

ACT

To provide for the establishment of a health system that is compatible with the structured uniform national standards; to establish health governance structures; to bring the provincial health legislation in line with Chapter 2 of the National Health Act, 2003 (Act No. 61 of 2003) and to replace Chapter 4 of the National Act in as far as it deals with health issues that are dealt with in this Act; to repeal the Free State Health Act, 1999 (Act No. 8 of 1999); and to provide for matters incidental thereto.

WHEREAS everyone has the constitutional right to have access to health care services;

AND WHEREAS the Free State Provincial Government is committed to ensure a healthy and self-reliant Free State community by providing affordable, effective, integrated and comprehensive health services,

BE IT THEREFORE ENACTED by the Free State Provincial Legislature as follows -

(English text assented to and signed by the Premier.)

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CHAPTER 1 INTRODUCTORY PROVISIONS

Definitions

- 30 1. In this Act, unless the context indicates otherwise -
- “**academic health services complex**” means a group of health facilities utilised for the provision of health services, training, education and research in collaboration with an institution of higher education;
- 35 “**ambulance**” means ambulance as defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989);
- 40 “**central hospital**” means a public hospital designated by the Minister to provide health services to users from more than one Province;
- “**chief executive officer**” means the head of a hospital;
- 45 “**communicable disease**” means a disease resulting from an infection due to pathogenic agents or toxins generated by the infection, following the direct or indirect transmission of the agents from the source to the host;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Department**” means the Department of Health in the Province;

“**Director General**” means the head of the national department;

5 “**district health system**” means the system contemplated in section 31 of this Act;

“**District Health Council**” means a council established in terms of section 33 of this Act;

10 “**district manager**” means the head of a health district;

“**Head of Department**” means the Head of the Department of Health in the Province;

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

“**health care provider**” means a person providing health services in terms of any law, including in terms of the -

20 (a) Allied Health Professions Act, 1982 (Act No. 63 of 1982);

(b) Health Professions Act, 1974 (Act No. 56 of 1974);

25 (c) Nursing Act, 1978 (Act No. 33 of 2005);

(d) Pharmacy Act, 1974 (Act No. 53 of 1974); and

(e) Dental Technicians Act, 1979 (Act No. 19 of 1979);

30 “**health district**” means a district whose boundaries have been demarcated in the Demarcation Act no 27 of 1998;

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

40 “**health facility**” means a whole or part of the public or private institution, building or place where persons receive treatment, diagnostic or therapeutic interventions or other health services and include facilities such as a clinic, mobile clinic, community health centre or hospital;

“**health nuisance**” means a situation, or state of affairs, that endangers life or health or adversely affects the well-being of a person or community;

“**health officer**” means a person appointed as a health officer under section 47 of this Act or designated as such in terms of that section;

“**health research**” includes any research which contributes to knowledge of -

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- (a) the biological, clinical, psychological or social processes in human beings;
 - (b) improved methods for the provision of health services;
 - 10 (c) human pathology;
 - (d) the causes of disease;
 - (e) the effects of the environment on the human body;
 - 15 (f) the development or new application of pharmaceuticals, medicines and related substances; and
 - (g) the development of new applications of health technology;
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“**health research ethics committee**” means a committee established in terms of section 43 of this Act;

“**health sciences**” means a group of disciplines of applied science dealing with human health;

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“**health services**” means -

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- (a) health care services, including reproductive health care and emergency medical treatment, contemplated in section 27 of the Constitution;
 - (b) basic nutrition and basic health care services contemplated in section 28(1)(c) of the Constitution;
 - 35 (c) medical treatment contemplated in section 35(2)(e) of the Constitution; and
 - (d) municipal health services;

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

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“**higher education institution**” means an institution as contemplated in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);

“**hospital manager**” means the head of a hospital;

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“**Inspectorate for Health Establishments**” means a inspectorate established in terms of section 56;

“**MEC**” means the Member of the Executive Council responsible for Health in the Province;

5 “**medical practitioner**” means a person who is qualified and registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);

“**Minister**” means the National Cabinet Minister responsible for Health;

10 “**municipal council**” means a municipal council contemplated in section 157 (1) of the Constitution;

“**municipal health services**” for the purposes of this Act, includes -

15 (a) water quality monitoring;

(b) food control;

(c) waste management;

20 (d) health surveillance of premises;

(e) surveillance and prevention of communicable diseases, excluding immunisations;

25 (f) vector control;

(g) environmental pollution control;

30 (h) disposal of the dead; and

(i) chemical safety,

but excludes port health, malaria control and control of hazardous substances;

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

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

40 “**Ombudsperson**” means a person who is appointed in terms of section 18 of this Act;

“**pollution**” means pollution as defined in section 1 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

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“**prescribed**” means prescribed by regulation under section 59;

5 “**primary health care**” means essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally accessible to individuals and families in the community through their full participation and at a cost that the community and the country can afford to maintain in the spirit of self reliance and self-determination;

“**primary health care services**” means such health services as may be prescribed by the Minister to be primary health care services;

10 “**private health establishment**” means a health establishment that is not owned or controlled by an organ of state;

“**Province**” means the Free State Province;

15 “**Provincial Health Consultative Forum**” means a committee established in terms of section 27 of this Act;

20 “**Provincial Health Council**” means the body established in terms of section 23 of this Act;

“**public health establishment**” means a health establishment that is owned or controlled by an organ of state;

25 “**SALGA**” means the South African Local Government Association recognised in terms of section 2(1)(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997);

30 “**SITA**” means the State Information and Technology Agency that is established in terms of the SITA Act No. 88 of 1998;

“**tertiary education institutions**” means any institution that provides higher education on a full-time, part-time or distance basis;

35 “**user**” means the person receiving treatment in a health establishment.

