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KWAZULU-NATAL HEALTH ACT, 2000

NO. 4 OF 2000

Assented to on 2000-08-03

ACT

To restructure provincial health service delivery; to develop and implement 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 define an integrated provincial health care network to be managed in accordance with equitable principles; to provide for accessible comprehensive provincial health care services; to facilitate improved management in the provision of public sector health service delivery; and to provide for transparency in the development and implementation of health policies and practices; and to provide for all matters connected therewith.

BE IT ENACTED by the KwaZulu-Natal Provincial Parliament as follows-

Part I

Definitions

Definitions

1. In this Act unless the context indicates otherwise-

"academic health services complex" means one or more faculties or departments of health sciences at one or more universities, technikons or other tertiary educational institutions, together with health service facilities at different levels with which the faculties or departments are associated;

"ambulance services" means the provision of vehicles equipped for the purpose of providing emergency medical services as prescribed by regulation;

"available resources" means financial, human or other resources available to the Department and subject to funds appropriated in accordance with the Constitution by national and provincial government for health services within the Province;

"basic essential health service" means a package of comprehensive provincial health care services prescribed by regulation; "board" means a board established in terms of section 62(a) to govern a public health care establishment;

"certificate of need" means a certificate required to establish, continue to operate, enlarge or modify any public health care establishment or any private health care establishment and to provide for any related personnel, equipment or services;

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

"communicable disease" means any disease which can be communicated directly or indirectly from any animal or through any agent to any person or from any person suffering from or who is a carrier thereof to any other person;

"community health centre" means a facility that normally provides primary health care services, 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;

"complaint" means a complaint submitted on any health related matter;

"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 (Act 108 of 1996);

"contribution" means financial, technical or other assistance authorised by the Minister to achieve the purposes of this Act;
"co-terminous" means sharing the same or similar boundaries;

"court" means any institution vested with judicial authority of the Republic of South Africa as set out in section 166 of the Constitution;

"Demarcation Act" means the Local Government Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

"Demarcation Board" means the board responsible for demarcation of municipal boundaries in terms of the Demarcation Act;

"Department" means that department of the KwaZulu-Natal Provincial Administration which has as one of its functions the administration of this Act,

"disability" means any impairment, restriction or lack of ability to perform an activity in the manner or within the range considered normal for a human being;

"district council" means the council of a district municipality established in terms of section 18 of the Municipal Structures Act;
"district councillor" means a member of a district council;

"district health advisory committee" means a district health advisory committee established in terms of section 51; "district health authority" means the political structure of a health district established in terms of section 45;

"district health manager" means the person appointed as the administrative head of a health district or the officials responsible for health as designated by each health district, municipal and metro council, as set out in section 13;

"district health system" means the district health system, including district health authorities, established in terms of section 44;

"district hospital" means a hospital which receives referrals from and provides generalist support to clinics and community health centres with health treatment administered by general health care practitioners or primary health care nurses;

"district municipality" or A municipality" means a municipality that

has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155(1) in the Constitution as a category AC" municipality;

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

"environmental health officer" means any person who is registered in terms of legislation to provide environmental health services;

"environmental health services" means the anticipation, identification, evaluation, monitoring, promotion and prevention or control of all physical, chemical, biological and aesthetic factors which affect the development, health or well-being and survival of a person or community;

"Executive Council" means the Council established in terms of section 132 of the Constitution;

"financial year" means the period commencing 1 April in a year and ending 31 March the next year; "forensic pathology" means the application of medical and scientific evidence to legal issues;

"framework" means the structures established by the Minister;

"Gazette" means the Provincial Gazette of the Province;

"Head of Department" means the public servant who is the administrative head of the Department;

"health care establishment" means any private or public institution, facility, building or place where health care users receive treatment, diagnostic or therapeutic interventions or other health services;

"health care practitioner" means a person who is registered in terms of legislation to provide care or treatment for the physical or mental health or well-being of individuals;

"health care user" means any person who utilises a private health care establishment or public health care establishment or receives treatment from a health care practitioner;

"health nuisance" means anything that endangers life, health or negatively affects the well-being of a community or an individual and gives offence or obstructs reasonable and comfortable use of premises;

"health services" means health services referred to in Schedule 4, Part A of the Constitution and determined in terms of national and provincial legislation;

"health technical committee or forum" means any technical committee or forum established in terms of section 66;

"hospital" means an organisational complex which provides in-patient and out-patient care and related services as part of the integrated provincial health care network;

"impairment" means loss or abnormality of a body part or body function which significantly deviates from established statistical norms;

"informed consent" means a health care user's consent to health care as defined in section 33;

"integrated development plan" means a plan aimed, in terms of the Municipal Structures Act, at the integrated development and management of a municipal area;

"integrated provincial health care network" means all public and

private sector health care services and programmes provided to health care users within the Province, including but not limited to private health care establishments, public health care establishments, the district health system and district health authorities, municipal health services and programmes and any other entity, department, system or programme which contributes to the health and well-being of the Province's population and prevents activities or conditions detrimental to the Province's population;

"legislation" means legislation made in terms of a provincial Act and includes subordinate legislation made in terms of a provincial Act;

"local council" means the municipal council of a local municipality;
 "local councillor" means a member of a local council;

"local municipality" means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155(1) of the Constitution as a category B municipality;

"means test" means the method used to assess public health care users' income, assets and liabilities to determine applicable and structured fees for services provided at public health care establishments, with the method of assessment to be determined by the Minister, in consultation with the Minister of Finance, and published in the Gazette;

"Mental Health Advisory Committee" means the KwaZulu-Natal Mental Health Advisory Committee established in terms of section 20;

"metro councillor" means a member of a metropolitan council;

"metro council" means the municipal council of a metropolitan municipality;

"metropolitan municipality" means a municipality that has exclusive executive and legislative authority in its area, and which is described in section 155(1) of the Constitution as a category A municipality;

"Minister" means the member of the Executive Council responsible for health in the Province;

"Minister of Finance" means the member of the Executive Council responsible for finance in the Province;

"municipal health services" means those health services referred to in Schedule 4, Part B of the Constitution and determined in terms of national legislation;

"municipality" means any local government structure contemplated in terms of section 155 of the Constitution and any other applicable law;

"Municipal Structures Act, 1998" means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"national central hospital" means a hospital which consists of highly specialised national referral units which, together, provide an environment for multi-specialty clinical services, innovation and research;

"non-profit organisation" means a trust, company or other association of persons-

- (i) established for a public purpose; and
- (ii) the income and property of which are not distributable to its members and office bearers except as reasonable compensation for services rendered;

"norm" means a binding principle to guide, control and regulate standards;

"official languages"? means the particular official languages adopted for purposes of government by the provincial government in terms of section 6(3)(a) of the Constitution;

"ombudsperson" means any person appointed by the Minister to receive and investigate complaints within the integrated provincial health care network, mediate complaints and disputes and report his or her findings to the Minister;

"organised health care practitioner groups" means professional health care practitioner associations recognised in terms of national legislation;

"organised labour" means the trade unions and employee associations recognised in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), or any other applicable law;

"organised local government" means the KwaZulu-Natal provincial organisation representing municipalities recognised in terms of section 163(a) of the Constitution;

"Parliament" means the KwaZulu-Natal Legislature;

"performance agreement" means a written agreement between the Minister and a district health authority, which may include each municipality within the district health authority, in terms of section 49 specifying health care service policy, delivery of health services and management in the health district;

"policy" means the overarching principles, including planning, general goals and objectives, to guide and determine present and future ministerial and Departmental decisions;

"Portfolio Committee" means the Provincial Parliamentary Portfolio Committee responsible for health;

"Premier" means the Premier of the Province contemplated in terms of section 125(1) of the Constitution;

"premises" means any piece of land and any building or other structure, together with the land on which it is situated, and includes any vehicle, conveyance, ship, boat or other vessel or any aircraft;

"prescribe" means prescribed by regulation;

"primary health care services" means accessible first level health services included as part of the package of basic essential health services as prescribed by the Minister in regulations;

"private health care establishment") means a health care establishment which is not owned or controlled by an organ of the State; "private health care user" means a person who is treated in a private health care establishment;

"Promotion of Access to Information Act" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); "Province" means the Province of KwaZulu-Natal referred to in section 103(1)(d) of the Constitution;

"Provincial Health Authority" means the KwaZulu-Natal Provincial Health Authority established in terms of section 8;

"Provincial Health Advisory Committee" means the KwaZulu-Natal Provincial Health Advisory Committee established in terms of section 12;

"provincial health services" means health services provided to health care users by the Department and wholly or partially funded by or through the Province;

"provincial tertiary hospital" means a hospital which receives health

care users from and provides sub-specialist support to a regional hospital and requires the expertise of clinicians working as sub-specialists;

"public health care establishment" means a health care establishment which is constituted, owned, controlled or wholly or partially funded by an organ of State and includes any private sector entity or non-governmental organisation providing services with government funds within any public health care establishment or private health care establishment;

"public health care user" means a person who is treated in a public health care establishment;

"record" means any written or electronic record or document contemplated under this Act;

"regional hospital" means a hospital which receives referrals from and provides specialist support to a district hospital and where health care users require the expertise of teams led by resident specialists;

"regional medical officer" means a person who is assigned or delegated functions under section 7(2)(b)(iii) to act as a medical officer for a designated region;

"regulation" means any regulation made under this Act;

"Revenue Fund" means the Provincial Revenue Fund established in terms of section 226 of the Constitution;

"specialised hospital" means a hospital which provides care for specified groups of health care users;

"standard" means the criteria to measure and determine performance;

"tertiary institution" means any institution providing health education at a tertiary level within the Province; and

"this Act" includes any regulations made hereunder.

