance with these conditions;
 - (ix) epidemiological surveillance and monitoring of provincial trends with regard to major diseases and risk factors for disease; and
 - (x) obtaining, processing and use of statistical returns;
- (b) proposed legislation relating to health matters before it is introduced in the relevant provincial legislature;
- (c) norms and standards for the establishment of health establishments;
- (d) guidelines for the management of health districts;

14

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

- (e) the implementation of national and provincial health policy; and
- (f) the performance of any other health-related function determined by the MEC.

(2) The KwaZulu-Natal Provincial Health Council:

- (a) may determine the time frames, guidelines and the format for the preparation of district health plans within the Province;
- (b) may consult with or receive health-related representations from any person, organisation, institution or authority;
- (c) must determine the procedures for its meetings; and
- (d) may establish one or more committees to advise it with respect to matters contemplated in subsection (1).

(6) A quorum of a Provincial Health Council meeting is at least half of the members plus one.

Division of health districts into sub-districts

12.(1)(a) The MEC may, with the concurrence of the MEC responsible for local government, and subject to subsection (2), divide any health district into subdistricts, and may determine and change the boundaries of such sub-districts.

(b) The MEC must publish details of any division, determination or change as contemplated in subsection (a), in the *Gazette*.

(2) The MEC and the MEC responsible for local government contemplated in subsection (1), must have due regard to the principles laid down in sections 27 and 195 of the Constitution and the criteria laid down in section 25 of the Local Government: Municipal Demarcation Act, 1998 particularly in so far as they relate to -

- (a) equity;
- (b) access to services;
- (c) quality;
- (d) overcoming fragmentation;
- (e) comprehensive services;
- (f) effectiveness;
- (g) efficiency;
- (h) local accountability;
- (i) community participation;
- (j) developmental and intersectoral approach; and
- (k) sustainability.

Composition of district health councils

13.(1) A district health council consists of -

- (a) a member of the metropolitan or district municipal council situated in the health district in question, nominated by the relevant council;

15
CONFIDENTIAL
NOT FOR DISTRIBUTION

- (b) a person appointed by the MEC to represent them;
 - (c) a member of the council of each local municipality within the health district, nominated by the members of the relevant council; and
 - (d) not more than five other persons, appointed by the MEC, after consultation with the municipal council of the metropolitan or district municipality, as the case may be.
- (2) The member contemplated in subsection (1)(a) is the chairperson of the district health council.

Functions of district health councils

14.(1) A district health council must -

- (a) promote co-operative governance;
 - (b) ensure co-ordination of planning, budgeting, provisioning and monitoring of all health services that affect residents of the health district for which the council was established;
 - (c) advise the MEC, through the KwaZulu-Natal Provincial Health Council, and the municipal councils of the relevant metropolitan or district municipality, as well as of the local municipalities concerned, on any matter regarding health or health services in the health district for which the council was established; and
 - (d) perform any functions and duties as may be determined by the MEC by notice in the *Gazette*.
- (2) A district health council may establish one or more committees to advise it with respect to any matter as contemplated in subsection (1).
- (3) The Head of Department must provide sufficient human, financial, infrastructural and other resources so as to ensure the effective functioning of district health councils and sub-district health councils.
- (4) (a) The MEC and the municipal councils of the metropolitan or district municipality, as the case may be, must, after consultation with the relevant district health council, approve the detailed budget and performance targets for health services in the health district;
- (b) In each district health council, the provincial and municipal spheres of government must contribute to the provision of health services.
- (5) The MEC must, by notice in the *Gazette*, provide a framework for -
- (a) deadlock-breaking mechanisms for cases where agreement between the MEC and the municipal council concerned on the budget or performance targets contemplated in subsection 4(a) cannot be reached within a period as specified in the notice; and
 - (b) corrective action, to be taken if the agreement contemplated in subsection (a) is breached.
- (6) The MEC must ensure that each health district and each health sub-district is effectively managed.

16
CONFIDENTIAL
NOT FOR DISTRIBUTION

Health services to be provided by municipalities

15. Every metropolitan and district municipality must ensure that appropriate municipal health services are effectively and equitably provided in their respective areas.

Provincial monitoring of municipalities

16. (1) The MEC must establish mechanisms, processes and procedures in terms of section 155(6) of the Constitution to monitor municipalities in the province in respect of their performance of the municipal health services function.

(2) In the event of the Department submitting a report to the MEC in respect of the non-delivery or the insufficient delivery of municipal health services by a metropolitan or district municipality, the MEC may, after consultation with the MEC responsible for local government:

- (a) issue a directive to the municipality describing the extent of its failure to provide the specified municipal health service and stating any steps the municipality must follow in order to meet its required obligations; or
- (b) determine that one or more specified municipal health service must be performed by the Department or a health care service provider as contemplated in section 7, for such period and subject to such conditions as the MEC may determine.

