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## THE PRESIDENCY

No. 869 23 July 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 61 of 2003: National Health Act, 2003.

## MO-PRESIDENTE

No. 869 23 July 2004

Mo go tsebiswa gore Mo-Presidente o dumetse Molao wo o latelago, wona o tla gatiswa e le tsebiso ya kakaretso:—

Nmro. 61 ya 2003: Molao wa Bosetšhaba wa Boitekanelo, 2003.



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

*(English text signed by the President.)  
(Assented to 18 July 2004.)*

# ACT

**To provide a framework for a structured uniform health system within the Republic, taking into account the obligations imposed by the Constitution and other laws on the national, provincial and local governments with regard to health services; and to provide for matters connected therewith.**

## PREAMBLE

### RECOGNISING—

- \* the socio-economic injustices, imbalances and inequities of health services of the past;
- \* the need to heal the divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights;
- \* the need to improve the quality of life of all citizens and to free the potential of each person;

### BEARING IN MIND THAT—

- \* the State must, in compliance with section 7(2) of the Constitution, respect, protect, promote and fulfil the rights enshrined in the Bill of Rights, which is a cornerstone of democracy in South Africa;
- \* in terms of section 27(2) of the Constitution the State must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the right of the people of South Africa to have access to health care services, including reproductive health care;
- \* section 27(3) of the Constitution provides that no one may be refused emergency medical treatment;
- \* in terms of section 28(1)(c) of the Constitution every child has the right to basic health care services;
- \* in terms of section 24(a) of the Constitution everyone has the right to an environment that is not harmful to their health or well-being;

### AND IN ORDER TO—

- \* unite the various elements of the national health system in a common goal to actively promote and improve the national health system in South Africa;
- \* provide for a system of co-operative governance and management of health services, within national guidelines, norms and standards, in which each province, municipality and health district must address questions of health policy and delivery of quality health care services;

- \* establish a health system based on decentralised management, principles of equity, efficiency, sound governance, internationally recognised standards of research and a spirit of enquiry and advocacy which encourages participation;
- \* promote a spirit of co-operation and shared responsibility among public and private health professionals and providers and other relevant sectors within the context of national, provincial and district health plans,

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## SCHEDULE

## Definitions

1. In this Act, unless the context indicates otherwise—
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| “ <b>authorised institution</b> ” means any institution designated as an authorised institution in terms of section 54;  | 10 |
| “ <b>blood product</b> ” means any product derived or produced from blood, including circulating progenitor cells, bone marrow progenitor cells and umbilical cord progenitor cells;   |    |
| “ <b>central hospital</b> ” means a public hospital designated by the Minister to provide health services to users from more than one province;  | 15 |
| “ <b>certificate of need</b> ” means a certificate contemplated in section 36;   |    |
| “ <b>communicable disease</b> ” 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;                                  | 20 |
| “ <b>Constitution</b> ” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);  |    |
| “ <b>death</b> ” means brain death;  |    |
| “ <b>Director-General</b> ” means the head of the national department;   |    |
| “ <b>district health council</b> ” means a council established in terms of section 31;   | 25 |
| “ <b>essential health services</b> ” means those health services prescribed by the Minister to be essential health services after consultation with the National Health Council;   |    |
| “ <b>embryo</b> ” means a human offspring in the first eight weeks from conception;  |    |
| “ <b>Forum of Statutory Health Professional Councils</b> ” means the Forum established by section 50;  | 30 |
| “ <b>gamete</b> ” means either of the two generative cells essential for human reproduction;   |    |
| “ <b>gonad</b> ” means a human testis or human ovary;  |    |
| “ <b>health agency</b> ” means any person other than a health establishment—   |    |
| (a) whose business involves the supply of health care personnel to users or health establishments;   | 35 |
| (b) who employs health care personnel for the purpose of providing health services; or   |    |
| (c) who procures health care personnel or health services for the benefit of a user, and includes a temporary employment service as defined in the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), involving health workers or health care providers; | 40 |
| “ <b>health care personnel</b> ” means health care providers and health workers;   |    |
| “ <b>health care provider</b> ” means a person providing health services in terms of any law, including in terms of the—   | 45 |
| (a) Allied Health Professions Act, 1982 (Act No. 63 of 1982);  |    |
| (b) Health Professions Act, 1974 (Act No. 56 of 1974);   |    |
| (c) Nursing Act, 1978 (Act No. 50 of 1978);  |    |
| (d) Pharmacy Act, 1974 (Act No. 53 of 1974); and   |    |
| (e) Dental Technicians Act, 1979 (Act No. 19 of 1979);   | 50 |