Part II

Objectives of this Act

Objectives of this Act

2. The objectives of this Act are to-

- (a) give effect to and regulate the right to progressive realisation of access to health services conferred by section 27 of the Constitution and 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;
- (b) determine and provide for the development and implementation of provincial health policy, norms, frameworks and standards in accordance with national health policy, norms, frameworks and standards;
- (c) structure and provide for the implementation of an integrated provincial health care network and health service delivery in accordance with provincial health policy;
- (d) structure and provide for the implementation of the district health system, including but not limited to supervision, monitoring, evaluation and review of the district health system and district health authorities, in accordance with national and provincial health policy;
- (e) define health care user rights and obligations;

- (f) define health care practitioner rights and obligations; and
- (g) determine and provide for human resource development, utilisation and management.

Part III

Application and interpretation of this Act

3. This Act applies in the Province of KwaZulu-Natal.

Interpretation of this Act

4. (1) Any person applying this Act must interpret its provisions- (a) to give effect to its objectives; and (b) in compliance with the Constitution.

(2) Where there is a conflict between provincial health legislation and any by-law falling within the functional areas of concurrent provincial and municipal government legislative competences as envisaged in sections 155(6) and (7) of the Constitution, the by-law must be deemed invalid in terms of section 156(3) of the Constitution where-

- (a) provincial legislation addresses a health matter which can not be effectively regulated by by-laws;
- (b) the interests of the Province as a whole and equity within the provincial health care network require that a health matter must be dealt with uniformly across the Province, and provincial health legislation provides that uniformity by establishing provincial-
 - (i) norms and standards;
 - (ii) frameworks; or
 - (iii) policies;
- (c) provincial health legislation is necessary to-
 - (i) address a provincial health emergency;
 - (ii) promote equitable access to government and government funded services; or
 - (iii) protect the environment; or
- (d) provincial health legislation is aimed at preventing unreasonable action by municipalities that-
 - (i) is prejudicial to the health interests of another municipality or the province as a whole; or
 - (ii) impedes implementation of provincial health policies.

Part IV

Statement of provincial health policy and principles

Statement of provincial health policy

5. The Minister must-

- (a) uphold section 27 of the Constitution to achieve, within available resources, the progressive realisation of the right of everyone to have access to health services and section 24 of the Constitution to achieve the right to an environment that is not harmful to the health or well-being of the people in the Province;
- (b) establish an integrated provincial health care network which must

provide sustainable, equitable and cost-efficient health service delivery to health care users within the Province; and

- (c) develop and implement the integrated provincial health care network contemplated in paragraph (b) in consultation with municipalities and organised local government in the Province in accordance with standards of co-operative governance in terms of section 41 of the Constitution.

Statement of principles governing provincial health policy

6. (1) Provincial health policy must include reasonable legislative and other measures, within available resources and the budget allocated annually to the Department, to achieve the progressive realisation of the right of access to health services for every one, including but not limited to-

- (a) the advancement and protection of fundamental rights guaranteed in terms of section 27 and section 24 of the Constitution;
- (b) regulating access to health care services and determining conditions of access to health treatment;
- (c) achieving equitable health care opportunities and redressing past inequality in the provision of health services through cost-effective use of provincial health resources and sustainable implementation of health services;
- (d) strengthening the existing provincial health care network to develop required skills and capacities necessary for the provision of health services;
- (e) providing for innovative research to assist with provincial planning, coordination, monitoring and evaluation of health and health services;
- (f) ensuring broad participation in the development of provincial health policy and representation of stakeholders in the governance of the integrated provincial health care network; and
- (g) achieving close co-operation among national, provincial and municipal government on matters relating to the integrated provincial health care network.

(2) The Minister must-

- (a) provide for access to comprehensive provincial health care services, including but not limited to primary health care services;
- (b) utilise provincial health funds in a cost-effective and transparent manner to develop and implement health policy, norms, frameworks, and standards for delivery of comprehensive health care services and must, where possible, support development within the Province;
- (c) be accountable to the Parliament for policy and implementation related to cost-effective use of government and any private funds and resources allocated to health services; and
- (d) be committed to transparency and community participation, through established structures.

(3) The Minister may assume assigned functions or powers from national government in terms of section 99 of the Constitution where:

- (a) national government and the Minister have consulted on the assumption and extent of the assigned functions or powers and national government and the Minister have reached agreement on the nature, extent and funding of the assigned functions or powers;

- (b) adequate funds have been made available for the assumption of assigned functions or powers and the Department has the capacity to perform the assigned functions or powers;
- (c) national government and the Minister have reached agreement on the assignment in accordance with standards of cooperative governance in terms of section 41 of the Constitution; and
- (d) national government and the Minister enter into a written agreement specifying the nature, extent and funding of the assignment of functions or powers in terms of paragraphs (a), (b) and (c).

(4) The Minister may assume delegated functions or powers from national government in terms of section 238 of the Constitution where:

- (a) national government and the Minister have consulted on the assumption and extent of the delegated functions or powers and national government and the Minister have reached agreement on the nature, extent and funding of the delegated functions or powers;
- (b) adequate funds have been made available for the assumption of delegated functions or powers and the Department has the capacity to perform the delegated functions or powers;
- (c) national government and the Minister have reached agreement on the delegation in accordance with standards of co-operative governance in terms of section 41 of the Constitution; and
- (d) national government and the Minister enter into a written agreement specifying the nature, extent and funding of the delegation of functions or powers in terms of paragraphs (a), (b) and (c).

(5) The Minister may delegate any authority-

- (a) except policy-making authority, in terms of this Act to a municipality and may also withdraw the delegation of authority at any time; and
- (b) in terms of this Act to any officer within the Department and may also withdraw the delegation of authority at any time.

Determination of provincial health policy

7. (1) The Minister must determine provincial health policy, norms, frameworks and standards in accordance with the provisions of the Constitution, national health policy and this Act.

(2) The Minister must determine all provincial standards and requirements for the coordination and implementation of provincial health care policy to achieve the progressive realisation of access to health services, within available resources and national and provincial expenditure frameworks, including but not limited to-

- (a) the establishment, management, governance and phased implementation of the integrated provincial health care network within the Province, including but not limited to-
 - (i) development and implementation of provincial and district health system policy and management systems within the integrated provincial health care network;
 - (ii) preparation of multi-year and annual provincial health plans for the exercise of the powers and performance of duties of the Department which must be in accordance with national and provincial health policy, norms, frameworks and standards;
 - (iii) determination of the format and guidelines of provincial and health district plans, which must be in accordance with

- national health policy, norms, frameworks and standards;
- (iv) determination of integrated provincial health care network funding priorities and equitable allocations;
- (v) determination of contributions to non-governmental organisations rendering health services for or to the Department;
- (vi) subject to compliance with national and provincial requirements, determination of Departmental and health district financial management and information systems for the Department and health districts, including oversight, monitoring and evaluation standards and provincial requirements for any necessary corrective action;
- (vii) demarcation of health district boundaries and determination of district health authority responsibilities, in consultation with organised local government;
- (viii) determination and implementation of obligations for the district health system and municipalities to implement provincial health policy;
- (ix) the provision of the required infrastructure for health service delivery within the Province;
- (x) determination and implementation of the district health system for the delivery of comprehensive health care services and provision of necessary technical and logistical support;
- (xi) provision of technical and logistical support to public health care establishments and the district health system and municipalities;
- (xii) monitoring and evaluation of the integrated provincial health care network;
- (xiii) determination and implementation of accurate and relevant research required to assist with provincial planning, coordination, monitoring and evaluation of health, health services and health districts, and
- (xiv) ensuring corrective action where required;
- (b) the regulation and monitoring of health service delivery and programmers within the Province, including but not limited to the-
 - (i) development, implementation and management of the integrated provincial health care network health information system, including but not limited to the collection of data in accordance with national health obligations;
 - (ii) designation of administrative regions, including but not limited to the determination and implementation of the obligations in each region to ensure the delivery of health services within the Province;
 - (iii) assignment or delegation of functions to regional medical officers and public health care practitioners;
 - (iv) development and implementation of management, accreditation, evaluation and monitoring standards and regulatory procedures for public health care establishments and private health care establishments within the Province;
 - (v) certificate of need requirements, including establishing standards for private health care establishments, public health care establishments, any related personnel, equipment