Purpose of this Act

2. (1) The purpose of this Act is to provide for an effective health care and health governance system for the Province, and –
- 40 (2) to fulfil the primary objectives of this Act, which are to -
- (a) create and maintain a provincial health system which –
- 45 (i) is an integral part of a national health system;
- (ii) provide acceptable and equitable health services to the population of the Province;

- (b) create and maintain a district health system which –
- (i) renders comprehensive essential health services to the population in that district;
- (ii) promotes co-operative governance between the provincial government and the local municipalities; and
- (iii) is an integral part of the provincial health system;
- (c) ensures the provision of efficient health services and to provide for related health matters.
- (3) This Act replaces Chapter 4 of the National Health Act with regard to matters dealt with in this Act.

Interpretation of this Act

3. A person applying this Act must interpret its provisions -
- (a) to give effect to its primary objectives;
- (b) in compliance with the National Act; and
- (c) having due regard to the rights and obligations that are enshrined in the Constitution.

CHAPTER 2

RIGHTS AND DUTIES OF USERS AND HEALTH CARE PERSONNEL

Emergency treatment

4. A health care provider, health worker or health establishment may not refuse a person emergency medical treatment.

User to have full knowledge

5. (1) Every health care provider must inform a user of -
- (a) the user's health status except in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to the best interests of the user;
- (b) the range of diagnostic procedures and treatment options generally available to the user;
- (c) the benefits, risks, costs and consequences generally associated with each treatment option; and

(d) the user's right to refuse health services and explain the implications, risks, obligations of such refusal.

5 (2) A health care provider must, where possible, in order to comply with the provisions of subsection (1), use a language that the user understands and a manner which takes into account the user's level of literacy.

Consent of user

10 6. (1) Subject to section 7, a health service may not be provided to a user without the user's informed consent, unless -

15 (a) the user is unable to give informed consent and such consent is given by a person -

(i) mandated by the user in writing to grant consent on his or her behalf; or

20 (ii) authorised to give such consent in terms of any law or court order;

25 (b) the user is unable to give informed consent and no person is mandated or authorised to give such consent, and the consent is given by the spouse or partner of the user or, in the absence of such spouse or partner, a parent, grandparent, an adult child or a brother or a sister of the user, in the specific order as listed;

30 (c) the provision of a health service without informed consent is authorised in terms of a law or a court order;

(d) failure to treat the user, or group of people which includes the user, will result in a serious risk to public health; or

35 (e) a delay in the provision of the health service to the user might result in his or her death or irreversible damage to his or her health and the user has not expressly, impliedly or by conduct refused that service.

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

45 (3) For the purposes of this section 'informed consent' means consent for the provision of a specified health service given by a person with legal capacity to do so and who has been informed as contemplated in section 5.

Participation in decisions

7. (1) A user has the right to participate in a decision affecting his or her personal health and treatment.

(2) (a) If the informed consent required by section 6 is given by a person other than the user, such person must, if possible, consult the user before giving the required consent.

5 (b) A user who is capable of understanding must be informed as contemplated in section 5 even if he or she lacks the legal capacity to give the informed consent required by section 6.

10 (3) If a user is unable to participate in a decision affecting his or her personal health and treatment, he or she must be informed as contemplated in section 5 after the provision of the health service in question unless the disclosure of such information would be contrary to the user's best interest.

15 Health service without consent

8. (1) Subject to any applicable law, where a user is admitted to a health establishment without his or her consent, the health establishment must notify the Head of Department within 48 hours after the user was admitted of the user's admission and must submit such other information as may be prescribed.

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(2) If the 48-hour-period contemplated in subsection (1) expires on a Saturday, Sunday or public holiday, the health establishment must notify the Head of Department of the user's admission and must submit the other information contemplated in subsection (1) at any time before noon of the next day following a Saturday, Sunday or public holiday.

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(3) Subsection (1) does not apply if the user consents to the provision of a health service in that health establishment within 24 hours of admission.

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Discharge reports

9. (1) A health care provider must provide a user with a discharge report at the time of the discharge of the user from a health establishment containing such information as may be prescribed.

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(2) In prescribing the information contemplated in subsection (1), the MEC must have regard to -

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(a) the nature of the health service rendered;

(b) the prognosis for the user; and

(c) the need for follow-up treatment.

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(3) A discharge report provided to a user may be verbal in the case of an outpatient, but must be in writing in the case of an inpatient.

Health services for experimental or research purposes

- 5 10. (1) Subject to subsection (2), before a health establishment can provide a health service for experimental or research purposes to a user, the health establishment must inform the user in the prescribed manner that the health service is for experimental or research purposes or part of an experimental or research project.
- 10 (2) A health establishment may not provide any health service to a user for a purpose contemplated in subsection (1) unless the user, the health care provider primarily responsible for the user's treatment, the head of the health establishment in question and the relevant health research ethics committee, or other person to whom that authority has been delegated, has given prior written authorisation for the provision of the health service in question.
- 15

Duty to disseminate information

- 20 11. The provincial department, District Health Council and a municipality must ensure that appropriate, adequate and comprehensive information is disseminated on the health services for which they are responsible, which must include -
- 25 (a) the types and availability of health services;
- (b) the organisation of health services;
- (c) operating schedules and timetables of visits;
- 30 (d) procedures for access to the health services;
- (e) other aspects of health services which may be of use to the public;
- (f) procedures for laying complaints; and
- 35 (g) the rights and duties of users and health care providers.

Obligation to keep record

- 40 12. Subject to the Provincial Archives Act, 1999 (Act No. 4 of 1999), and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the person in charge of a health establishment must ensure that a health record containing such information as may be prescribed is created and maintained at that health establishment for every user of health services.

Confidentiality

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13. (1) Information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment is confidential.
- (2) Subject to section 14, a person may not disclose information contemplated in subsection (1) unless -
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- (a) the user consents to that disclosure in writing;
- (b) a court order or any law requires that disclosure; or
- (c) non-disclosure of the information represents a serious threat to public health.
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Access to health records

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14. (1) A health worker or a health care provider that has access to the health records of a user may disclose such personal information to other person, health care provider or health establishment as is necessary for legitimate purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interests of the user.
- 25
- (2) For the purpose of this section, 'personal information' means personal information as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- (3) Access to health care records is subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
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Access to health records by health care provider

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15. (1) A health care provider may examine a user's health records for the purposes of -
- (a) treatment with the authorisation of the user; or
- (b) study, teaching or research with the authorisation of the user, head of the health establishment concerned and the relevant health research ethics committee.
- 40
- (2) If the study, teaching or research contemplated in subsection (1)(b) reflects or obtains no information as to the identity of the user concerned, it is not necessary to obtain the authorisations contemplated in that subsection.