- “**health district**” means a district contemplated in section 29;
- “**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; 5
- “**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 any person appointed as a health officer under section 80 or designated as such in terms of that section; 10
- “**health research**” includes any research which contributes to knowledge of—
- (a) the biological, clinical, psychological or social processes in human beings;
  - (b) improved methods for the provision of health services;
  - (c) human pathology;
  - (d) the causes of disease; 15
  - (e) the effects of the environment on the human body;
  - (f) the development or new application of pharmaceuticals, medicines and related substances; and
  - (g) the development of new applications of health technology;
- “**health research ethics committee**” means any committee registered in terms of section 73; 20
- “**health services**” means—
- (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; 25
  - (c) medical treatment contemplated in section 35(2)(e) of the Constitution; and
  - (d) municipal health services;
- “**health technology**” means machinery or equipment that is used in the provision of health services, but does not include medicine as defined in section 1 of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965); 30
- “**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;
- “**hospital**” means a health establishment which is classified as a hospital by the Minister in terms of section 35; 35
- “**Inspectorate for Health Establishments**” means any inspectorate established in terms of section 77;
- “**military health establishment**” means a health establishment which is, in terms of the Constitution and the Defence Act, 2002 (Act No. 42 of 2002), the responsibility of and under the direct or indirect authority and control of the President, as Commander in Chief, and the Minister of Defence, and includes— 40
- (a) the Institutes for Aviation and Maritime Medicine;
  - (b) the Military Psychological Institute;
  - (c) military laboratory services; and
  - (d) military training and educational centres; 45
- “**Minister**” means the Cabinet member responsible for health;
- “**municipal council**” means a municipal council contemplated in section 157(1) of the Constitution;

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

- (a) water quality monitoring;
- (b) food control;
- (c) waste management;
- (d) health surveillance of premises; 5
- (e) surveillance and prevention of communicable diseases, excluding immunisations;
- (f) vector control;
- (g) environmental pollution control;
- (h) disposal of the dead; and 10
- (i) chemical safety,

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

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

“**national department**” means the national Department of Health; 15

“**National Health Council**” means the Council established by section 22(1);

“**national health policy**” means all policies relating to issues of national health as approved by the Minister;

“**National Health Research Committee**” means the Committee established in terms of section 69(1); 20

“**National Health Research Ethics Council**” means the Council established by section 72(1);

“**national health system**” means the system within the Republic, whether within the public or private sector, in which the individual components are concerned with the financing, provision or delivery of health services; 25

“**non-communicable disease**” means a disease or health condition that cannot be contracted from another person, an animal or directly from the environment;

“**norm**” means a statistical normative rate of provision or measurable target outcome over a specified period of time;

“**Office of Standards Compliance**” means the Office established in terms of section 78(1); 30

“**oocyte**” means a developing human egg cell;

“**organ**” means any part of the human body adapted by its structure to perform any particular vital function, including the eye and its accessories, but does not include skin and appendages, flesh, bone, bone marrow, body fluid, blood or a gamete; 35

“**organ of state**” means an organ of state as defined in section 239 of the Constitution;

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

“**premises**” means any building, structure or tent together with the land on which it is situated and the adjoining land used in connection with it and includes any land without any building, structure or tent and any vehicle, conveyance or ship; 40

“**prescribed**” means prescribed by regulation made under section 90;

“**primary health care services**” means such health services as may be prescribed by the Minister to be primary health care services; 45

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

“**provincial department**” means any provincial department responsible for health;



- “**Provincial Health Council**” means a Council established by section 26(1);
- “**public health establishment**” means a health establishment that is owned or controlled by an organ of state;
- “**rehabilitation**” means a goal-orientated and time-limited process aimed at enabling impaired persons to reach an optimum mental, physical or social functional level; 5
- “**relevant member of the Executive Council**” means the member of the Executive Council of a province responsible for health;
- “**statutory health professional council**” means—
- (a) the Health Professions Council of South Africa established by section 2 of the Health Professions Act, 1974 (Act No. 56 of 1974); 10
- (b) the South African Nursing Council established by section 2 of the Nursing Act, 1978 (Act No. 50 of 1978);
- (c) the South African Pharmacy Council established by section 2 of the Pharmacy Act, 1974 (Act No. 53 of 1974); 15
- (d) the Allied Health Professions Council of South Africa established by section 2 of the Allied Health Professions Act, 1982 (Act No. 63 of 1982);
- (e) the South African Dental Technicians Council contemplated in section 2 of the Dental Technicians Act, 1979 (Act No. 19 of 1979); and
- (f) such other statutory health professional council as the Minister may prescribe; 20
- “**this Act**” includes any regulation made thereunder;
- “**tissue**” means human tissue, and includes flesh, bone, a gland, an organ, skin, bone marrow or body fluid, but excludes blood or a gamete;
- “**use**”, in relation to tissue, includes preserve or dissect;
- “**user**” means the person receiving treatment in a health establishment, including receiving blood or blood products, or using a health service, and if the person receiving treatment or using a health service is— 25
- (a) below the age contemplated in section 39(4) of the Child Care Act, 1983 (Act No. 74 of 1983), “user” includes the person’s parent or guardian or another person authorised by law to act on the firstmentioned person’s behalf; or 30
- (b) incapable of taking decisions, “user” includes the person’s spouse or partner or, in the absence of such spouse or partner, the person’s parent, grandparent, adult child or brother or sister, or another person authorised by law to act on the firstmentioned person’s behalf;
- “**zygote**” means the product of the union of a male and a female gamete. 35