- or services and inspection of the establishments to ensure compliance with reasonable health and maintenance standards;
- (vi) determination of required action, including but not limited to closure of private health care establishments and public health care establishments, where any public health care establishment or private health care establishment fails to comply with standards established by regulation;
- (vii) provision and delivery of health care services in any district hospital, regional hospital, provincial tertiary hospital, specialised hospital, national central hospital or academic health service complex, including but not limited to developing and implementing standards for admission, treatment and discharge of health care users;
- (viii) provision of health services in public health care establishments to private health care users by private health service practitioners and related issues of access and payment for use of the public health care establishment;
- (ix) provision and delivery of health service programmes in the public schools;
- (x) administration of nursing colleges within the Province until the National Department of Education assumes responsibility for nursing colleges;
- (xi) establishment and administration of forensic pathology programmes;
- (xii) provision of provincial ambulance services;
- (xiii) determination of health care user rights and obligations;
- (xiv) determination of health care practitioner rights and obligations;
- (xv) determination of provincial standards for the disposal of deceased persons, including but not limited to specifications, staffing and equipment of facilities utilised to dispose of deceased persons; and
- (xvi) provision and maintenance of public health care establishments, equipment and vehicles;
- (e) raising funds, subject to national and provincial legislation, from private and other sources for functions of the Department, provided this does not compromise ministerial or departmental health functions;
- (d) the determination of intersectoral co-operation between the Department and-
 - (i) national government and departments;
 - (ii) other provincial governments and departments;
 - (iii) municipalities;
 - (iv) district health authorities;
 - (v) the private sector; and
 - (vi) non-governmental organisations,

to promote provincial health policy and the integrated provincial health care network contemplated in this Act;

- (e) proposing legislation to all levels of government where the Minister considers action advisable for the promotion of health within the Province;
- (f) establishing boards, forums, advisory committees and any other required entity to address health matters, including the establishment of terms of reference and conditions for appointment, and to make appointments as may be necessary for the purposes of this Act; and
- (g) exercising the executive functions required to implement provincial health policy determinations in terms of this Act, including the implementation of measures to address past discriminatory practices.

(3) The Minister must determine all provincial standards and requirements to prevent and control communicable diseases and must make regulations to address the prevention and control of communicable diseases.

Part V

Provincial Health Authority

Establishment of KwaZulu-Natal Provincial Health Authority

8. The KwaZulu-Natal Provincial Health Authority is hereby established.

Composition of Provincial Health Authority

9. The Provincial Health Authority must consist of-

- (a) the Minister;
- (b) one councillor designated by each district council in the Province;
- (c) one councillor designated by each metro council in the Province;
- (d) one local government health official nominated by organised local government in the Province;
- (e) the Chairperson of the Portfolio Committee; and
- (f) the Head of Department.

Procedures, Chairperson and Meetings of Provincial Health Authority

10. (1) The Minister must preside over all meetings of the Provincial Health Authority.

(2) In the event that the Minister is unable to preside over any meeting of the Provincial Health Authority in terms of subsection (1), the Minister must designate one of the members of the Provincial Health Authority to preside over the meeting.

(3) The Provincial Health Authority must meet at the time and place determined by the Minister.

(4) The Provincial Health Authority may determine its own rules governing meetings and the procedures of meetings.

(5) The Provincial Health Authority must make its decisions on the basis of consensus, and failing consensus, must make its decision on the basis of a resolution by two-thirds of its members.

(6) The Provincial Health Authority must meet at least once every two months.

(7) The Provincial Health Authority may consult or hear representations on provincial health matters from any person, body or authority.

Functions of Provincial Health Authority

11. (1) The Provincial Health Authority must-

- (a) coordinate the implementation of national and provincial health policies;
- (b) coordinate the functioning of the district health authorities;
- (c) consider and coordinate strategic plans of district health authorities;
- (d) consider requests and recommendations made by district health authorities;
- (e) recommend provincial health policies, norms, frameworks and standards to the Minister;
- (f) consider or comment on health legislation prior to it being introduced in Parliament; and
- (g) perform any function as determined by the Minister.

(2) The Minister may consult with other members of the Provincial Health Authority on any other health matter.

Part VI

Provincial Health Advisory Committee

Establishment of KwaZulu-Natal Provincial Health Advisory Committee

12. The KwaZulu-Natal Provincial Health Advisory Committee is hereby established.

Composition of Provincial Health Advisory Committee

13. The Provincial Health Advisory Committee must consist of-

- (a) the Head of Department;
- (b) one official responsible for health designated by each district council in the Province;
- (c) one official responsible for health designated by each metro council in the Province; and
- (d) seven senior Departmental officials designated by the Minister.

Procedures, chairperson and meetings of Provincial Health Advisory Committee

14. (1) The Head of Department must preside over all meetings of the Provincial Health Advisory Committee.

(2) In the event that the Head of Department is unable to preside over any meeting of the Provincial Health Authority in terms of subsection (1), the Head of Department must designate one of the members of the Provincial Health Advisory Committee to preside over the meeting.

(3) The Provincial Health Advisory Committee must meet at the time and place determined by the Head of Department.

(4) The Provincial Health Advisory Committee may determine its own rules governing meetings and the procedures of meetings.

(5) The Provincial Health Advisory Committee must make its decisions on the basis of consensus, and failing consensus, must make decisions on the basis of a resolution by two-thirds of its members.

(6) The Provincial Health Advisory Committee must meet at least once every two months.

(7) Any member of the Provincial Health Advisory Committee must submit valid written reasons to the Head of Department in the event that the member is unable to attend any meeting.

(8) In the event that any member of the Provincial Health Advisory Committee fails to attend two or more meetings without prior submission of valid written reasons in terms of subsection (7), the Head of Department must advise the relevant entity or the member's supervisor.

Functions of Provincial Health Advisory Committee

15. The Provincial Health Advisory Committee must-

- (a) advise the Minister on any matter related to health; and
- (b) promote the objectives of this Act.

Part VII

Provincial Health Forum

Establishment of KwaZulu-Natal Provincial Health Forum

16. The KwaZulu-Natal Provincial Health Forum is hereby established.

Composition of Provincial Health Forum

17. The Provincial Health Forum must-consist of-

- (a) the Minister;
- (b) the Head of Department;
- (c) representatives from the Province invited from-
 - (i) each organised labour organisation, trade union and employee association involved in the delivery of health services;
 - (ii) community-based organisations involved in the delivery of health services;
 - (iii) each municipal council;
 - (iv) each district health manager and members of the district health management team designated by the district health manager for the health district;
 - (v) organisations working with HIV/AIDS health issues;
 - (vi) non-governmental organisations involved in the delivery of health services;
 - (vii) parastatal entities responsible for health service delivery;
 - (viii) private sector health care provider organisations;
 - (ix) each professional body or association responsible for the delivery of health services and recognised in legislation;
 - (x) faith-based organisations;
 - (xi) recognised sports bodies;

- (xii) statutory bodies responsible for delivery of health services;
- (xiii) each tertiary institution which provides health care training;
- (xiv) recognised traditional healers organisations;
- (xv) traditional leaders;
- (xvi) provincial managers from the Department;
- (xvii) professional support services within the Department; and
- (xviii) any other person or body invited by the Minister.

Procedures, chairperson and meetings of Provincial Health Forum

18. (1) The Minister must preside over all meetings of the Provincial Health Forum.

(2) In the event that the Minister is unable to preside over any meeting of the Provincial Health Forum in terms of subsection (1), the Head of Department must preside over the meeting.

(3) The Provincial Health Forum must meet at the time and place determined by the Minister.

(4) The Provincial Health Forum must meet at least twice every year.

Functions of Provincial Health Forum

19. The Provincial Health Forum is a voluntary body established to facilitate information exchange and discussion relating to health service delivery in the Province.

Part VIII

Mental Health Advisory Committee

Establishment of Mental Health Advisory Committee

20. (1) The Minister may, by notice in the Gazette, establish the KwaZulu-Natal Mental Health Advisory Committee. (2) The Minister must determine the terms of reference of the Mental Health Advisory Committee.

Composition of Mental Health Advisory Committee

21. (1) The Minister must determine the number of persons to serve on the Mental Health Advisory Committee, provided that the number must not be less than three persons nor more than five persons appointed from each of the following categories- (a) district health authorities; (b) tertiary institutions; and (c) mental health care practitioners.

(2) (a) Subject to subsection (1), the Minister must appoint members of the Mental Health Advisory Committee to serve an initial term of three years.

(b) Any member appointed in terms of paragraph (a) may be appointed by the Minister to serve one additional term of three years.

(3) The Minister must publish the notice of establishment of and names of members appointed to the Mental Health Advisory Committee in the Gazette.

(4) The Minister must from time to time appoint one of the persons appointed in subsection (2) as the Chairperson of the Mental Health Advisory Committee.

(5) A person appointed in terms of subsection (2) must be appointed in the prescribed manner.

Procedures of Mental Health Advisory Committee

22. (1) The Mental Health Advisory Committee-

- (a) may determine its procedures for conducting business;
- (b) must meet whenever necessary, but must meet at least once every two months;
- (c) may consult or hear representations on provincial mental health matters from any person, body or authority;
- (d) must keep and maintain minutes; and
- (e) must timeously submit annual reports, including an accounting of all activities and expenditures during the immediately preceding financial year, to the Minister or his or her designee on the last day of April of each year.

(2) The chairperson of the Mental Health Advisory Committee must give members reasonable notice of the date and time of any meeting.