Protection of health records

- 5 16. (1) The person in charge of a health establishment in possession of a user's health records must set up control measures to prevent unauthorised access to those records and to the storage facility in which, or system by which, records are kept.
- (2) A person who -
- 10 (a) fails to perform a duty imposed on them in terms of subsection (1);
- (b) falsifies a record by adding to or deleting or changing information contained in that record;
- 15 (c) creates, changes or destroys a record without authority to do so;
- (d) fails to create or change a record when properly required to do so;
- 20 (e) provides false information with the intent that it be included in a record;
- (f) without authority, copies any part of a record;
- 25 (g) without authority, connects the personal identification elements of a user's record with any element of that record that concerns the user's condition, treatment or history;
- 30 (h) gains unauthorised access to a record or record-keeping system, including intercepting information being transmitted from one person, or one part of a record-keeping system, to another;
- (i) without authority, connects a part of a computer or other electronic system on which records are kept to -
- 35 (i) another computer or other electronic system; or
- (ii) a terminal or other installation connected to or forming part of another computer or other electronic system; or
- 40 (j) without authority, modifies or impairs the operation of -
- (i) part of the operating system of a computer or other electronic system on which a user's records are kept; or

- (ii) part of the programme used to record, store, retrieve or display information on a computer or other electronic system on which a user's records are kept,

5 commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

10 Laying of complaints

17. (1) A person may lay a complaint about the manner in which he or she was treated at a health establishment and have the complaint investigated.

15 (2) The MEC and every municipal council must establish a procedure for the laying of complaints within those areas of the health system for which they are responsible.

(3) The procedures for laying complaints must -

20 (a) be displayed by all health establishments in a manner that is visible to a person entering the establishment and the procedure must be communicated to users on a regular basis;

25 (b) in the case of a private health establishment, allow for the laying of complaints with the head of the relevant establishment;

(c) include provisions for the acceptance and acknowledgment of every complaint directed to a health establishment, whether or not it falls within the jurisdiction or authority of that establishment; and

30 (d) allow for the referral of a complaint that is not within the jurisdiction or authority of the health establishment to the appropriate body or authority.

35 (4) In laying a complaint, the person contemplated in subsection (1) must follow the procedure established by the MEC or the relevant municipal council, as the case may be.

40 Ombudsperson

18. (1) The office of the Ombudsperson is hereby established.

45 (2) The MEC may, by notice in the *Provincial Gazette*, determine the manner of appointment of the Ombudsperson, the remuneration, the functions and powers, term of office, removal from office, as well as other matters that are incidental thereto.

(3) The Ombudsperson must resolve all the complaints that are referred to the office that are raised in terms of the provisions of this Act.

- (4) The health establishment must advise the user whose complaint has not been resolved to refer the complaint to the Ombudsperson.

Duties of users

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19. A user must -

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- (a) adhere to the rules of the health establishment when receiving treatment or using health services at the health establishment;

- (b) subject to section 13 provide the health care provider with accurate information pertaining to his or her health status and co-operate with health care providers when using health services;

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- (c) treat health care providers and health workers with dignity and respect; and

- (d) sign a discharge certificate or release of liability if he or she refuses to accept recommended treatment.

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Rights of health care personnel

20. (1) Health care personnel may not be unfairly discriminated against on account of their health status.

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- (2) Despite subsection (1) but subject to any applicable law, the head of the health establishment concerned may in accordance with a guideline determined by the MEC impose conditions on the service that may be rendered by a health care provider or health worker on the basis of his or her health status.

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(3) Subject to any applicable law, every health establishment must implement measures to minimise -

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- (a) injury or damage to the person and property of health care personnel working at that establishment; and

- (b) disease transmission.

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(4) Subject to subsection (3), a health care provider may refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her.

Referral from one public health establishment to another

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21. (1) Subject to this Act, a user may attend a public health establishment for the purposes of receiving health services as may be determined by the MEC.

- 5 (2) If a public health establishment is not capable of providing the necessary treatment or care, the public health establishment in question must transfer the user concerned to an appropriate public health establishment which is capable of providing the necessary treatment or care in such manner and on such terms as may be determined by the MEC.

CHAPTER 3

10 PROVINCIAL HEALTH SERVICES AND GENERAL FUNCTIONS OF THE DEPARTMENT

Provincial Health Services and general functions of the Department

- 15 22. (1) The MEC must ensure that national health policy, norms and standards are uniformly implemented throughout the entire Province.
- (2) (a) The Head of Department must prepare strategic, medium term health and human resources plans annually for the exercise of the powers and the performance of the duties of the Department.
- 20 (b) The health plans referred to in subsection (a) must form the basis of -
- (i) the annual budget as required by the national department responsible for finance and state expenditure; and
- 25 (ii) any other governmental planning exercise as may be required by any other law.
- (c) The Head of Department must integrate the health plans of the Department annually and submit the integrated health plans to the Provincial Health Council.
- 30 (3) The Head of Department must, in accordance with national health policy and in line with the provincial health policy -
- 35 (a) provide specialised hospital services;
- (b) plan and manage the provincial health information system;
- 40 (c) participate in interprovincial and intersectoral co-ordination and collaboration;
- (d) co-ordinate the funding and financial management of District Health Councils;
- 45 (e) provide technical and logistical support to District Health Councils;