(3) In the event of the MEC electing to proceed in terms of (2)(b), the MEC must send written notice to the municipality informing the municipality of:

- (a) the nature and extent of services to be performed by the Department or health care service provider;
- (b) the reason(s) for the taking over of the performance of the specified service(s); and
- (c) the date on which the service will be taken over.

Transfer of administration of certain health care matters to local government

17.(1) The MEC may, after consultation with the MEC responsible for Local Government, and taking into account the constitutional, national and provincial frameworks for the assignment in terms of section 156(4) of the Constitution, of the administration of matters as contemplated in Schedule 4 (Part A) of the Constitution –

- (a) enter into a written service level agreement with a metropolitan, district or local municipality as regards the assignment to it of one or more provincial health care services; and
- (b) impose any conditions as may be deemed necessary by the MEC:

if the health care service concerned could most effectively be administered at municipal level, and the municipality concerned has the capacity to administer it.

(2) The service level agreement contemplated in terms of subsection (1)(a) must provide for -

- (a) the health care services to be rendered by the municipality concerned;
- (b) the financial resources that the MEC must make available;
- (c) performance standards which must be used to monitor and evaluate health care

17

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

services rendered by the municipality as contemplated in section 79; and

(d) the conditions under which the service level agreement may be terminated.

Relations with state-supported institutions

18.(1) The Head of Department may, in the prescribed format, enter into a written agreement with any state-supported institution as regards -

- (a) health related research to be undertaken for the Department;
- (b) health care training services to be undertaken for the Department;
- (c) one or more health care services to be provided by such institution on behalf of the Department;
- (d) a service related to the operational functioning of the Department; and
- (e) any other support that the Department may require from time to time.

(2) The MEC may enter into agreements with any tertiary institutions involved in the education and training of health professionals if it is deemed to be to the benefit of the Province.

(a) The agreement may include, amongst others, matters such as -

- (i) the availability of health facilities for practical training;
- (ii) the appropriateness of the curriculum to meet the basic health needs of the Province;
- (iii) provincial needs for health professionals;
- (iv) funding of expenses created by the agreement;
- (v) establishment, composition and functions of an Advisory Liaison Committee; and
- (vi) staffing requirements;

(b) Other provincial departments of health or the national Department of Health may be parties to such agreements.

(3) The MEC must, within twelve months after the commencement of this Act, by notice in the *Gazette*, determine the format, contents, reporting schedules and funding arrangements in respect of agreements as contemplated in this section.

Relations with private sector

19.(1) The Head of Department may, in the prescribed format, enter into a written agreement with any private sector entity as regards -

- (a) health related research to be undertaken for the Department;
- (b) health care training services to be undertaken for the Department;
- (c) one or more health care services to be provided by such entity on behalf of the Department;
- (d) a service related to the operational functioning of the Department; and
- (e) any other support that the Department may require from time to time.

18
CONFIDENTIAL
NOT FOR DISTRIBUTION

(2) The MEC must, within twelve months after the commencement of this Act, by notice in the *Gazette*, determine the format, contents, reporting schedules and funding arrangements in respect of agreements as contemplated in this section.

Relations with statutory health-related bodies

20.(1) The MEC must, within three months after the commencement of this Act, by notice in the *Gazette*, establish the KwaZulu-Natal Health Consultative Forum.

(2) The KwaZulu-Natal Health Consultative Forum comprises the Head of Department as chairperson, and a representative each from the following sectors -

- (a) health care services providers;
- (b) private health care establishments;
- (c) public health care establishments;
- (d) other facilities providing health care services;
- (e) the Department;
- (f) the pharmaceutical industry;
- (g) each of the seven statutory health professional councils which are members of the Forum of Statutory Health Professional Councils,
- (h) the SA Blood Transfusion Service;
- (i) the Medical Research Council;
- (j) the Medicine Control Council;
- (k) the National Health Research Committee (NHRC);
- (l) the National Health Research Ethics Council (NHREC); and
- (m) any other entity which, in the opinion of the MEC, is directly involved in the provision of one or more health care services.

(3)(a) The MEC must determine the place, date and time of any meeting of the KwaZulu-Natal Health Care Services Consultative Forum;

(b) The KwaZulu-Natal Health Care Services Consultative Forum meets once annually.