Functions and powers of Mental Health Advisory Committee

23. (1) The Mental Health Advisory Committee must-

- (a) at least once every two months, visit each provincial mental private health care establishment and public health care establishment and hear representations from health care users receiving health treatment in mental private health care establishments and public health care establishments;
- (b) within a reasonable time, investigate any complaint or grievance made by any health care user within any mental health care establishment; and
- (c) within 30 days of any visit or investigation contemplated in paragraphs (a) and (b), submit a report to the Minister on any visit or investigation.

(2) The Minister may prescribe any additional powers and functions of the Mental Health Advisory Committee in regulations.

Access to information by Mental Health Advisory Committee

24. The Mental Health Advisory Committee must have access to information held by the Department as is reasonably necessary to perform its functions in terms of section 23.

Part IX

Consultation on provincial health policy

Consultation

25. (1) Policy contemplated in Part IV must be determined by the Minister after consultation with-

- (a) the Provincial Health Authority;
- (b) consultative bodies which have been established in terms of this Act;
- (c) organised labour;
- (d) provincial organisations representing health care user interests;

- (e) organised health care practitioner groups; and
- (f) any other provincial stakeholder bodies which the Minister may recognise.

(2) Any policy contemplated in this Act must be determined by the Minister, with the concurrence of the Minister of Finance insofar as the policy involves expenditure from the Revenue Fund.

(3) Nothing in this section limits the discretion of the Minister to consult with whomever he or she wishes for advice on the determination of provincial health policy.

Part X

Publication of provincial health policy

Publication of provincial health policy

26. (1) The Minister must, within 30 days after determining policy referred to in section 5, give notice of the determination in the Gazette and indicate in the notice where the relevant policy document may be obtained.

(2) The Minister may, in addition to notice required in terms of subsection (1), utilize additional print or electronic media to disseminate information about any policy referred to in section 5.

Part XI

Financing comprehensive provincial health care services and annual report

Financing comprehensive provincial health care services

27. (1) Public sector comprehensive provincial health care services must be financed from allocations from national, provincial and municipal government revenues.

(2) The Minister may, subject to national and provincial legislation, raise private donations for provincial health activities.

Annual report

28. The Minister must submit to Parliament an annual report detailing the Department's activities during the preceding financial year within required statutory time limits.

Part XII

Health care user rights and obligations

Health care user rights

29. (1) A health care user is entitled, as a matter of right, to emergency medical services for any life threatening condition at any public health care establishment or private health care establishment.

(2) A health care user is entitled to the progressive realisation, within the Province's available resources, to the right-

- (a) to information in any of the official languages specifying provincial health resources, services and conditions governing access to services and resources;
- (b) of access to available primary health care services;
- (c) to community consultation and participation with provincial and district health authorities on development and implementation of

provincial health policy;

- (d) to participate, where reasonably practical, in any decision affecting the health care user's health or welfare;
- (e) to a health service discharge report, upon discharge from a private health care establishment or public health care establishment;
- (f) to confidentiality of all health care user records, except where the health care user gives explicit written authorisation for the release of any information about the health care user's health and treatment or where research is undertaken in terms of section 31(4) and (5); and
- (g) not to be subject to any health treatment without granting his or her informed consent subject to section 33.

(3) A person employed by a public health care establishment or private health care establishment who turns away a person requiring emergency medical services in terms of subsection (1) commits an offence.

Right of access to primary health care services

30. (1) Everyone is entitled, within the Province's available resources and funds allocated to the Department and as a matter of right, to the progressive realisation of access to primary health care services offered by designated public health care establishments.

(2) The Minister must ensure that information about access to primary health care services is available to the public.

Confidentiality

31. (1) Every health care user is entitled to confidential treatment of all information, in oral, written or electronic form, regarding the health care user's general health, any medical condition, diagnosis, prognosis and related treatment.

(2) A person must not release any health care user records, including computer or electronic records, except in terms of this Act.

(3) A person who has information about a health care user's general and specific condition may disclose the information only if failure to disclose information would seriously jeopardise public health.

(4) Health care user records may be disclosed for approved research purposes where any affected health care user's right to confidentiality is protected and the research does not identify any particular health care user.

(5) The Minister must make regulations to ensure confidentiality of health care user records and establish minimum standards for the use of health care user records for approved medical or health research.

(6) A person who releases health care user confidential information protected in terms of this Act commits an offence.

Access to information and health records related to health care user's general health and treatment

32. (1) (a) Every health care user is entitled, as matter of right, to access to his or her own health records held by private health care practitioners, public health care practitioners, public health care establishments and private health care establishments.

(b) Health care user health records must include all information related to the health care user's health treatment.

(2) Every health care user is entitled, as a matter of right, to be

fully informed of-

- (a) the state of the health care user's health;
- (b) the available range of treatment options;
- (c) the risks and consequences associated with treatment options, including prescribing medication; and
- (d) any costs associated with the health care user's treatment.

(3) The legal guardian of a health care user is entitled, as a matter of right, to the health care user's records unless the-

- (a) dissemination of this information to the legal guardian would be prejudicial to the health of the health care user; or
- (b) health care user makes a request to the health care practitioner that this information should not be released to his or her legal guardian, except to the extent that a court may order otherwise in the best interests of the health care user.

(4) Health care user requests for individual health information may be submitted either in writing or orally and may be made, in accordance with the Province's policy on the use of, official languages, in the language of the health user's choice, to the head of the health care establishment.

(5) (a) The head of any health care establishment must respond to any health care user request for information in terms of this section in accordance with the requirements and time periods provided for in the Promotion of Access to Information Act.

(b) A health care user who has made a request in terms of this section may appeal the failure of the head of a health care establishment to provide all relevant information timeously in accordance with the applicable provisions of the Promotion of Access to Information Act.

(c) Failure of the head of a health care establishment to provide all relevant information timeously in terms of paragraph (a) must constitute grounds for a complaint, without prejudice to the complainant, against the offending head of a health care establishment.

(6) In the event that the head of a health care establishment is not a qualified health care practitioner, access to health care user information may be denied only by the most senior health care practitioner in the health care establishment on grounds that the health care user's access to information would seriously jeopardise the health of the health care user.

(7) Any restriction on access to information must be interpreted narrowly in favour of the health care user or health care user's representative, and the health care user's access to information about the health care user's state of health, treatment and treatment options.

(8) Any restriction on any health care user's access to information must be reconsidered periodically and information must be made available to the health care user at the earliest available opportunity when the health care user's health will not be jeopardised.

(9) A health care user may appeal to the head of the health care establishment against a health care practitioner's decision to restrict access to information and the head of the health care establishment must make a decision within a reasonable period of time in accordance with the requirements and time periods provided for in the Promotion of Access to Information Act.

(10) If a health care user is aggrieved by the head of the health care establishment's decision or failure to make a decision, the health care user may submit a complaint, without prejudice to the health care user, to the Head of Department.

(11) A health care user may be charged only the reasonable costs of photocopying or reproducing the health care user's records in the possession of a health care establishment.

(12) Subject to subsection (3), no person other than a health care user may authorise the release of the health records of the health care user, except with the written consent of the health care user or his or her legal guardian or where approval has been obtained from the health care establishment or health care practitioner for research in terms of this Act and the research does not identify any particular health care user.

(13) A person who releases any information, including computer or electronic records, without required authorisation in terms of this Act, commits an offence.

(14) A health care user may bring an action for damages suffered by him or her against any person who gains, or allows, unauthorised access to the health care user's records.

(15) A professional or other person who discloses any health care user's health record without written authorisation in terms of this Act commits an offence.

Informed consent

33. (1) Every health care user or legal guardian of a health care user, in accordance with national legislation, is entitled, as a matter of right, to information about the health care user's health, medical condition, recommended treatment and prognosis for recovery in the official language of the health care user's choice.

(2) A health care practitioner must ensure that where treatment or lack of treatment will constitute a risk to the health of a health care user that, prior to instituting or withdrawing recommended treatment, the health care user is advised orally, in the official language of his or her choice and in full, of his or her general state of health, medical condition, recommended treatment, related risks and prognosis for recovery.

(3) A health care user may not undergo any invasive medical procedure without the health care practitioner informing the health care user of his or her medical condition, options for treatment, recommended treatment and prognosis for recovery and obtaining consent from the health care user.

(4) Where a health care user refuses to grant his or her informed consent and the health care user's life is in jeopardy, the Minister may, where health treatment is required for the protection of the public health and after fully reviewing the facts, order health treatment for the health care user.

(5) Where a health care user whose life is not in jeopardy refuses to grant informed consent and health care or treatment is necessary to protect public health, the Minister or party with an interest at law must make application to a court of competent jurisdiction to rule without delay on the necessary health care or treatment.

(6) Where an emergency has occurred and a health care user's life is at stake or irreparable damage could occur if health treatment is not authorised and undertaken, the health care practitioner attending the health care user must take immediate action to save the health care user's life or prevent irreparable damage.

(7) Where a health care user is hospitalised and/or receives treatment without his or her consent, the head of the health care establishment must promptly make a written submission to the Minister, which submission must establish the facts which gave rise to health care without informed consent.