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- (f) plan, co-ordinate and monitor health services and must evaluate the rendering of health services;
- (g) co-ordinate health and medical services during provincial disasters;
- (h) conduct or facilitate research on health and health services;
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- (i) plan, manage and develop human resources for the rendering of health services;
- (j) plan the development of public and other health establishments and health agencies;
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- (k) control and manage the cost and financing of public health establishments and public health agencies;
- (l) facilitate and promote the provision of port health services, comprehensive primary health services and community hospital services;
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- (m) provide and co-ordinate emergency medical services and forensic pathology, forensic clinical medicines and related services, including the provision of medico-legal mortuaries and medico-legal services;
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- (n) control the quality of all health services and facilities;
- (o) provide health services contemplated by specific provincial health service programmes;
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- (p) provide and maintain equipment, vehicles and health care facilities in the public sector;
- (q) consult with communities regarding health matters;
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- (r) provide occupational health services;
- (s) promote health and healthy lifestyles;
- 40
- (t) promote community participation in the planning, provision and evaluation of health services;
- (u) provide environmental pollution control services;
- (v) ensure health systems research; and

- (w) provide services for the management, prevention and control of communicable and non-communicable diseases.

CHAPTER 4

5

HEALTH GOVERNANCE STRUCTURES

Establishment and composition of Provincial Health Council

- 10 **23.** (1) A council known as the Provincial Health Council is hereby established.
- (2) The Provincial Health Council consists of -
- 15 (a) the MEC, or his or her nominee, who acts as chairperson;
- (b) a councillor from each metropolitan and/or municipality in the Province;
- (c) the Head of the Department of Health;
- 20 (d) the Head of the Department responsible for Local Government or his/her nominee;
- (e) the chairperson of South African Local Government Association in the Province or his/her nominee; and
- 25 (f) additional members appointed by the MEC.
- (3) The MEC may by notice in the *Provincial Gazette* determine the procedure in terms of which the members as envisaged in subsection (2)(f) may be appointed and nominated.
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Functions of Provincial Health Council

- 35 **24.** (1) A Provincial Health Council must advise the MEC on –
- (a) policy matters that will protect, promote, improve and maintain the health of the population within the Province, including -
- 40 (i) responsibilities for health within the Province by individuals and the public and private sector;
- (ii) targets, priorities, norms and standards within the Province relating to the equitable provision and financing of health services;
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- (iii) efficient co-ordination of health services within the Province and between neighbouring Provinces;
- (iv) human resources planning, production, management and development;
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- (v) development, procurement and use of health technology within the Province;
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- (vi) equitable financial mechanisms for the funding of health services within the Province;
- (vii) the design and implementation of programmes within the Province to provide for effective referral of users between health establishments or health care providers or to enable integration of public and private health establishments;
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- (viii) financial and other assistance received by the Province from foreign governments, inter-governmental or non-governmental organisations, the conditions applicable to receiving such assistance and the mechanisms to ensure compliance with these conditions;
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- (ix) epidemiological surveillance and monitoring of provincial trends with regard to major diseases and risk factors for disease; and
- (x) obtaining, processing and use of statistical returns;
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- (b) proposed legislation relating to health matters before it is introduced in the Free State Provincial legislature;
- (c) norms and standards for the establishment of health establishments;
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- (d) guidelines for the management of health districts;
- (e) the implementation of national and provincial health policies; and
- 40
- (f) the performance of any other function determined by the MEC.
- (2) A Provincial Health Council may determine the time frames, guidelines and the format for the preparation of district health plans within its jurisdiction.

- (3) A Provincial Health Council may consult with or receive representations from any person, organisation, institution or authority.
- (4) The Provincial Health Council may create one or more committees to advise it on any matter.

Meetings of the Provincial Health Council

25. (1) The MEC or his/her nominee must preside over the meetings of the Provincial Health Council.
- (2) A quorum of a Provincial Health Council is the majority of the members present at the meeting.
- (3) The Provincial Health Council may determine its rules and procedures governing the meetings.
- (4) The Provincial Health Council must meet at least once in every three months.
- (5) The chairperson has a casting, as well as a deliberative vote.
- (6) Members of the Provincial Health Council who are not in the employ of the State must be paid reasonable subsistence and travelling expenses or allowances for attending the meetings of the Council or committees that are established by the Council.

Term of office of the Provincial Health Council

26. (1) The term of office of the members of the Provincial Health Council is three years.
- (2) A member may be reappointed for a second term after the expiry of the first term.
- (3) The MEC may terminate membership of a member if a member –
- (a) has been absent from more than two consecutive meetings without a written apology;
- (b) is declared unable to manage his or her own affairs by a court of law;
- (c) is convicted by a court of law and sentenced to a prison term without an option of a fine;
- (d) resigns by giving thirty days written notice;
- (e) is declared insolvent and is not rehabilitated; and

- (f) if, in the opinion of the MEC, a good cause is shown for terminating membership of the member.

Establishment of Provincial Consultative Health Forum

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27. A Provincial Consultative Health Forum is hereby established.

Composition of the Provincial Consultative Health Forum

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28. The Provincial Consultative Health Forum consists of representatives from the Provincial Health Department and health organisations at the provincial and municipal level and/or all the relevant stakeholders.

Functions of the Provincial Consultative Health Forum

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29. The Provincial Consultative Health Forum must, at the request of the MEC –

- (a) convene public forums;
- (b) identify challenges and solutions to health care in the Province;
- (c) perform an act that is necessary to promote the objectives of this Act; and
- (d) promote and facilitate interaction, communication and sharing of information on provincial health issues.

25

Meetings of the Provincial Consultative Health Forum

30. The Provincial Consultative Health Forum must meet at least once in every twelve months.

30

CHAPTER 5 DISTRICT HEALTH SYSTEM

Establishment of district health system

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31. (1) A district health system is hereby established.
- (2) The district health system consists of various health districts.

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Division of health districts into subdistricts

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

45

(b) Details of a division, determination or change must be published in the *Provincial Gazette*.

5 (2) The MECs contemplated in subsection (1) must have due regard to the principles laid down in sections 27 and 195 of the Constitution and the criteria laid down in section 25 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998).