(4) The KwaZulu-Natal Health Care Services Consultative Forum is responsible for –

- (a) the promotion and facilitation of interaction, communication, liaison, and the sharing of information on provincial health issues;
- (b) the written submission of recommendations to the Department as regards the formulation of new, or amendment of existing, provincial health care policy, legislative and implementation frameworks;
- (c) any matter that it might deem to be relevant for the promotion of health care in the Province;
- (d) providing written advice to the MEC, if and when requested to do so; and
- (e) any other matter that the MEC may determine by notice in the *Gazette*

19

**CONFIDENTIAL
NOT FOR DISTRIBUTION****Relations with Chapter 9 and other non-health statutory institutions**

21. Within the framework for intergovernmental relations and cooperative government as contemplated in section 8, the Department and, 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, public entities, as well as structures, institutions and service providers established, licensed, authorised and recognised in terms of this Act, must -

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

Relations with international and regional governmental health care structures

22.(1) Within the framework for international relations as determined by the national and provincial spheres of government and 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, public entities, as well as structures, institutions and service providers established, licensed, authorised and recognised in terms of this Act, must -

- (a) comply with all norms, standards and obligations relating to health matters provided for in international and regional instruments which, in accordance with the Constitution, are binding on South Africa; and
- (b) provide the necessary information to the Department in order to enable it to submit reports on a regular basis as required by the instruments as set out in subsection (1)(a).

Relations with regional and international non-governmental health care structures

23.(1) The MEC must, within twelve months after the commencement of this Act, by notice in the *Gazette*, provide a framework for the establishment and maintenance of appropriate structures, systems and support, that would promote sound relations between -

- (a) the Department;
- (b) international and regional non-governmental health care structures; and
- (c) 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, public entities, as well as structures, institutions and service providers established, licensed, authorised and recognised in terms of this Act.

Relations with South African community-based non-profit organisations

24.(1) The MEC must, within twelve months after the commencement of this Act, by notice in the *Gazette*, provide a framework for the establishment and maintenance of appropriate structures, systems and support, that would promote sound relations between -

20

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

- (a) the Department;
 - (b) South African community-based non-profit organisations functioning within the health sector and registered in terms of applicable national legislation; and
 - (c) the KwaZulu Natal provincial health sector.
- (2) The MEC must ensure the tabling of an annual written report in the prescribed format, on matters contemplated in subsection (1) to the Provincial Legislature.

Relations with non-South African institutions and entities

25. The MEC must, within twelve months after the commencement of this Act, by notice in the *Gazette*, provide a framework for the establishment and maintenance of appropriate structures, systems and support, that would promote sound relations between -

- (a) the Department;
- (b) non-South African institutions and entities functioning within the health sector; and
- (c) 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, public entities, as well as structures, institutions and service providers established, licensed, authorised and recognised in terms of this Act.

Relations with donors and providers of donations and other forms of support

26. The MEC must, within twelve months after the commencement of this Act, by notice in the *Gazette*, provide a framework for the establishment and maintenance of appropriate structures and systems to regulate relations with, and the submission of written reports to, international, regional and South African donors and providers of donations and other forms of support.

CHAPTER 4**INSTITUTIONAL ARRANGEMENTS****Powers, functions, duties and responsibilities of the MEC**

27. The MEC must –

- (a) ensure the implementation of national health policy, norms and standards in the Province;
- (b) formulate, co-ordinate, maintain and review provincial policy and planning in consultation with all stakeholders;
- (c) review, formulate and administer health care legislation in consultation with all stakeholders;
- (d) out of moneys appropriated by the Provincial Legislature for that purpose, make available funding for health care programmes approved in terms of section 18 in respect of beneficiaries as determined in section 36;

21

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

- (e) determine by notice on the commencement date of this Act, and thereafter on a regular basis, but at least once every three year cycle, minimum norms and standards for the delivery of health care services;
- (f) determine by notice on the commencement date of this Act, and thereafter on a regular basis, but at least once every three year cycle, the financial and other requirements and conditions as referred to in section 36(2) for beneficiaries to be eligible for access to health care services;
- (g) issue notices as provided for in sections 87.
- (h) make regulations as provided for in section 87.
- (i) consider reports and accompanying recommendations submitted by the Head of Department in terms of section 29 (2)(m);
- (j) ensure the implementation of appropriate steps by the Head of Department in respect of reports and accompanying recommendations submitted to her or him as referred to in paragraph (i); and
- (k) in general, exercise any power, perform any function and execute any duty that is necessary to realise the objects of this Act or any other law.

Conclusion of agreements by the MEC

28. The MEC may, if it is deemed necessary, conclude agreements with -

- (a) any Provincial Department;
- (b) any National Department;
- (c) any Local Municipality;
- (d) any district municipality;
- (e) any metropolitan municipality;
- (f) any public entity within the national, provincial or local sphere of government; and
- (g) any organ of state within the national, provincial or local sphere of government,

in order to achieve the objects of this Act.