(8) Consent gained by coercion must not constitute informed consent for

purposes of this Act.

(9) A health care practitioner or other person who uses coercion to obtain informed consent commits an offence.

Health care user fees

34. (1) The Minister may, in the absence of national legislation and after consultation with the Provincial Health Authority and in consultation with the Minister of Finance, make regulations specifying a means test to be applied to public health care users to determine indigency payment standards within the integrated provincial health care network.

(2) An individual who misrepresents or falsifies any financial information in a means test supplied under subsection (1) commits an offence.

Complaint procedures

35. (1) Any person is entitled to submit a complaint, without prejudice to the complainant, about private health care establishments and public health care establishments and services, including the manner in which a health care user was treated by staff in any health care establishment.

(2) Any complaint submitted in terms of subsection (1) must initially be submitted to the head of the health care establishment.

(3) In the event that the head of the relevant health care establishment does not respond to a complaint within 30 days of submission of a complaint in terms of subsection (1), the person who submitted the complaint may submit the complaint to the Ombudsperson in terms of section 74.

(4) No contractual provision limiting or excluding the liability of a health care establishment for the acts or omissions of its employees in the provision of health care services is valid or enforceable.

(5) The Minister must make regulations specifying health care user complaint procedures.

Community participation

36. The Minister must ensure that-

- (a) procedures for community participation in the development and implementation of health policies and practices are transparent and viable; and
- (b) community participation is solicited as provided for in terms of this Act.

Obligations of health care users

37. (1) A health care user must-

- (a) respect the rights of other health care users;
- (b) subject to the right to submit a complaint without prejudice and to receive a timeous response to any complaint, observe the rules concerning the organisation and operation of all health care establishments;
- (c) assume responsibility for the appropriate use of health service benefits provided by the integrated provincial health care network;
- (d) work with health care workers to ensure that health care users get the maximum benefit out of all health care services;
- (e) not damage or in any other way take actions which will lead to the

physical deterioration of health care establishments; and

- (f) where a health care user has an obligation to pay for health care services, pay the fees stipulated in terms of any statute or written agreement.

(2) Where a health care user refuses treatment, the health care user must sign, or if a health care user is unable to sign make an identifying mark on, a statement indicating that he or she has refused treatment and the Department is not liable for any injury or death caused as a consequence of the refusal.

Part XIII

Health care practitioner rights and obligations

Health care practitioner rights

38. A health care practitioner is, as a matter of right, entitled-

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

Health care practitioner obligations

39. (1) Every health care practitioner must-

- (a) fulfil every duty owed to each health care user in accordance with the standard of care generally recognised in his or her profession, including the obligation to treat all health care users with dignity and respect; and
- (b) carry insurance cover to provide for claims resulting from failure to comply with the standard of care generally recognised in his or her profession.

(2) A health care practitioner must perform his or her duties in accordance with the standard of care generally recognised in his or her profession.

(3) The Minister must make regulations providing for mandatory insurance coverage in terms of subsection (1)(b).

Part XIV

Integrated provincial health care network

Integrated provincial health care network

40. (1) The Minister must, in accordance with national health policy and after consultation with the Provincial Health Authority and subject to provincial norms and standards and the terms of this Act, establish an integrated provincial health care network to encompass all aspects of health care service delivery in the Province, including but not limited to-

- (a) rationalisation of all provincial and district health system services, private health care establishments and public health care establishments within the Province to ensure effective health care service delivery and to provide for equitable distribution of health care services;
- (b) establishment of objective criteria to define required levels of health care service delivery within the integrated provincial health care network;
- (c) establishment of a uniform standard of health care and service delivery, including specific objectives and targets for the

Department and categories of private health care establishments, public health care establishments, management and personnel, to ensure provincial delivery of health care services within the integrated provincial health care network;

- (d) provision for an equitable distribution of resources within the integrated provincial health care network;
- (e) development, implementation and management of a provincial, district and municipal health information system;
- (f) monitoring and evaluation of all levels of service delivery within the integrated provincial health care network;
- (g) establishment of effective health care user referral mechanisms;
- (h) providing for mandatory health care programmes;
- (i) establishment and administration of provincial nursing colleges;
- (j) design and implementation of departmental in-service training programmes;
- (k) conducting research into public health matters; and
- (l) development and implementation of any other activity or programme designed to ensure effective management of and service delivery within the integrated provincial health care network.

(2) The Minister must, subject to national and provincial health norms and standards and after consultation with the Provincial Health Authority make regulations to classify and establish all categories of public health care establishments and private health care establishments within the Province to-

- (a) define the nature and level of health services and access to public health care establishments to be provided by each category of public health care establishment contemplated in subsection (1);
- (b) define the nature and level of services to be provided by health districts, including but not limited to health services to be provided by municipalities; and
- (c) regulate the referral of health care users between public health care establishments and private health care establishments and within the public sector.

(3) The Minister must, in consultation with the Provincial Health Authority-

- (a) develop and implement the standards for the Department to monitor and evaluate all provincial, health district, private health care establishments and public health care establishments to ensure that provincial norms and standards are maintained by all health care establishments within the Province;
- (b) be responsible for the establishment, restructuring of financial and human resources and phased implementation of comprehensive health care services within the integrated provincial health care network; and
- (c) be responsible for the development, utilisation and management of human resources within the integrated provincial health care network.

Certificate of Need for private health care establishments and public health care establishments and any related personnel, equipment or services

41. (1) The Minister must rationalise the integrated provincial health

care network to ensure that private health care establishments, public health care establishments and any related personnel, equipment or services are equitably distributed throughout the Province.

(2) (a) The Minister must make regulations establishing-

- (i) objective criteria required for the establishment, operation, enlargement or modification of any private health care establishment, any public health care establishment and any related personnel, equipment or services;
- (ii) objective criteria based on the standard of service generally recognised in the medical profession to determine continuing operation or closure of any private health care establishment or public health care establishment and any related personnel, equipment or services;
- (iii) the procedure to apply for a certificate of need;
- (iv) the procedure for any private health care establishment or public health care establishment aggrieved by a decision in terms of subsections 3(c), 3(e)(i), 3(e)(iii) or 3(g) to appeal a decision made by the Minister; and
- (v) a joint committee, to be appointed by the Minister and comprised of public and private sector representatives, to determine objective criteria with respect to the number of private health care users and public health care users in terms of paragraphs (b) and (c)(ii)-(iii) and make recommendations to the Minister on criteria in terms of paragraph (c) and subsections (3)(e)(iii)-(iv), inclusive.

(b) Any regulations made in terms of paragraph (a) must be based on a rational and equitable distribution of health services, health care establishments, personnel, equipment, services and technology by the use of objectively verifiable criteria.

(c) Regulations made in terms of paragraph (a) must take into consideration any existing national, provincial, municipal or district health plan and may take into account-

- (i) the geographic areas to be served by private health care establishments and public health care establishments and any related personnel, equipment or services in the Province;
- (ii) subject to subsection 2(a)(v), the number of public health care users to be served within a health district or by a municipality;
- (iii) subject to subsection 2(a)(v), the number of private health care users to be served within a health district or by a municipality;
- (iv) the number of migratory health care users;
- (v) demographic considerations, including disease patterns and health status of populations to be served;
- (vi) assessments of present and future need, including community infrastructure and migration patterns;
- (vii) transportation networks;
- (viii) the numbers of medical aid health care users who have used all benefits and are reliant on public health care establishments;
- (ix) the need to correct historical imbalances in the delivery of health services;

- (x) availability and location of existing private health care establishments, public health care establishments and any related personnel, equipment, services or technological resources, within the areas to be served;
- (xi) availability and location of private health service practitioners and public health service practitioners;
- (xii) effects on the provision of health services in the private sector and public sector;
- (xiii) available funds from national, provincial and municipal government for health service delivery and need to rationalise delivery of health services; and
- (xiv) any other relevant considerations.

(3) (a) Every private health care establishment and public health care establishment within the Province must apply, in accordance with regulations made in terms of subsection (2), for a certificate of need within two years of the date of the regulations.

(b) Every private health care establishment and public health care establishment within the Province must obtain a certificate of need, which will allow it to continue providing services, within three years of the date of making of regulations in terms of paragraph (a).

(c) The Minister may issue a certificate of need for a period of 10 years to any private health care establishment or public health care establishment which qualifies in terms of regulations made in terms of subsection (2).

(d) Any private health care establishment or public health care establishment which has received a certificate of need for a term of 10 years in terms of paragraph (c) must reapply for an additional certificate of need before the end of its ninth year of operating under the current certificate of need.

(e) Any certificate of need issued in terms of paragraphs (c) or (d) by the Minister-

- (i) must specify the standard of services to be provided by the private health care establishment or public health care establishment;
- (ii) may include requirements for insurance cover to be carried by any private health care practitioner or any public health care practitioner in any private health care establishment or any public health care establishment;
- (iii) may include any conditions on any related personnel, diagnostic and therapeutic equipment and use of equipment, services to be provided and populations to be served by the private health care establishment or public health care establishment; and
- (iv) may include conditions on types of training to be provided to staff at the private health care establishment or public health care establishment.