## CHAPTER 1

### OBJECTS OF ACT, RESPONSIBILITY FOR HEALTH AND ELIGIBILITY FOR FREE HEALTH SERVICES

#### Objects of Act

2. The objects of this Act are to regulate national health and to provide uniformity in respect of health services across the nation by— 40
- (a) establishing a national health system which—
- (i) encompasses public and private providers of health services; and

- (ii) provides in an equitable manner the population of the Republic with the best possible health services that available resources can afford;
- (b) setting out the rights and duties of health care providers, health workers, health establishments and users; and
- (c) protecting, respecting, promoting and fulfilling the rights of— 5
  - (i) the people of South Africa to the progressive realisation of the constitutional right of access to health care services, including reproductive health care;
  - (ii) the people of South Africa to an environment that is not harmful to their health or well-being; 10
  - (iii) children to basic nutrition and basic health care services contemplated in section 28(1)(c) of the Constitution; and
  - (iv) vulnerable groups such as women, children, older persons and persons with disabilities.

### **Responsibility for health** 15

3. (1) The Minister must, within the limits of available resources—
- (a) endeavour to protect, promote, improve and maintain the health of the population;
  - (b) promote the inclusion of health services in the socio-economic development plan of the Republic; 20
  - (c) determine the policies and measures necessary to protect, promote, improve and maintain the health and well-being of the population;
  - (d) ensure the provision of such essential health services, which must at least include primary health care services, to the population of the Republic as may be prescribed after consultation with the National Health Council; and 25
  - (e) equitably prioritise the health services that the State can provide.
- (2) The national department, every provincial department and every municipality must establish such health services as are required in terms of this Act, and all health establishments and health care providers in the public sector must equitably provide health services within the limits of available resources. 30

### **Eligibility for free health services in public health establishments**

4. (1) The Minister, after consultation with the Minister of Finance, may prescribe conditions subject to which categories of persons are eligible for such free health services at public health establishments as may be prescribed.
- (2) In prescribing any condition contemplated in subsection (1), the Minister must 35 have regard to—
- (a) the range of free health services currently available;
  - (b) the categories of persons already receiving free health services;
  - (c) the impact of any such condition on access to health services; and
  - (d) the needs of vulnerable groups such as women, children, older persons and 40 persons with disabilities.
- (3) Subject to any condition prescribed by the Minister, the State and clinics and community health centres funded by the State must provide—
- (a) pregnant and lactating women and children below the age of six years, who are not members or beneficiaries of medical aid schemes, with free health 45 services;
  - (b) all persons, except members of medical aid schemes and their dependants and persons receiving compensation for compensable occupational diseases, with free primary health care services; and

- (c) women, subject to the Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996), free termination of pregnancy services.

## CHAPTER 2

### RIGHTS AND DUTIES OF USERS AND HEALTH CARE PERSONNEL

#### Emergency treatment 5

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

#### User to have full knowledge

6. (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; 10
  - (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 option; and 15
  - (d) the user's right to refuse health services and explain the implications, risks, obligations of such refusal.
- (2) The health care provider concerned must, where possible, inform the user as contemplated in subsection (1) in a language that the user understands and in a manner which takes into account the user's level of literacy. 20

#### Consent of user

7. (1) Subject to section 8, a health service may not be provided to a user without the user's informed consent, unless—
- (a) the user is unable to give informed consent and such consent is given by a person— 25
    - (i) mandated by the user in writing to grant consent on his or her behalf; or
    - (ii) authorised to give such consent in terms of any law or court order;
  - (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 any law or a court order; 35
  - (d) failure to treat the user, or group of people which includes the user, will result in a serious risk to public health; or
  - (e) any 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.

(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 6.

### Participation in decisions

8. (1) A user has the right to participate in any decision affecting his or her personal health and treatment. 5

(2) (a) If the informed consent required by section 7 is given by a person other than the user, such person must, if possible, consult the user before giving the required consent.

(b) A user who is capable of understanding must be informed as contemplated in section 6 even if he or she lacks the legal capacity to give the informed consent required by section 7. 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 6 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

9. (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 the provincial department in the province in which that health establishment is situated within 48 hours after the user was admitted of the user’s admission and must submit such other information as may be prescribed. 20

(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 the provincial 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 that is not a Saturday, Sunday or public holiday. 25

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

### Discharge reports 30

10. (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.

(2) In prescribing the information contemplated in subsection (1), the Minister must have regard to— 35

- (a) the nature of the health service rendered;
- (b) the prognosis for the user; and
- (c) the need for follow-up treatment.

(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. 40

### Health services for experimental or research purposes

11. (1) Before a health establishment provides a health service for experimental or research purposes to any user and subject to subsection (2), 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. 45

(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 any other person to whom that