

**PROVINCIAL LEGISLATIVE AGENDA MANDATED BY THE NATIONAL  
HEALTH ACT AND ASSESSMENT OF THE EXTENT TO WHICH THE KZN  
BILL DISCHARGES THIS MANDATE**

<b>NATIONAL HEALTH ACT</b>	<b>KZN BILL</b>
<b>CHAPTER 4</b>	
<p><b><i>Section 25: Provincial health services, and general functions of provincial departments</i></b></p> <p>(1) The relevant member of the Executive Council must ensure the implementation of national health policy, norms and standards in his or her province.</p>	<p>In addition to the example provided in the letter, the following provisions are also problematic insofar as they undermine “national health policy, norms and standards” rather than ensure their implementation (as is required of the member of the Executive Council responsible for health (“the MEC”) in a province in terms of section 25(1) of the Act:</p> <ul style="list-style-type: none"> <li>▪ Section 5 of the Act states that a “health care provider, health worker or health establishment may not refuse a person emergency medical treatment”. Yet clause 6(1)(e) of the KZN Bill states that “a health care user is entitled to emergency medical services for any life threatening condition at any <b>public health care establishment.</b>”</li> <li>▪ Simply put, the exclusionary language in the Bill expressly keeps private health workers and health establishments out of its ambit. It also unreasonably and unjustifiably limits emergency medical treatment in its reference to any life threatening condition.</li> <li>▪ Section 20 of the Act states that “[h]ealth care personnel may not be unfairly discriminated against on account of their health status.” The language in clause 7(1) of the KZN Bill refers only to “health care providers”, a subset of all health care personnel. In particular, it excludes those health care workers – such as cleaners and porters – who are, in general, significantly more vulnerable to unfair discrimination.</li> </ul>

<p><b>Section 26: Establishment and composition of Provincial Health Council</b></p> <p>(1) A council to be known as the Provincial Health Council is hereby established in each province. ....</p>	<p>Clause 9(2)(a)(i) establishes the KwaZulu-Natal Provincial Health Council, as required by section 26 of the Act. In setting out the membership of this body in clause 10, the KZN Bill gives some clarity to the requirements of the Act in a manner that is consistent with section 26(2) of the Act. It is unfortunate, however, that the KZN Bill does not give guidance to the MEC in the exercise of his or her powers in terms of section 26(1)(f) of the Act. Instead, the KZN Bill merely reflects what is contained in the Act. Clause 11, which merely repeats what is contained in section 27 of the Act, appears to be necessary duplication.</p>
<p><b>Section 28: Provincial consultative bodies</b></p> <p>(1) The relevant member of the Executive Council must establish a consultative body for his or her province.</p>	<p>Clause 9(2)(a)(ii), when read together with clause 9(2)(b), establishes the KwaZulu-Natal Provincial Health Consultative Forum, seemingly in compliance with section 28 of the Act. Given the Act's lack of detail in this regard, it is surprising that the KZN Bill does not detail the composition and functions of this important provincial consultative structure.</p>
<p><b>CHAPTER 5</b></p>	
<p><b>Section 31: Establishment of district health councils</b></p> <p>Section 31 (5) of the Act states that provincial legislation must at least provide for –</p> <ul style="list-style-type: none"> <li>(a) the functioning of district health councils;</li> <li>(b) the approval ... of the detailed budget and performance targets for health services in the health district to which both the provincial and municipal spheres of government must contribute; and</li> <li>(c) (i) deadlock-breaking mechanisms for cases where agreement between the relevant member of the Executive Council and the municipal council on the budget or performance targets contemplated in paragraph (b) cannot be reached within a period specified in the legislation; and (ii) corrective action to be taken if the agreement contemplated in subparagraph (i) is breached.</li> </ul>	<p>Clause 9(2)(a)(iii), when read together with clause 9(2)(b), establishes district health councils as mandated by section 31(1) of the Act. However, while much of section 31(5) of the Act is merely repeated in clause 14, the latter does not establish a mechanism or framework for dealing with the specific matters set out in section 31(5). For example, the KZN Bill does not state when and how the budget and performance targets for health service in the health districts should be approved.</p> <p>Equally disturbing is the breach of the principle of legality in respect of section 31(5)(c) of the Act, which requires that provincial legislation contain deadlock-breaking mechanisms and make provision for corrective action to ensure that section 31(5) of the Act is indeed realised. Instead of dealing with the section 31(5)(c) issues in the KZN Bill, as the Act requires, this power is unlawfully delegated to the MEC in KZN. This is simply not permitted by the Act and in breach of the Constitution.</p>