(f) A proposed private health care establishment or public health care establishment which intends opening within two years after the commencement of this Act must comply with all certificate of need requirements.

(g) The Minister must close a private health care establishment or public health care establishment which fails to obtain a certificate of need within three years of the date of commencement of this Act.

(h) A private health care establishment or public health care establishment may, in terms of regulations made under subsection (2)(a)(iv), appeal a decision made by the Minister in terms of paragraphs 3(c), 3(e)(i), 3(e)(iii) or 3(g).

Individuals and entities providing goods and services to Department

42. The Head of Department, subject to any other national or provincial Act-

- (a) must enter into a written agreement with any individual, company, non-governmental organisation or other entity which provides any goods or services to the Department;
- (b) may renegotiate the terms of any agreement or contract with any individual, company, non-governmental organisation or other entity which provides goods or services to the Department and enter into a revised written agreement; and
- (c) may, upon reasonable notice, terminate any agreement with any individual, company, non-governmental organisation or other entity providing goods or services to the Department and the individual, company, non-governmental organisation or other entity must not be entitled to claim compensation for any goods or services rendered after the effective date of the termination.

Part XV

Monitoring and evaluation of integrated provincial health care network

Standards to monitor and evaluate integrated provincial health care network

43. (1) (a) The Minister must make regulations specifying standards to monitor and evaluate the provision and delivery of health services throughout the integrated provincial health care network in the Province.

(b) The provision and delivery of health services in terms of paragraph (a) must be monitored and evaluated by the Department annually or at other specified intervals, with the object of assessing compliance with the provisions of the Constitution providing for the progressive realisation of the right to access to health services within available resources, national health policy and provincial health policy.

(2) The Minister must-

- (a) undertake monitoring and evaluation contemplated in terms of subsection (1);
- (b) improve professional capacity in monitoring and evaluation throughout the integrated provincial health care network and to raise the standards of health provision and performance; and
- (c) prepare and publish any report required under this section, including providing an opportunity for any competent authority concerned to comment, which comment must be published with the report.

Part XVI

District health system

Demarcation and establishment of health districts

44. The Minister must, after consultation with the Provincial Health Authority and organised local government, demarcate boundaries of and establish health districts and subdistricts within the Province in accordance with decisions made by the Demarcation Board in terms of the Demarcation Act.

Establishment of district health authorities

45. The Minister must, after consultation with the Provincial Health Authority and organised local government in the Province, establish district health authorities for each health district.

Composition of district health authorities

46. Each district health authority must consist of-

- (a) in a metro council, the councillor responsible for health designated in terms of section 9(c) and other metro councillors responsible for health; or
- (b) in a district council, the district councillor responsible for health designated in terms of section 9(b) and one local councillor responsible for health from each local municipality included within the district municipality; and
- (c) the district health manager.

Procedures, chairperson and meeting of district health authorities

47. (1) The district councillor or metro councillor who serves on the Provincial Health Authority in terms of section 9(b) or 9(c), respectively, must preside over all meetings of the relevant district health authority.

(2) In the event that the district councillor or metro councillor who serves on the Provincial Health Authority in terms of section 9(b) or 9(c), respectively, is unable to preside over any meeting of the relevant district health authority, the councillor must designate one of the members of the district health authority to preside over the meeting.

(3) Each district health authority must meet at the time and place determined by the district councillor or metro councillor who serves on the Provincial Health Authority in terms of in terms of section 9(b) or 9(c), respectively.

(4) Each district health authority may determine its own rules governing meetings and the procedures of meetings.

(5) Each district health authority must make its decisions on the basis of consensus, and failing consensus, must make its decisions on the basis of a resolution by two-thirds of its members, except to the extent that decision-making is prescribed by legislation affecting local government.

(6) Each district health authority must meet at least once each month.

Functions of district health authorities

48. Each district health authority must be responsible for-

- (a) powers and functions specified by the Provincial Health Authority;
- (b) implementing national and provincial health policies;
- (c) development of health plans in terms of section 50(1);
- (d) equitable delivery of health services within the health district;
- (e) management of all financial and human resources within the health district;
- (f) promotion of intersectoral collaboration;
- (g) consider requests and recommendations;
- (h) recommend provincial health policies, norms, frameworks and standards to the Minister; and

- (i) perform any function as determined by the Minister.

Performance agreements with district health authorities

49. (1) The Minister must enter into a written performance agreement with each district health authority, which may include each municipality within the health district, and each performance agreement must-

- (a) take into consideration the capacity of the district health authority, which may include each municipality within the health district, to implement provincial health policy;
- (b) include-
 - (i) the duration of the performance agreement;
 - (ii) the organisational and management structure of the district health authority;
 - (iii) health services to be delivered by the district health authority;
 - (iv) the funding of the district health authority;
 - (v) periodic evaluation of the district health authority's performance;
 - (vi) corrective action in the event that the district health authority fails to comply with its performance agreement; and
 - (vii) any other matter related to the district health authority.

(2) (a) Where a district health authority fails to comply with its performance agreement, is unable to meet its obligations in terms of its performance agreement and/or is unable to rectify the inability, the Minister may assume responsibility for health service delivery in terms of the district health authority's performance agreement to the extent necessary to-

- (i) maintain provincial policies, norms, standards and frameworks; and
- (ii) prevent the district health authority which may include each municipality within the health district, from taking unreasonable action that is prejudicial to health care users.

(b) Where the Minister assumes responsibility for health service delivery in terms of paragraph (a)-

- (i) the district health authority which may include each municipality within the health district, must, on demand by the Minister, compensate the Department for all expenditures and costs incurred in terms of paragraph (a); and
- (ii) the Minister may disestablish the district health authority.

(3) In the event of an irreconcilable dispute arising from a performance agreement between the Minister and a district health authority, which may include each municipality within the health district, the dispute must be resolved-

- (a) except where the National Department of Health is an interested party, through mediation conducted by the National Department of Health; and
- (b) where any dispute in terms of this section can not be resolved in terms of paragraph (a), the dispute must be resolved in accordance

with the Arbitration Act, 1965 (Act No. 42 of 1965) and the decision of the arbitrator must be final and binding on all parties.

Annual and multi-year health plans

50. (1) Each district health authority must, in accordance with relevant national and provincial legislation, after consultation with any relevant municipality and prior to adoption of an integrated development plan by any municipality in the district health authority, submit its proposed initial annual and subsequent multi-year health plans specifying the exercise of its functions and the performance of its responsibilities to the Minister for submission to the Provincial Health Authority, provided that where there is no district health authority for a particular health district, the Head of Department must, for the purposes of this section, be deemed to be the relevant district health authority.

(2) An annual and multi-year health plan in terms of subsection (1) must be submitted in the format required and by the date specified by the Minister.

(3) The Provincial Health Authority must review and assess compliance of each health district's annual and multi-year health plans with provincial health legislation, policies, norms, standards, and frameworks.

(4) The Provincial Health Authority must grant approval in principle or recommend changes to health district annual and multi-year health plans.

(5) An annual and multi-year health plan may not be implemented in health districts unless approved by the Provincial Health Authority in terms of subsection (4).

Part XVII

District Health Advisory Committees

Establishment of district health advisory committees

51. The Minister must, after consultation with organised local government, establish district health advisory committees for each health district.

Composition of district health advisory committees

52. (1) A district health advisory committee in a metropolitan municipality must consist of-

- (a) the metro council health manager; and
- (b) metro council health management team.

(2) A district health advisory committee for a district municipality must consist of-

- (a) the district health manager;
- (b) district health management team; and
- (c) one official responsible for health from each local municipality in the relevant health district.

Procedures, chairperson and meetings of district health advisory committees

53. (1) The district health manager for the relevant health district must preside over all meetings of the district health advisory committee.

(2) In the event that the district health manager designated in subsection (1) is unable to preside over any meeting of the district health advisory committee in terms of subsection (1), the district health manager must designate one of the members of the district health advisory committee

to preside over the meeting.

(3) Each district health advisory committee must meet at the time and place determined by the district health manager.

(4) Each district health advisory committee may determine its own rules governing meetings and the procedures of meetings.

(5) Each district health advisory committee must make its decisions on the basis of consensus, and failing consensus, must make its decision on the basis of a resolution by two-thirds of its members, except to the extent that decision-making is prescribed by legislation affecting local government.

(6) Each district health advisory committee must meet at least once every two months.

(7) Any member of a district health advisory committee must obtain prior written authorisation from the district health manager in the event that he or she is unable to attend any meeting.

(8) In the event that any member of the district health advisory committee fails to attend two or more meetings without prior written authorisation in terms of subsection (7), the district health manager must advise the relevant entity or the member's supervisor.

Functions of district health advisory committees

54. Each district health advisory committee must-

- (a) advise the district health authority on any matter related to health; and
- (b) promote the objectives of this Act.