Powers, functions and duties of the Head of Department

29.(1) The Head of Department, as the Accounting Officer of the Department in terms of national legislation, must in compliance with -

- (a) the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) all subordinate legislation issued in terms thereof; and
- (c) any other applicable legislation,

administer funding made available by the MEC in terms of section 43, as well as any other funding received in terms of this Act and other legislation.

(2) The Head of Department must -

- (a) plan, develop, implement and co-ordinate programmes and the delivery of health care

22

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

- services in accordance with national and provincial norms and standards;
- (b) initiate and facilitate the development and maintenance of health care structures;
 - (c) develop and enhance the capacity of health care service providers and other intermediary entities;
 - (d) undertake, promote and co-ordinate appropriate research;
 - (e) establish and maintain an appropriate communication network;
 - (f) establish and maintain an information system and appropriate registers;
 - (g) administer human resource management systems;
 - (h) promote awareness of, and access to, health care services;
 - (i) promote and facilitate the co-ordination of sound intergovernmental relations with national government, other provincial departments, local government, public entities and other organs of state;
 - (j) exercise any power, perform any function and execute any duty as provided for in national and other provincial legislation;
 - (k) must at the end of each financial year submit written reports in respect of matters listed in subsection (4) and accompanying recommendations for the MEC's consideration.
 - (l) provide and maintain equipment, vehicles and health care facilities in the public health sector;
 - (m) consult with communities regarding health matters;
 - (n) provide occupational health services;
 - (o) promote good health and healthy lifestyles;
 - (p) promote community participation in the planning, provision and evaluation of health services;
 - (q) provide environmental pollution control services;
 - (r) ensure health systems research;
 - (s) provide services for the management, prevention and control of communicable and non-communicable diseases;
 - (t) prepare strategic, medium term health and human resources plans annually for the exercise of the powers of, the performance of the duties of and the provision of health services in the province by the provincial department;
 - (u) in general, exercise any power, perform any function and execute any duty that is necessary to realise the objects of this Act or any other law; and
 - (v) provide for infection prevention and control services.
- (3) Provincial health plans must conform with national health policy.
- (4) The Head of Department must, in accordance with national framework health policy and legislation, transversal provincial policies and legislation, and provincial health policy -
- (a) provide specialised hospital services;
 - (b) plan and manage the provincial health information system;

23
CONFIDENTIAL
NOT FOR DISTRIBUTION

- (c) participate in inter-provincial and intersectoral co-ordination and collaboration;
- (d) co-ordinate the funding and financial management of district health councils;
- (e) provide technical and logistical support to district health councils;
- (f) plan, co-ordinate and monitor health services and must evaluate the rendering of health services;
- (g) co-ordinate health and medical services during provincial disasters;
- (h) conduct or facilitate research on health and health services;
- (i) plan, develop and manage human resources for the rendering of health services;
- (j) plan the development of public and private hospitals, other health establishments and health agencies;
- (k) control and manage the cost and financing of public health establishments and public health agencies;
- (l) facilitate and promote the provision of port health services, comprehensive primary health services and community hospital services;
- (m) provide and co-ordinate emergency medical services and forensic pathology, forensic clinical medicines and related services, including the provision of medico-legal mortuaries and medico-legal services, burial services in appropriate circumstances;
- (n) establish a framework, after consultation with local government, for the establishment, management, quality control, and inspection of cemeteries, crematoria and funeral parlours.
- (o) establish a framework for the provision of environment health services, including, but not limited to, port health, malaria and hazardous waste;
- (p) establish a framework for the transfer of health care users from -
 - (i) one public health care establishment to another;
 - (ii) a public health care establishment to a private health care establishment;
- (q) establish a framework for the inter-provincial transfer of health care users;
- (r) establish a framework for the provision of approved health care services by South African and international medical students and other trainee health professionals;
- (s) establish a framework for the relationship with nursing training colleges and similar institutions;
- (t) establish a framework for an effective relationship with agencies responsible for the placement on a permanent, temporary, full-time or part-time basis of health care providers;
- (u) establish a framework for the recognition of traditional healers registered in terms of applicable national legislation and the provision of approved health care services by them;
- (v) provide ambulance services;
- (w) provide a safe and healthy working environment, aligned with national occupational health and safety policies and legislation, and where appropriate, safe and healthy accommodation for health care providers;
- (x) provide a safe and healthy environment and conditions for health care users of public

24
CONFIDENTIAL
NOT FOR DISTRIBUTION

health care services;

(y) control the quality of all health services and facilities;

(z) provide health services contemplated by specific provincial health service programmes;

Governance and other structures

30. (1) The MEC may, at the request of the Head of Department or at the MEC's own discretion, establish by notice in the Gazette, one or more governance and other structures to assist in the promotion of the objects and the realisation of the provisions of this Act.