10 Establishment of District Health Councils

10 33. (1) The MEC, after consultation with the MEC responsible for local government in the Province and the municipal council of the metropolitan and/or district municipalities, must establish a District Health Council for every health district in the Province.

15

(2) The District Health Council consists of -

20 (i) a member of the metropolitan and/or district municipal council situated in the health district in question, nominated by the relevant council and is the chairperson of the District Health Council;

(ii) a member of the council of each local municipality within the health district, nominated by the members of the relevant council;

25

(iii) a person appointed by the MEC to represent him or her;

(iv) chairpersons of the district hospital boards;

30 (v) a representative from the non-governmental organisation consortium that deals with health matters;

(vi) a member from the traditional health practitioner's council;

35

(vii) district health manager as an *ex-officio* member.

(3) The District Health Council must -

40 (a) promote co-operative governance between itself and the District Health Councils in the Province;

(b) ensure co-ordination of planning, budgeting, provisioning and monitoring of all health services that affect residents of the health district for which the council was established; and

(c) advise the MEC, through the Provincial Health Councils, and the municipal council of the district municipality, on a matter regarding health or health services in the health district for which the council was established.

5

(4) A District Health Council may create one or more committees to advise it on any matter.

10

(5) The MEC must ensure that each health district and each health subdistrict is effectively managed.

Meetings of the District Health Council

15

34. (1) The chairperson of the District Health Council mentioned in section 33(2)(i) will preside over the meetings of the District Health Council.

(2) A quorum of a District Health Council is the majority of the member present at the meeting.

20

(3) The District Health Council may determine its rules and procedures governing the meetings.

(4) Must meet at least once in every three months.

25

(5) The chairperson has a casting, as well as a deliberative vote.

(6) Members of the District Health Council who are not in the employ of the state must be paid reasonable subsistence and travelling expenses or allowances for attending the meetings of the council or committees that are established by the council.

30

Term of office of members of the District Health Council

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35. (1) The term of office of the members of the District Health Council is three years.

(2) A member of the District Health Council whose term of office has expired may be reappointed or nominated for another term.

40

(3) MEC may terminate membership of a member if –

(a) a member absents himself or herself from two consecutive meetings without a written apology;

45

(b) a member is declared insolvent and is not rehabilitated;

(c) a member is declared unfit by a court to manage his or her own affairs;

- (d) a member resigns by giving thirty days written notice;
- (e) a member is convicted and sent to a prison term without an option of a fine.

5

- (4) The MEC may, on good cause shown, dissolve the District Health Council if –

10

- (a) The District Health Council fails to perform its functions;
- (b) it is in the interest of justice.

Preparation of health district plans

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36. (1) Each district and metropolitan health manager must within the provincial budget cycle develop and present to the District Health Council in question and the MEC a district health plan drawn up in accordance with national guidelines issued by the Director-General with due regard to national and provincial health policies and the requirements of the relevant integrated development plan prepared in terms of section 25 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

20

25

- (2) The MEC must ensure that each health district develops and implements a district human resource plan in accordance with national guidelines issued by the Director-General.

Budget and performance plans

30

37. (1) The MEC must, after consultation with the relevant District Health Council and the municipal council of the metropolitan or district municipality, approve a detailed budget and performance targets for health service in the health district to which both the provincial and municipal spheres of government must contribute.

35

- (2) The MEC must prescribe -

40

- (a) deadlock-breaking mechanisms for cases where agreement between the MEC and the municipal council cannot be reached on the budget and performance targets contemplated in section 37(1); and
- (b) corrective action to be taken if the agreement contemplated in section 37(2)(a) is breached.

Health services to be provided by municipalities

45

38. (1) Every metropolitan and/or district municipality must ensure that appropriate municipal health services are effectively and equitably provided in their respective areas.

- (2) The MEC must assign such health services to municipalities in the Province as contemplated in section 156(4) of the Constitution.
- (3) An agreement contemplated in section 156(4) of the Constitution must provide for -
- (a) the services to be rendered by the municipality;
 - (b) the resources that the MEC must make available;
 - (c) performance standards which must be used to monitor services rendered by the municipality; and
 - (d) conditions under which the agreement may be terminated.

Clinics and community health centre committees

- 39.** (1) The MEC must, after consultation with District Health Council, establish a clinic committee for a ward in which a clinic is situated.
- (2) The clinic committee must consist of -
- (a) a representative from the ward committee who is responsible for health issues, who will act as a chairperson of the committee;
 - (b) a representative nominated by an organisation of people with disabilities;
 - (c) a representative nominated by the local business community;
 - (d) the manager or senior official of the health facility which is situated in the ward;
 - (e) a representative registered with the traditional health practitioners council;
 - (f) two members of a community who use the clinic; and
 - (g) not more than three members who have expertise in health services appointed by the MEC or his/her nominee.
- (3) The clinic committee must -
- (a) advise the management of a health facility within its area of jurisdiction;

- 5 (b) investigate administrative complaints in respect of a health facility within its area of jurisdiction and make recommendations regarding the solutions of complaints to the District Health Council who must forward them to the MEC if the former is unable to address the complaints;
- (c) assist users in following the complaints procedures;
- 10 (d) review and approve local health delivery plans;
- (e) investigate health service delivery problems in respect of a health facility within its jurisdiction and make recommendations to the District Health Council who must forward them to the MEC if the former is unable to address the complaints; and
- 15 (f) liaise with and share information with other health organisations and facilities that are situated within the area of local municipality.
- 20 (4) (a) The term of office of a clinic committee is 3 years.
- (b) A member whose term of office has expired is eligible for re-appointment or re-nomination.
- 25 (c) The MEC may terminate a member's membership if a member –
- (i) is absent from two consecutive meetings without a written apology;
- 30 (ii) is declared to be unable to manage his or her own affairs by a court of law;
- (iii) is declared insolvent and is not rehabilitated;
- 35 (iv) resigns by giving thirty days written notice;
- (v) is convicted and sentenced to a prison term without an option of a fine.
- 40 (5) (a) The clinic committee must meet at least once a month.
- (b) The clinic committee must determine the rules governing the procedure at the meetings.
- 45 (c) The chairperson must determine the place and times of the meetings.
- (d) A quorum of the clinic committee is the majority of members present at the meeting.