Part XVIII

District Health Forum

Establishment of District Health Forum

55. Each district health authority must establish a district health forum.

Composition of District Health Forum

56. Each district health forum must consist of-

- (a) the district councillor or metro councillor who serves on the Provincial Health Authority in terms of section 9(b) or 9(c), respectively, for the district municipality or metropolitan municipality;
- (b) one local councillor from each local municipality included within the district health authority;
- (c) one official responsible for health from each local municipality in the relevant health district;
- (d) members of the district health management team designated by the district health manager for the health district; and
- (e) representatives from-
 - (i) each organised labour organisation, trade union and employee association involved in the delivery of health services;
 - (ii) each clinic committee, community health centre committee,

hospital board and Ambulance and Emergency Medical Services Board operating in the health district;

- (iii) community-based organisations involved in the delivery of health services;
- (iv) organisations working with HIV/AIDS health issues;
- (v) non-governmental organisations involved in the delivery of health services;
- (vi) parastatal entities responsible for health service delivery;
- (vii) private sector health care provider organisations;
- (viii) each professional body or association responsible for the delivery of health services and recognised in legislation;
- (ix) faith-based organisations;
- (x) recognised sports bodies;
- (xi) statutory bodies responsible for delivery of health services;
- (xii) any tertiary institution which provides health care training in the health district;
- (xiii) recognised traditional healers organisations;
- (xiv) traditional leaders;
- (xv) provincial managers from the Department;
- (xvi) professional support services within the Department; and
- (xvii) any other person or body invited by a municipal council within the health district.

Procedures, chairperson and meetings of district health forums

57. (1) The councillor designated in terms of section 9(b) must preside over all meetings of the relevant district health forum.

(2) In the event that the councillor responsible for health in the district is unable to preside over any meeting of the district health forum in terms of subsection (1), he or she must designate the person responsible for presiding over the meeting.

(3) Each district health forum must meet at the time and place determined by the district council.

(4) Each district health forum must meet at least twice every year.

Functions of district health forums

58. Each district health forum is a voluntary body established to facilitate information exchange and discussion, including community participation, relating to health service delivery in the Province.

Continuation of delivery of health care services

59. (1) Each municipality in the Province must, after this Act commences operation, remain responsible for the provision of all health services, including but not limited to primary health care services, for which the municipality had responsibility prior to the commencement of this Act.

(2) A municipality may assume responsibility for health services in addition to health services specified in subsection (1) where the Minister-

- (a) delegates or assigns responsibility for health services in terms of national or provincial legislation; or
- (b) contracts with a municipality to provide specified health services; and
- (c) enters into a performance agreement with the municipality, which agreement must specify the nature of the health services to be provided by the municipality and the transfer of funds for the provision of additional services from the Department to the municipality.

Part XIX

Provincial monitoring and support of municipal health services

Provincial monitoring and support of municipal health services

60. The Minister must-

- (a) in terms of section 155(6)(a) of the Constitution and in consultation with the Provincial Health Authority, provide for the monitoring and support of municipal health services;
- (b) in terms of section 155(6)(b) of the Constitution, promote the capacity of municipalities to provide for and manage the delivery of municipal health services; and
- (c) in terms of section 155(7) of the Constitution, see to the effective performance of health service delivery in respect of matters listed in Schedules 4 and 5 of the Constitution, by regulating the exercise by municipalities of their executive authority referred to in section 156(1) of the Constitution.

Part XX

Transparency

Transparency

61. (1) The Minister must ensure transparency in the development and implementation of provincial health policy.

(2) Except as otherwise provided in this Part, meetings of any administrative body created under this Act, supported in whole or in part by public funds from provincial government, including but not limited to boards, committees, subcommittees, forums, councils or any similar administrative body, advisory or otherwise, must be open to the public.

(3) Reasonable public notice must be given for meetings required to be open under this section and meetings must be scheduled when it is reasonably possible for the public to attend.

(4) If subjects as set out in subsection (6) are to be discussed at a meeting, the meeting must first be convened as a public meeting and the decision of whether to hold a closed meeting to discuss matters set out in subsection (6) must be determined by a majority vote of the body.

(5) Where possible and to the extent that public participation is not designed to obstruct, hinder or otherwise impede the proceedings, the convenor of the meeting may allocate time at the end of the agenda for public questions and comments.

(6) The following subjects may be discussed in closed session-

- (a) matters, the immediate public knowledge of which would have an

adverse effect upon the finances of government;

- (b) subjects that might tend to prejudice the reputation and character of any person, provided however that the affected person may request a public discussion;
- (c) matters which are administrative and address the management and operation of health care establishments;
- (d) matters which by law are required to be kept confidential subject to the provisions of national legislation governing the disclosure of information;
- (e) individual health care user issues, protected by confidentiality and privilege, are to be discussed; and
- (f) disciplinary proceedings to address an employee or employer grievance.

Part XXI

Hospital boards, ambulance and emergency medical services Board, clinic and community health centre committees, Health technical committees and forums

Hospital boards

62. The Minister must-

- (a) appoint a board for each public hospital within the Province;
- (b) establish terms of reference which must be available, on request, to members of the public; and
- (c) make regulations to provide for the establishment, membership and functions of public hospital boards established in terms of paragraph (a).

Ambulance and Emergency Medical Services Board

63. The Minister must-

- (a) appoint the Ambulance and Emergency Medical Services Board within the Province and must establish terms of reference which must be available, on request, to members of the public; and
- (b) make regulations to provide for the establishment, membership and functions of the Ambulance and Emergency Medical Services Board established in terms of paragraph (a).

Clinic and community health centre committees

64. Each district health authority must-

- (a) appoint a committee for each public sector clinic and community health centre within the Province and must establish terms of reference which must be available, on request, to members of the public; and
- (b) make regulations to provide for the establishment, membership and functions of public sector clinic and community health centre committees established in terms of paragraph (a).

Membership of hospital boards, Ambulance and Emergency Medical Services Board and clinic and community Health centre committees

65. (1) Membership of hospital boards, the Ambulance and Emergency Medical Services Board and clinic and community health centre committees must-

- (a) be representative of the Province, with appointment practices or selection procedures based on the needs of the Ambulance and Emergency Medical Services Board, hospitals, clinics and community health centres;
- (b) be based on objectivity and fairness; and
- (c) consider the need to redress the imbalances of the past with broad representation.

(2) No person employed by the Department or independent contractor providing services to and remunerated by the Department may, except by virtue of his or her office, serve on any hospital board, the Ambulance and Emergency Medical Services Board or clinic and community health centre committee.

Health technical committees and forums

66. (1) The Minister may establish any health technical committee or forum, with the terms of reference of any committee or forum available, on request, to members of the public.

(2) The Minister must establish and determine terms of reference for any health technical committee or forum established in terms of subsection (1) and the terms of reference must provide for the establishment, membership and functions of the health technical committee or forum.

(3) (a) Membership of any health technical committee or forum established in terms of subsection (1) must-

- (i) be representative of the Province, with appointment practices or selection procedures based on the needs of the health technical committee or forum; and
- (ii) be based on objectivity and fairness.

(b) A person employed by the Department or independent contractor providing services to and remunerated by the Department may not, except by virtue of his or her office, serve on any health technical committee or forum.

(4) Unless otherwise specified in the published terms of reference establishing a health technical committee or forum, the duration of the entity must be no more than one year and the terms of reference for each must specify the duration of the entity.

Mandatory declaration of interests and conflict of interests by members of hospital boards, Ambulance and Emergency Medical Services Board, clinic and community health centre committees, health technical committees or forums

67. (1) (a) A member of any public hospital board, the Ambulance and Emergency Medical Services Board or public sector clinic or community health centre committee, health technical committee or forum appointed by the Minister or applicable district health authority may not use his or her appointed position to promote any special financial or other interest, including but not limited to the interests of any individual, company or other entity.

(b) Members of each public hospital board, the Ambulance and Emergency Medical Services Board, public sector clinic or community health centre committee, health technical committee or forum must be responsible for representing the interests of the Department and the Province.

(2) Every member of any public hospital board, the Ambulance and Emergency Medical Services Board, public sector clinic or community health centre committee, health technical committee or forum appointed by the Minister or applicable district health authority in terms of sections 62(a), 63(a), 64(a), 66(1) and (3), respectively, must, within 30 days of

his or her appointment, submit to the Minister or applicable district health authority a written declaration of all financial or other interests which are or could be related to or in conflict with the appointment.

(3) (a) The required declaration of all financial and other interests by any member of any board, committee or forum contemplated in subsection (2) must include all existing or reasonably foreseeable future financial or other interests in all matters related to health and the provision of health services.

(b) The declaration of interest in terms of paragraph (a) must include but not be limited to all interests relating to the rendering of health care services, constructing or maintaining health care establishments and the provision of equipment or supplies to any health care establishment.

(4) (a) Where financial or other interests in terms of subsection (3) of any member of any board, committee or forum contemplated in subsection (2) change during the term of his or her appointment, the member is required to submit a written notice of change of financial or other interest relating to the integrated provincial health care network.

(b) A written notice of change of declaration of financial or other interests in terms of paragraph (a) relating to the integrated provincial health care network must be submitted to the Minister or applicable district health authority within ten working days from the date of the change of financial or other interest.

(5) (a) The Minister may take action against any member of any board, committee or forum contemplated in subsection (2) who fails to submit the required declaration of interests in terms of subsection (3) or who fails to advise the Minister or applicable district health authority timeously of any change of financial or other interests in terms of subsection (4).