(2) The notice contemplated in subsection (1) must stipulate –

(a) the composition of the structure concerned;

(b) membership of the structure;

(c) the terms of reference;

(d) procedural matters;

(e) reporting requirements; and

(f) any other matter that the MEC may deem appropriate for the effective functioning of such structure.

Categories of structures

31. The structures contemplated in section 9 are -

(a) governance structures consisting of the Department, other provincial government departments, organs of state, public entities, and local government; and

(b) stakeholder consultative forums consisting of the Department, health care service providers and other interest groups, and in the discretion of the MEC, also other provincial government departments, organs of state, public entities, local government, traditional councils and traditional health practitioners;

(c) Hospital Boards, EMRS Board and Clinic Committees of public health care establishments;

(d) Advisory structures for communicable and non-communicable diseases;

(e) Provincial Ethics Committees which must be registered with the National Health Research Ethics Council as contemplated in national legislation; and

(f) any other structures that the MEC may establish by notice in the *Gazette*.

Functions of structures

32. The structures established in terms of section 9 -

(1) must, in respect of their specific functional domain, advise the MEC on -

(a) developmental health care policy in the Province;

(b) achieving operational uniformity of developmental health care programmes, projects and services in the Province;

25
CONFIDENTIAL
NOT FOR DISTRIBUTION

- (c) any matter related to developmental health care or the rendering of health care services in relation to which the responsible MEC requests advice;
- (d) any other function related to the objects and other provisions of this Act as determined in the establishment notice of the structure concerned;
- (e) any other matter related to the objects and other provisions of this Act as requested by the MEC; and
- (f) the performance of any other function or the execution of any duty imposed on it by this Act or any other law;

(2) must –

- (a) liaise with national and provincial organisations concerned with health care or the rendering of health care services;
- (b) exercise any power, perform any functions and execute any duty conferred on it by this Act or any other law; and

(3) may generally do everything which is deemed necessary or expedient to achieve the objects of this Act as referred to in subsection (1).

Dissolution and reconstitution of structures

33. The MEC may, after consultation with the structure concerned, at any time, by notice in the *Gazette*, dissolve or reconstitute any of the structures provided for in section 31.

CHAPTER 5

HEALTH CARE PROGRAMMES, PROJECTS, FUNDING, GRANTS, SERVICE DELIVERY AGREEMENTS AND SERVICE LEVEL AGREEMENTS

National norms and standards

34. National norms and standards as prescribed from time to time by the National Health Council in terms of national framework legislation apply with respect to the formulation of strategies, programmes, projects and the implementation of all functions to be performed, duties to be executed and activities performed in terms of this Act.

Provincial norms and standards

35. Provincial norms and standards as determined from time to time in terms of the KwaZulu-Natal Provincial Growth and Development Strategy and other cross-cutting provincial policies, provincial priorities identified in terms of Executive Council resolutions and made public in the annual State of the Province Addresses apply with respect to the formulation of strategies, programmes, projects and the implementation of all functions to be performed, duties to be executed and activities performed in terms of this Act.

26
CONFIDENTIAL
NOT FOR DISTRIBUTION

Categories of beneficiaries

36.(1) The Department and all other statutory institutions must provide comprehensive health care services to:

- (a) all persons in the province of KwaZulu-Natal as contemplated in section 2; and
- (b) any other category of health care user as may be determined by the National Minister and the MEC from time to time by means of notice in the *Gazette*:

provided that adequate financial, human, administrative, infrastructural and other resources are, in the discretion of the MEC, available.

(2) The criteria for eligibility of beneficiaries must be determined by the MEC, by notice in the *Gazette*, in accordance with the national framework policy, norms and standards.

Compliance by health care establishments and providers

37. The Department must ensure that all accredited and authorised private and public health care establishments, as contemplated in sections 51 and 52, in the Province, are registered in terms of applicable national legislation to provide specified health care services to beneficiaries as contemplated in section 36.

Health care delivery standards

38. The MEC shall prescribe minimum norms and standards for the delivery of health care services as stipulated in the national norms and standards as contemplated in section 34 and as amended from time to time. Such norms and standards shall 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 MEC may determine by notice in the *Gazette*.

Health care programmes

39.(1) The MEC must ensure, within twelve months from the commencement of this Act, that the annual vote of the Department provides for a framework for the implementation of programmes as contemplated in subsection (2), and projects as contemplated in section 40, as well as the provision of the necessary financial, human, infrastructural and other related resources required for said implementation.