Health services at non-health establishments and at public health establishments other than hospitals

- 5 40. The MEC may, by notice in the *Provincial Gazette*, make provision for health services at health establishments in the Province other than hospitals.

Relationship between public and private health establishments

- 10 41. (1) The Department or a municipality may enter into an agreement with any private practitioner, private health establishment or nongovernmental organisation in order to achieve any object of this Act.

- 15 (2) An agreement contemplated in subsection (1) must comply with the Public Finance Management Act, 1999 (Act No. 1 of 1999), or Municipal Finance Management Act, 2003 (Act No. 56 of 2003), whichever is relevant.

Obligations of private health establishments

- 20 42. Every private health establishment must maintain insurance cover sufficient to indemnify a user for damages that he or she might suffer as a consequence of a wrongful act by a member of its staff or its employees.

CHAPTER 6 PROVINCIAL HEALTH RESEARCH AND INFORMATION

Provincial Health Research Committee

- 30 43. (1) A committee to be known as the Provincial Health Research Committee is hereby established.

- (2) (a) The Provincial Health Research Committee consists of not more than ten persons, appointed by the MEC after consultation with the Provincial Health Council.

- 35 (b) A person appointed in terms of paragraph (a) -

- (i) serves for a term of not more than three years and may be reappointed; and

- 40 (ii) ceases to be a member on resignation or if requested by the MEC on good cause shown to resign.

- 45 (c) A vacancy in the Provincial Health Research Committee must be filled by the appointment of a person for the unexpired portion of the term of office of the member in whose place the person is appointed, and in the same manner in which the member was appointed in terms of paragraph (a).

- (3) The Provincial Health Research Committee must -
- (a) determine the health research to be carried out in the Province;
 - 5 (b) ensure that health research agendas and research resources focus on priority health problems;
 - (c) develop and advise the MEC on the application and implementation of an integrated national strategy for health research; and
 - 10 (d) coordinate the research activities of public health authorities.
- (4) The MEC must prescribe the manner in which the Provincial Health Research Committee must conduct its affairs and the procedure to be followed at meetings of the Committee, including the manner in which decisions must be taken.
- 15
- (5) A member of the Provincial Health Research Committee who is not in the full-time employment of the State must in respect of his or her service as a member be paid such necessary travelling and subsistence expenses and allowances as determined by the MEC.
- 20

Identification of health research priorities

- 25 **44.** (1) The Provincial Health Research Committee must identify and advise the MEC on health research priorities.
- (2) In identifying health research priorities, the Provincial Health Research Committee must have regard to -
- 30
- (a) the prevalence and effect of disease;
 - (b) the cost-effectiveness of interventions aimed at reducing the prevalence and effect of disease;
 - 35 (c) the availability of human and institutional resources for the implementation of an intervention at the level closest to the affected communities;
 - (d) the health needs of vulnerable groups such as woman, older persons, children and people with disabilities; and
 - 40 (e) the health needs of communities.

Provincial Health Information Systems Committee

45. (1) A committee known as the Provincial Health Information Committee is hereby established.

5

(2) The Provincial Health Information Committee shall consist of -

10

(a) a member from the provincial office of the State Information and Technology Agency or SITA or a representative recommended by SITA head office;

(b) a representative from the Department of Home Affairs;

15

(c) a representative from the office of the Statistics South Africa in the Province;

(d) a member from the faculties of health sciences;

20

(e) the head of Information Management in the Department;

(f) a representative from the South African Local Government Association;

25

(g) a representative from a higher education institution;

(h) a representative from the private health sector;

(i) representatives from the district health information committee;

30

(j) three representatives who are programme managers; and

(k) any other relevant members.

35

(3) The Provincial Health Information Committee must -

(a) encourage and facilitate the implementation of policies and the recommendations of the National Health Information System at provincial and district level;

40

(b) promote and encourage awareness of the use of data in the Province for health planning and health awareness;

(c) consult and liaise with -

45

(i) provincial health council;

(ii) District Health Councils; and

50

(iii) the municipality which provide health services in its area of jurisdiction;

- (d) consult and liaise with –
- (i) academic research institutions;
 - 5 (ii) health organisations and institutions responsible or providing health related information;
 - (iii) public and private health care providers; and
 - 10 (iv) community and development organisations that are receiving health care or participating in health care services;
- (e) ensure the establishment of the subcommittees in the districts that will assist and inform the Provincial Health Information Committee.
- 15 (4) (a) The term of office of the Provincial Health Information Committee is three years.
- (b) A member whose term of office has expired is eligible for re-
20 appointment.
- (c) The MEC may terminate a member's membership if –
- 25 (i) a member is absent from two consecutive meetings without a written apology;
 - (ii) a member is declared to be unable to manage his or her own affairs;
 - 30 (iii) a member is declared insolvent and is not rehabilitated;
 - (iv) a member resigns by giving thirty days written notice; and
 - 35 (v) a member is convicted and sentenced to a prison term without an option of a fine.
- (5) (a) The Provincial Health Information Committee must meet at least once in every three months.
- 40 (b) The MEC must appoint the chairperson from the members of the Provincial Health Information Committee.
- (c) The chairperson of the Provincial Health Information Committee must determine the place and times of the meetings.
- 45 (d) The Provincial Health Information Committee must determine the rules governing the procedures of its meetings.

- (e) A quorum of the Provincial Health Information Committee is half the members present plus one.
- (f) The members of the Provincial Health Information Committee who are not employees of the public service must be paid travelling and subsistence expenses or allowances for attending the meetings of the committee.

Duties of District Health Councils and municipalities

46. Every District Health Council and every municipality which provides a health service must establish and maintain a health information system as part of the national health information system contemplated in section 45.