(b) In the event of failure to submit any full and timeous declaration of interests in terms of this section, the Minister or the applicable district health authority may terminate or take any other appropriate action against any member of any board, committee or forum who fails to declare his or her interests in all matters related to health and the provision of health services.

Part XXII

ENVIRONMENTAL HEALTH

Environmental health

68. (1) The Minister may, to realise the intent of section 24(a) of the Constitution, make regulations to determine provincial environmental health standards and the scope of authority, responsibilities and procedures for environmental health officers.

(2) (a) Where an environmental health officer has reasonable grounds to suspect that conditions exist that are detrimental to health or likely to cause a health nuisance or that there is a health nuisance, the environmental health officer must-

(i) investigate and in the event of the environmental health officer determining that a health nuisance exists, satisfy himself or herself as to the identity of the person or persons responsible for the health nuisance; and

(ii) issue a compliance notice;

(b) the compliance notice issued in terms of paragraph (a) must instruct the responsible person to-

(i) remedy the condition or activity causing the health nuisance at his, her or its cost; or

- (ii) reimburse the Department and, where relevant, the municipal council for reasonable costs incurred by the Department to investigate and take corrective action for the condition or activity; and

(c) a person aggrieved by a determination or instruction in terms of paragraph (a) or (b), 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.

(3) An environmental health officer must treat each investigation and all information obtained in the performance of his or her duties in terms of this Act as confidential.

(4) During an inspection, an environmental health officer may be accompanied by an interpreter or any other person reasonably required to assist in conducting the inspection, or both.

Co-operation with environmental health officers

69. A person who is questioned by an environmental health officer in terms of matters regulated in this Act must answer truthfully and to the best of his or her ability.

Compliance notices

70. (1) An environmental health officer who is satisfied that there has been compliance with a notice issued in terms of section 68(2)(a) must issue a certificate to that effect.

(2) A compliance notice remains in force until the environmental health officer issues a compliance certificate in respect of that notice .

(3) A compliance notice must set out-

- (a) the provision which has not been complied with;
- (b) any steps that are required to be taken and the period within which those steps are to be taken; and
- (c) any penalty which may be imposed in terms of this Act.

Miscellaneous provisions relating to environmental health officers, inspections and compliance procedures

71. (1) The provisions of this Act apply to any person or body, including any organ of state.

(2) Section 68 applies in respect of-

- (a) any premises;
- (b) any person or thing on or in any premises; and
- (c) the owner or occupier of any premises or thing.

(3) The powers provided for in this Part are in addition to any power conferred on an environmental health officer in terms of any other law.

(4) For purposes of this Act, the head of any national, provincial or municipal department is deemed to be-

- (a) the owner and occupier of any premises that the Department occupies or uses to the exclusion of any other person; and
- (b) the employer of the persons in the service of that department if, as an employer, the department-
 - (i) bears any duty imposed by this Act; or

- (ii) exercises any power conferred by this Act.

Offences

72. A person who-

- (a) obstructs or hinders an environmental health officer who is carrying out a duty under this Act;
- (b) fails or refuses to provide an environmental health officer with any information that the person is required to provide in terms of this Part;
- (c) knowingly gives false or misleading information to an environmental health officer;
- (d) unlawfully prevents the owner or occupier of any premises or a person working for the owner or occupier from entering premises to comply with a requirement of this Act;
- (e) pretends to be an environmental health officer;
- (f) falsely alters any documentation issued or obtained in terms of this Act;
- (g) conducts an inspection in a manner which is contrary to the provisions of this Act;
- (h) in the performance of any function or exercise of any power in terms of this Act, acquires information relating to the financial or business affairs of any person and discloses that information except if-
 - (i) a person requires the information to perform a function or exercise a power in terms of this Part;
 - (ii) the disclosure is ordered by a court of law; or
 - (iii) the disclosure is in compliance with any provisions of any law, commits an offence.

Environmental health regulations

73. The Minister may make regulations on matters related to public health in respect of-

- (a) production, distribution, transportation, storage, sale, composition and quality of milk, dairy produce and foodstuffs;
- (b) suitability of water for human consumption and use;
- (c) control of air, water, soil and noise pollution;
- (d) management and disposal of rainwater and waste water;
- (e) disposal of refuse and other waste products;
- (f) storage, handling, removal and transportation of sewage, excrement, solid and liquid waste;
- (g) hazardous and medical waste products;
- (h) health impact of any activity or proposed building activity, whether of a residential, commercial or industrial nature;
- (i) evacuation or closure of any premises on which a condition exists which constitutes a danger to health or safety;

- (j) vehicles designed for the transport of foodstuffs, dangerous chemicals, hazardous substances and dead bodies;
- (k) hygiene and sanitation of all public premises and amenities;
- (l) public and private mortuaries and Schools of Anatomy;
- (m) any activity, occupation, business or trade, including premises or processes, which have the potential to cause a health nuisance or danger to health;
- (n) control, prevention or prohibition of conditions that are likely to be health nuisances or detrimental to or dangerous to health;
- (o) prevention and control of infestation of any premises by rodents, insects, disease carriers or pests;
- (p) environmental health management and risk assessment;
- (q) development and implementation of environmental health programmes;
- (r) inspection procedures for environmental health officers to monitor and enforce compliance with this Act; and
- (s) any condition or activity on any premises which is likely to constitute a danger to health or safety.

Part XXIII

Health ombudsperson

Health ombudsperson

74. (1) The Minister may appoint an Ombudsperson to receive and investigate complaints within the integrated provincial health care network and to mediate complaints and disputes. (2) The Ombudsperson must report his or her findings to the Head of Department.

(3) The Minister must make regulations to determine the scope of authority, responsibilities and procedures for an Ombudsperson.

Part XXIV

Regulations

Regulations

75. (1) The Minister may make regulations consistent with this Act relating to any matter that-

- (a) in terms of this Act may or must be prescribed; and
- (b) the Minister considers necessary or expedient to prescribe or have governed by regulation to achieve the objectives of this Act.

(2) (a) The Minister must publish draft regulations in the Gazette and invite public comments.

(b) The Minister may, as he or she deems necessary, hold public meetings to discuss proposed regulations.

(c) All written comments and testimony on proposed regulations must be considered by the Minister.

Part XXV

Public health administration and good governance

Public health administration and good governance principles

76. Administration of the integrated provincial health care network must be governed by the principles enshrined in section 195 of the Constitution and any national or provincial policy or legislation addressing good governance and public service delivery.

Part XXVI

Departmental liability

Limitation of liability

77. The State Liability Act, 1957 (Act No. 20 of 1957), applies to each body established in terms of this Act but a reference in that Act to the Minister of the Department concerned" must be interpreted as referring to the Minister or head of the relevant body.

Part XXVII

Offences and penalties

Offences

78. (1) A person who-

- (a) contravenes or fails to comply with any provision of this Act;
- (b) fails to comply with any notice served upon him or her in terms of this Act; or
- (c) willfully obstructs, resists or hinders any officer in the lawful exercise of any power conferred under this Act, commits an offence.

(2) Every fine or estreated bail for a contravention of or failure to comply with this Act collected by-

- (a) the Province must be paid into the Revenue Fund; and
- (b) a municipality must be paid to the Municipal Council.

Penalties

79. Any person convicted of an offence in terms of this Act must be liable to a fine or to imprisonment not exceeding five years, or to both a fine and imprisonment.

Part XXVIII

Service of notice

Service of notice

80. Notice required under this Act to the owner or occupier of any property may either be served personally upon him or her or his or her known representative, or served-

- (a) in the case of an owner, by registered post, to a known address of the owner or of his or her representative, or if there is no known address, by registered post to the occupier, or if there is no person in occupation, by being affixed in a conspicuous place on the property; or
- (b) in the case of an occupier, by registered post to his or her known address or to the address of the property or to the occupier's known representative.

Part XXIX

Repeal of laws and savings

Repeal of laws and savings

81. (1) The laws referred to in the Schedule are hereby repealed to the extent set out in that Schedule.

(2) Notwithstanding the repeal of the laws in whole or in part referred to in subsection (1)-

- (a) anything done under such law which is capable of being done under a provision of this Act, must be deemed to have been done under such provision of this Act; and
- (b) any proceedings commenced under such law, must be continued and concluded as if such law had not been repealed.

Part XXX

Short title and commencement date

Short title and commencement date

82. This Act is called the KwaZulu-Natal Health Act, 2000, and commences on a date determined by the Minister by notice in the Gazette.

SCHEDULE

No. and Year of Law	Title or Subject	Extent of Repeal or Amendment
No. 17 of 1946	Provincial Hospitals Ordinance, 1946	The whole.
No. 13 of 1955	Provincial Hospitals and General Services Pensions Ordinance, 1955	The whole.
No. 13 of 1961	Provincial Hospitals Ordinance, 1961	The whole.
No. 269 of 1968	Sanitary Regulations in Rural Black Areas, 1968	The whole.
No. 5 of 1985	Provincial Hospitals Amendment Ordinance, 1985	The whole.
No. 11 of 1986	KwaZulu Medical and Surgical Treatment Act, 1986	The whole.