(2) The Head of Department must ensure, within twelve months from the commencement of this Act, that the appropriate departmental structures and systems are in place and that the necessary funding and human resources are made available in order to implement the following programmes

27

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

- (a) strategic national priority programmes as identified by the Minister by notice in the *Government Gazette* from time to time, including but not limited to -
- (b) emergency programmes as identified by the national or provincial spheres of government, as provided for in applicable national or provincial legislation, as the case may be;
- (c) strategic provincial priority programmes as identified by the MEC by notice in the *Gazette* from time to time, including but not limited to -
- (d) any other programme as identified by the Provincial Executive Council by notice in the *Gazette*;
- (e) any other programme as identified by the MEC by notice in the *Gazette*.

Health care projects

40.(1) The Head of Department may identify specific projects for one or more of the programmes contemplated in section 39(2).

(2) The Head of Department must provide the necessary financial, human, infrastructural and other related resources for the execution of a project as contemplated in subsection (1).

Conditional grants

41.(1) The MEC must, within twelve months from the commencement of this Act, and thereafter on an annual basis, by notice in the *Gazette*, provide a framework that is aligned, to the national and provincial legislation governing conditional grants.

Service level agreements

42. (1) An agreement contemplated in section 156(4) of the Constitution is known as a service level agreement and must provide for -

- (a) the services to be rendered by the municipality;
- (b) the resources that the MEC must make available;
- (c) performance standards which must be used to monitor services rendered by the municipality;
- (d) conditions under which the agreement may be terminated; and
- (e) any other terms and conditions applicable to such an agreement.

(2) The HOD—

- (a) must determine the standard form and content of such agreements;
- (b) must provide for appropriate financial management and reporting systems, as well as for procedures for the repayment to the Department of unspent and misspent funding;
- (c) may impose additional conditions.

28
CONFIDENTIAL
NOT FOR DISTRIBUTION

CHAPTER 6
FUNDING AND OTHER ARRANGEMENTS

Acquisition and allocation of funding

43. The funding of the Department consists of –

- (a) money appropriated to it by the Provincial Legislature as contemplated in Chapter 4 of the Public Finance Management Act, 1999;
- (b) money transferred to the Department by National Government, other provincial government departments, local government, public entities and organs of state;
- (c) money donated or bequeathed to the Department;
- (d) revenue derived from the applications for registration and authorisations as contemplated in this Act;
- (e) funding transferred by non-South African international entities for the promotion of health care in the Province; and
- (f) any other source in compliance with the provisions of this Act or any other legislation.

Promotion of access to information

44. The Department, the three spheres of government, organs of state, public entities, as well as structures, institutions and service providers established, licensed, authorised and recognised in terms of this Act, must comply with the constitutional, national and provincial legislative framework that promotes access to information.

Use of public facilities by private medical practitioners, private health care users and non-South Africans excluded from public health care facilities and services

45.(1) The MEC must, within twelve months from the commencement of this Act, by notice in the *Gazette*, provide a framework for the use of the public sector health care facilities and health care services by private medical practitioners, private health care users and non-South Africans who do not satisfy the criteria for eligibility as contemplated in section 2.

(2) The notice contemplated in subsection (1) must provide for –

- (a) the format for any application;
- (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 an application;
- (d) the procedure for the consideration of an application;
- (e) the qualification requirements for an application to be considered;
- (f) any conditions that may be imposed;
- (g) reporting criteria; and
- (h) any other relevant requirements.

29
CONFIDENTIAL
NOT FOR DISTRIBUTION

Funding made available by other departments for emergencies

46. The Department must use funding transferred to it for emergency purposes, as determined by the Premier by notice in the *Gazette*, by the national, provincial or local sphere of government, in compliance with -

- (a) national and provincial legislation relating to public finance management;
- (b) the purpose for which such transfer was effected; and
- (c) any conditions imposed by the transferor.

Funding and other support made available to other departments, public entities and civil society

47. The Head of Department must, in appropriate health-related cases, make funding and other support available for

- (a) joint interdepartmental programmes, projects and activities;
- (b) joint inter-sphere programmes, projects and activities;
- (c) joint programmes, projects and activities with public entities;
- (d) the support of health-related initiatives and events implemented by civil society within the context of the Department's corporate social investment; and
- (e) a combination of two or more of the subsections (a), (b), (c) and (d).

CHAPTER 7
ACCREDITATION, LICENCES, PERMITS, AUTHORISATIONS
AND REGISTRATIONS

Categories of public health care establishments

48. (1) 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) Central hospital; and
- (g) Any other category of public health care establishments that may be determined by the Minister by notice in the *Government Gazette*.

Establishment of general public health care establishments

49. The MEC may, by notice in the *Gazette*, establish one or more general public health care establishments as contemplated in section 45.

30
CONFIDENTIAL
NOT FOR DISTRIBUTION

Establishment of specialised public health care establishments

50. The MEC may, by notice in the *Gazette*, establish one or more specialised general public health care establishments as contemplated in section 45.