CHAPTER 7 HEALTH OFFICERS AND COMPLIANCE PROCEDURES

Appointment of health officers

47. (1) The MEC may appoint a person in the employ of the Department as a health officer for the Province.
- (2) The mayor of a district council may appoint a person in the employ of the council as a health officer for the district municipality.
- (3) An appointment under subsection (1) may be general or for a specific purpose.
- (4) The MEC may request the Provincial Commissioner of the South African Police Service to designate a member of the Service as a health officer for the Province.
- (5) The MEC must issue to every health officer a document in the prescribed form certifying that he or she has been appointed or designated as a health officer.

Duty of health officers

48. A health officer must monitor and enforce compliance with this Act.

Routine inspections

49. (1) A health officer may enter premises, excluding a private dwelling, at a reasonable time and -
- (a) inspect such premises in order to ensure compliance with this Act;
- (b) question a person who he or she believes may have information relevant to the inspection;

- 5
- (c) require the person in charge of such premises to produce, for inspection or for the purpose of obtaining copies or extracts thereof or therefrom, a document that such person is required to maintain in terms of a law; and
- (d) take samples of a substance that is relevant to the inspection.
- 10
- (2) A health officer may be accompanied by an interpreter and other person reasonably required to assist him or her in conducting the inspection.
- (3) A health officer may issue a compliance notice to the person in charge of the premises if any provision of this Act has not been complied with.
- 15
- (4) A compliance notice remains in force until the relevant provision of the Act has been complied with and the health officer has issued a compliance certificate in respect of that notice.
- (5) A health officer who removes an item other than that contemplated in subsection (1)(d) must -
- 20
- (a) issue a receipt for it to the person in charge of the premises; and
- (b) subject to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), return it as soon as practicable after achieving the purpose for which it was removed.
- 25

Environmental health investigations

- 30
- 50.** (1) If a health officer has reasonable grounds to believe that a condition exists which -
- (a) constitutes a violation of the right contained in section 24 (a) of the Constitution;
- 35
- (b) constitutes pollution detrimental to health;
- (c) is likely to cause a health nuisance; or
- (d) constitutes a health nuisance or health hazard,
- 40
- the health officer must investigate such condition.
- (2) If the investigation reveals that a condition contemplated in subsection (1) exists, the health officer must endeavour to determine the identity of the person responsible for such condition.
- 45

(3) The health officer must issue a compliance notice to the person identified to be responsible for a condition contemplated in subsection (1) to take appropriate corrective action in order to minimise, remove or rectify such condition.

5

(4) A person aggrieved by a determination or instruction in terms of subsection (2) or (3) may, within a period of 14 days from the date on which he or she became aware of the determination or instruction, lodge an appeal with the Head of Department.

10

(5) The Head of Department must make his or her decision known within 15 days after receiving the notice of appeal.

Entry and search of premises with warrant

15

51. (1) A health officer accompanied by a police official may, on the authority of a warrant issued in terms of subsection (5) and subject to subsection 46(5), enter a premises specified in the warrant, including a private dwelling, and –

20

(a) inspect, photograph, copy, test and examine any document, record, object or material, or cause it to be inspected, photographed, copied, tested and examined;

25

(b) seize a document, record, object or material if he or she has reason to suspect that it might be used as evidence in a criminal trial; and

(c) examine an activity, operation or process carried out on the premises.

30

(2) A health officer who removes a document, record, object or material from the premises being searched must -

35

(a) issue a receipt for it to the owner or person in control of the premises; and

(b) unless it is an item prohibited in terms of this Act, return it as soon as practicable after achieving the purpose for which it was removed.

40

(3) Upon the request of a health officer acting in terms of a warrant issued in terms of subsection (5), the occupant and other person present on the premises must -

45

(a) make available or accessible or deliver to the health officer a document, record, object or material which pertains to an investigation contemplated in subsection (1) and which is in the possession or under the control of the occupant or other person;

- (b) furnish such information as he or she has with regard to the matter under investigation; and
- (c) render such reasonable assistance as the health officer may require to perform his or her functions in terms of this Act efficiently.
- 5
- (4) Before questioning a person at the premises that is being searched, the health officer or police official must advise that person of his or her right to remain silent and to be assisted by an advocate or attorney and allow that person to exercise that right.
- 10
- (5) A warrant contemplated in subsection (1) may be issued by a judge or a magistrate -
- 15
- (a) in relation to premises on or from which there is reason to believe that a contravention of this Act has been or is being committed; and
- (b) if it appears from information on oath or affirmation that there are reasonable grounds to believe that there is evidence available in or upon such premises of a contravention of this Act.
- 20
- (6) The warrant may impose restrictions on the powers of the health officer.
- (7) A warrant issued in terms of this section -
- 25
- (a) remains in force until -
- (i) it is executed;
- 30
- (ii) it is cancelled by the person who issued it or, if such person is not available, by a person with equal authority;
- (iii) the expiry of one month from the day of its issue; or
- 35
- (iv) the purpose for the issuing of the warrant has lapsed, whichever occurs first; and
- (b) must be executed by day unless the person who issues the warrant authorises the execution thereof by night.
- 40
- (8) A person is not entitled to compensation for a loss or damage arising out of a *bona fide* action by a police official or health officer under this section.

Identification prior to entry, and resistance against entry

52. (1) A health officer who has obtained a warrant in terms of section 51(5) or the police official accompanying him or her must immediately before entering the premises in question -

(a) audibly announce that he or she is authorised to enter the premises and demand admission to the premises; and

(b) notify the person in control of the premises of the purpose of the entry,

unless there are reasonable grounds to believe that such announcement or notification might defeat the purpose of the search.

(2) The health officer must -

(a) hand to the person in control of the premises a copy of the warrant or, if such person is not present, affix such a copy to a prominent place on the premises; and

(b) on request of the person in charge of such premises, show his or her certificate of appointment as health officer to that person.

(3) A health officer or police official contemplated in subsection (1) may overcome resistance to the entry and search by using such force as is reasonably required, including the breaking of a door or window of the premises.