Accreditation of public and private health care establishments

51. No public health care establishment as contemplated in section 45 or private health care establishment as contemplated in section 19 and licensed as contemplated in section 53 may provide, or continue to provide, any health care services prior to it having being accredited in terms of national legislation;

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

52. The MEC may prescribe –

- (a) minimum standards and requirements for the provision of health care services in locations other than health establishments, including schools, defence force, correctional services, childcare facilities, home and the community; and
- (b) penalties for any contravention or failure to comply with any such standards and requirements.

Licences

53. (1) No private health care establishment, providing one or more health care services may function without a licence.

(2)(a) The Head of Department must advertise, in the prescribed format, an application for a new private health care establishment providing one or more health care services, or for the amendment or extension of any licence issued as contemplated in this section, or of any condition attached to said licence, within 30 calendar days subsequent to the receipt of such application, by notice in the *Gazette*, a provincial and a local newspaper circulating in the district concerned.

(b) The advertisement contemplated in subsection (2)(a) must provide for the submission of comments in writing, in the prescribed format, from the national, provincial and local spheres of government, the health care community, and any third party, within 30 calendar days subsequent to the publication of the advertisement.

(3) The MEC may make regulations regarding -

- (a) the format, required contents and fees payable for all applications;
- (b) the process to:
 - (i) evaluate-
 - (aa) compliance with subsection (3)(a);

31

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

- (bb) any comment(s) submitted as contemplated in subsection (2)(b);
 - (ii) obtain further relevant information from any public sector entity, any private sector entity, civil society or any individual; and
 - (c) the process and criteria to be applied for the consideration of any application.
- (4) The MEC may –
- (a) after consultation with any public sector entity, any private sector entity, civil society or any individual, and taking into account all submissions received as contemplated in subsection (2)(b), and the report by the Department as contemplated in section 29(2)(m)
 - (i) approve,
 - (ii) approve subject to any limitation,
 - (iii) approve provisionally, or
 - (iv) reject
- the application as contemplated in this section;
- (b) impose any condition in respect of a subsection (4)(a)(i), (ii) or (iii) approval.

Certificate of registration of specified categories of health care providers not provided for in terms of national legislation

54.(1) The MEC must, in respect of specified categories of health care service providers, by notice in the *Gazette*, determine the-

- (a) form;
- (b) requirements;
- (c) application procedures; and
- (d) further conditions,

for the registration of such health care service provider.

(2) The MEC must, on approval of an application for registration, issue a certificate of registration in the prescribed manner to such health care service provider.

(3) The certificate of registration contemplated in (2) must also indicate-

- (a) which specific category or categories of health care services the registered health care service provider may render; and
- (b) any facility or facilities owned, leased or managed by such registered health care service provider where the services referred to in subsection (a) are, or are to be, rendered, provided that such facility is licensed as contemplated in section 53 prior to the rendering of any health care service.

(4) Any health care service provider that is registered in terms of this section, must also comply with all requirements as may be determined by national legislation from time to time.

(5) The MEC may:

- (a) from time to time, impose conditions on any certificate of registration; and

32
CONFIDENTIAL
NOT FOR DISTRIBUTION

(b) on good cause shown, based on a written report representing the outcomes of an investigation and a subsequent recommendation by the Department, and after consultation with:

- (i) the health care service provider concerned;
- (ii) any public sector entity;
- (iii) any private sector entity;
- (iv) civil society; or
- (v) any individual,

amend or rescind the certificate of registration.

CHAPTER 8

REVIEW AND APPEAL

Internal Appeal

55. (1) If an applicant disagrees with an administrative act by the Department in respect of a matter regulated by this Act, that person or a person acting on his or her behalf may, within 90 days of his or her gaining knowledge of that decision, lodge a written request for an appeal of that decision with the Head of Department, setting out the reasons why the Head of Department should vary or set aside that decision.

(2) The Head of Department must, within 30 days after receipt of the written request for an appeal confirm, vary or set aside that decision, providing written reasons for such confirmation, variation or setting aside.

Referral of matters to MEC

56. (1) A matter may be referred to the MEC within 90 days of—

- (a) an administrative act being performed or omitted; and
- (b) all internal appeal mechanisms, including the appeal procedure provided for in section 55, have been exhausted,

(2) Referrals in terms of subsection (1) may be done by the person affected by the administrative act, a person acting on his or her behalf, or a person or entity acting in the public interest.

Decision on appeal to MEC

57. (1) Subject to the provisions of this Act, the MEC must consider an appeal lodged with the MEC in accordance with section 56 of this Act, whereupon the MEC may—

- (a) reject the appeal and confirm the administrative act or decision;
- (b) uphold the appeal, set aside the administrative act or decision appealed against, and:
 - (i) substitute that act or decision for any other act or decision which the officer against whom the appeal was lodged, could have performed or taken; or

33
CONFIDENTIAL
NOT FOR DISTRIBUTION

(ii) refer the matter which gave rise to the appeal to the officer against whom the appeal has been lodged for reconsideration, including reasons for such reconsideration.

(2) The MEC must, within 30 days of such decision, notify in writing, all the parties involved in the matter of his or her decision, including reasons for such decision.

(4) The powers vested in the MEC in terms this section, may not be delegated.

Impact of applicable national and provincial legislation

58. The decision taken by -

- (a) the Head of Department under section 55 and
- (b) the MEC under section 57

must be consistent with the provisions of this Act, as well as applicable national and provincial legislation.

Inherent powers of the High Court

59. Sections 55, 56, 57 and 58 must be construed in such a manner that the inherent powers of the High Court are not affected.

CHAPTER 9
COMPLIANCE, HEALTH OFFICERS AND THE INSPECTORATE FOR
HEALTH ESTABLISHMENTS

Administrative Compliance

60.(1) 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 MEC may by notice, in the Provincial Gazette from time to time, determine.

(2) All structures recognised, established, licensed, accredited and authorised as contemplated in this Act are provincial public entities as contemplated in section 1 of the Public Finance

34

**CONFIDENTIAL
NOT FOR DISTRIBUTION**

Management Act, 1999 (Act No. 1 of 1999), and must comply with the provisions of said Act and the Treasury Regulations issued thereunder from time to time:

Appointment of health officers

61.(1) Subject to any other law the MEC may appoint any person in the employ of the provincial department, as a health officer for the province.

(2) An appointment under subsection (1) may be for a general or specific purpose.

(3) The MEC may request the National Commissioner of the South African Police Service to designate a member of the Service as a health officer for the province in question.

(4) The MEC must issue to the health officer a document in the prescribed form certifying that he or she has been appointed or designated as a health officer for the province.

Duty of health officers

62. A health officer must, having regard to constitutional and legislative prescripts, monitor and enforce compliance with this Act in the manner set out in sections 63 to 68.

Routine inspections

63.(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 who 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 therefrom, any document that such person is required to maintain in terms of any law; and
- (d) take samples of any substance that is relevant to the inspection.

(2) A health officer may be accompanied by an interpreter and any other person reasonably required to assist him or her 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 item other than that contemplated in subsection (1)(d) must-

- (a) issue a receipt for it to the person in charge of the premises; and
- (b) subject to the Criminal Procedure Act, 1977 (Act 51 of 1977), return it as soon as practicable after achieving the purpose for which it was removed.

35

**CONFIDENTIAL
NOT FOR DISTRIBUTION****Environmental health investigations**

64.(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,

the health officer 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 deemed 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, lodge an appeal with the Head of Department.

Entry and search of premises with warrant

65.(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 section 66, 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 it is an item prohibited in terms of this Act read in conjunction with other applicable legislation, return it as soon as practicable after achieving the purpose for which it was removed.

(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

36
CONFIDENTIAL
NOT FOR DISTRIBUTION

her functions in terms of this 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 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.

(6) The warrant 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

(b) must be executed by day unless the person who issues the warrant authorises the execution thereof by night.

(8) No person is entitled to compensation for any loss or damage arising out of any bona fide action by a police official or health officer under this section.

Identification prior to entry, and resistance against entry

66.(1) A health officer who has obtained a warrant in terms of section 65(5) or the police official 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 police official 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

37
CONFIDENTIAL
NOT FOR DISTRIBUTION

door or window of the premises.

(4) Before using force, the health officer or police official 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.

Entry and search of premises without warrant

67. A health officer accompanied by a police official may without a warrant exercise any power referred to in section 65(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 65(5) and that the delay in obtaining the warrant would defeat the object of the warrant.

Disposal of items seized by health officer

68.(1) The health officer must deliver anything seized in terms of section 65(1)(b) without delay to a police official contemplated in section 30 of the Criminal Procedure Act, 1977 (Act 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 police official acts in terms of section 30 (a) or (b) of the Criminal Procedure Act, 1977 (Act 51 of 1977), in respect of an item contemplated in subsection (1), he or she must do so after consultation with the health officer.

Miscellaneous provisions relating to health officers, inspectors and compliance procedures

69. For the purposes of this 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
 - (ii) exercises any power conferred upon an employer by or under this Act.

Establishment and functions of Inspectorate for Health Establishments

70.(1) The MEC must establish an inspectorate to be known as the Inspectorate for Health Establishments, which must include a person who acts as ombudsperson in respect of complaints in terms of this Act.

(2) The Inspectorate for Health Establishments must -