(4) Before using force, the health officer or police official must audibly demand admission and must announce the purpose of the entry, unless there are reasonable grounds to believe that doing so might defeat the purpose of the search.

Entry and search of premises without warrant

53. A health officer accompanied by a police official may without a warrant exercise any power referred to in section 51(1) if -

(a) the person who is competent to do so consents to such exercise; or

(b) there are reasonable grounds to believe that a warrant would be issued in terms of section 51(5) and that the delay in obtaining the warrant would defeat the object of the warrant.

Disposal of items seized by health officer

54. (1) The health officer must deliver items seized in terms of section 51 or 53 without delay to a police official contemplated in section 30 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), who must deal with and dispose of the seized item in the manner provided for in Chapter 2 of that Act.
- (2) When a police official acts in terms of section 30 (a) or (b) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in respect of an item contemplated in subsection (1), he or she must do so after consultation with a health officer.

Miscellaneous provisions relating to health officers, inspectors and compliance procedures

55. For the purposes of this Act, the Head of Department, and the head of the division responsible for health in the municipality are regarded as being -
- (a) the owner and occupier of a premises that the provincial department or the municipality occupies or uses; and
- (b) the employer of persons in the service of that provincial department or municipality if, as an employer, the provincial department or municipality -
- (i) performs a duty imposed upon an employer by or under this Act; or
- (ii) exercises power conferred upon an employer by or under this Act.

Offences

56. (1) A person is guilty of an offence if he or she -
- (a) obstructs or hinders a health officer who is performing a function under this Act;
- (b) refuses to provide a health officer with such information as that person is required to provide under this Act;
- (c) knowingly gives false or misleading information to a health officer;
- (d) unlawfully prevents the owner of premises, or a person working for the owner, from entering the premises in order to comply with a requirement of this Act;

- 5
- (e) impersonates a health officer;
- (f) fails to comply with a compliance notice issued to him or her by a health officer in terms of this Act; or
- (g) discloses information, which was acquired in the performance of any function in terms of this Act and which relates to the financial or business affairs of any person, to any other person, except if -
- 10
- (i) the other person requires that information in order to perform any function in terms of this Act;
- (ii) the disclosure is ordered by a court of law; or
- 15
- (iii) the disclosure is in compliance with the provisions of any law.
- (2) A person convicted of an offence in terms of subsection (1) is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
- 20

Establishment of Inspectorate for Health Establishments

- 25
- 57.** (1) The MEC must establish an inspectorate in the Province to be known as the Inspectorate for Health Establishments.
- (2) An Inspectorate for Health Establishments must -
- 30
- (a) monitor and evaluate compliance with this Act by health establishments and health agencies in the Province for which it is established; and
- (b) submit a quarterly report on its activities and findings to the MEC.
- 35
- (3) The MEC must submit an annual report to the Minister on the activities and findings of the Inspectorate for Health Establishments established in the Province.

Assignment of duties and delegation of powers

- 40
- 58.** (1) The MEC may assign a duty and delegate power imposed or conferred upon him or her by this Act, except the power to make regulations, or assigned or delegated to him or her by the Minister, to any officer in the Department or a council, board or committee established in terms of this Act.
- 45

- (2) The Head of the Department may assign a duty and delegate power imposed or conferred upon him or her in terms of this Act to an official of the Department.

5 **Repeal of laws**

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

10 **Transitional provisions**

60. Anything done before the commencement of this Act under a provision of a law repealed by section 58 and which could have been done under a provision of this Act must be regarded as having been done under the corresponding provision of this Act.

**CHAPTER 8
REGULATIONS**

20 **Regulations**

61. (1) The MEC, after consultation with the Provincial Health Council, may make regulations regarding -
- 25 (a) a matter which may or must be prescribed in terms of this Act;
- (b) the norms and standards for specified types of protective clothing and the use, cleaning and disposal of such clothing;
- 30 (c) human resource development;
- (d) co-operation and interaction between private health care providers and private health establishments on the one hand and public health care providers and public health establishments on the other;
- 35 (e) returns, registers, reports, records, documents and forms to be completed and kept by the provincial departments, District Health Councils, health care providers, private health establishments and public health establishments;
- 40 (f) the functions of persons who render voluntary, charitable or similar services in connection with a public health establishment;
- 45 (g) the rendering of forensic pathology, forensic medicine and related laboratory services, including the provision of medico-legal mortuaries and medico-legal services;

- 5 (h) communicable diseases;
- (i) notifiable medical conditions;
- 5 (j) rehabilitation;
- (k) emergency medical services and emergency medical treatment, both within and outside of health establishments;
- 10 (l) health nuisances and medical waste;
- (m) non-communicable diseases;
- 15 (n) health technology;
- (o) health research;
- 20 (p) the provincial health information system contemplated in section 44;
- 25 (q) the processes and procedures to be implemented by the Head of Department in order to obtain prescribed information from stakeholders relating to health financing, the pricing of health services, business practices within or involving health establishments, health agencies, health workers and health care providers, and the formats and extent of publication of various types of information in the public interest and for the purpose of improving access to and the effective and efficient utilisation of health services;
- 30 (r) the processes of determination and publication by the Head of Department of one or more reference price lists for services rendered, procedures performed and consumable and disposable items utilised by categories of health establishments, health care providers or health workers in the private health sector which may be used -
- 35 (i) by a medical scheme as a reference to determine its own benefits; and
- 40 (ii) by health establishments, health care providers or health workers in the private health sector as a reference to determine their own fees,
- 45 but which are not mandatory; and
- (s) generally, any other matter which is necessary or expedient to prescribe in order to implement or administer this Act.

- (2) The MEC must publish all regulations proposed to be made under this Act in the *Provincial Gazette* for comments at least 30 days before the date contemplated for their commencement.

5

Short title

- 62.** This Act is called the Provincial Health Act, 2009.

SCHEDULE**Laws repealed**

No. and year of Act	Short title	Extent of repeal
Act No. 8 of 1999	Free State Health Act, 1999	The whole