<p><b>Section 33: Preparation of district health plans:</b></p> <p>(1) Each district and metropolitan health manager must within the national budget cycle develop and present to the district health council in question and the relevant member of the Executive Council 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 32 of 2000).</p> <p>(2) The relevant member of the Executive Council must ensure that each health district develops and implements a district human resource plan in accordance with national guidelines issued by the Director-General.</p>	<p>The KZN Bill provides no framework for the preparation of district health plans and human resource plans in accordance with national guidelines. It does not, for example, set out any role for provincial health officials to ensure that such plans are in fact able to drawn up in accordance with national guidelines. Most disturbing is that the KZN Bill does not seem to recognise the centrality of district plans to health service planning and delivery at the provincial level.</p> <p>In our view, these plans form the very basis upon which provincial health services are to be delivered. As such, the KZN Bill should complement section 33 of the Act by expressly authorizing and mandating provincial support for the development of district plans, whether in relation to general health or specific human resources issues.</p>
<p><b>CHAPTER 6</b></p>	
<p><b>Section 41: Provision of health services at public health establishments</b></p> <p>(4) The Minister must appoint a representative hospital board for each central hospital or group of central hospitals.</p> <p>(5) The functions of a central hospital board must be prescribed by the Minister.</p> <p>In terms of subsection (6)(a), the relevant member of the Executive Council must –</p> <p>(i) appoint a representative board for each public health establishment classified as a hospital or for each group of such public health establishments within the relevant province;</p> <p>(ii) prescribe the functions of such boards; and</p> <p>(iii) prescribe procedures for meetings of the board.</p> <p>Subsection (6)(b) makes it plain that a “hospital contemplated in paragraph (a) does not include a central hospital.</p>	<p>Amongst other things, clause 9(2) of the KZN Bill establishes hospital boards. While the language of the provision seems to apply broadly to all hospitals, a proper interpretation shows that it is limited to hospitals other than central hospitals. This needs to be made clear, given that it is the Minister who has the power to appoint boards for central hospitals.</p> <p>Of more concern, however, is the failure of the KZN Bill to address sections 41(6)(a)(ii) and (iii) of the Act in any way. In short, the provincial statute says nothing about the functions of hospital boards or the procedures for their meetings. While such a power does appear to be one to be exercised by way of provincial regulations, it does seem appropriate for provincial legislation to provide some guidance for its exercise. In the result, we recommend that chapter 7 of the KZN Bill be expressly amended to provide guidance for the exercise of the section 41(6)(a)(i) and (ii) powers.</p>

<p><b>Section 42: Clinics and community health centre committees</b></p> <p>(1) Provincial legislation must at least provide for the establishment in the province in question of a committee for—</p> <ul style="list-style-type: none"> <li>(a) a clinic or a group of clinics;</li> <li>(b) a community health centre; or</li> <li>(c) a clinic and a community health centre or a group of clinics and community health centres.</li> </ul> <p>(2) Any committee contemplated in subsection (1) must at least include—</p> <ul style="list-style-type: none"> <li>(a) one or more local government councillors;</li> <li>(b) one or more members of the community served by the health facility; and</li> <li>(c) the head of the clinic or health centre in question.</li> </ul> <p>(3) The functions of a committee must be prescribed in the provincial legislation in question.</p>	<p>Clause 9(2)(a)(iv), when read together with clause 9(2)(b), establishes the relevant section 42 committees. Of concern, however, is that the functions of such committees are not addressed in the KZN Bill. This clear mandate of the Act must be discharged.</p>
<p><b>Section 43: Health services at non-health establishments and at public health establishments other than hospitals</b></p> <p>Subsection (2) provides that provincial legislation “must provide for the provision of health services at health establishments in the province in question other than hospitals.”</p>	<p>This mandate is discharged by clause 49 which makes provision for the establishment of health care establishments in compliance with section 43(2) of the Act.</p>
<p><b>CHAPTER 9</b></p>	
<p><b>Section 75: Provincial duties in relation to health information</b></p> <p>The relevant member of the Executive Council must establish a committee for his or her province to establish, maintain, facilitate and implement the health information systems contemplated in section 74 at provincial and local level.</p>	<p>While clause 9(2)(a)(vii) of the KZN Bill establishes the health information systems committee as stipulated in section 75 of the Act, it provides limited detail in this regard.</p>
<p><b>CHAPTER 10</b></p>	
<p><b>Section 77: Establishment of Inspectorate for Health Establishments</b></p> <p>(1)The relevant member of the Executive</p>	<p>Clause 70(1) of the Bill mandates the MEC to establish an inspectorate for health establishments in compliance with section 77(1) of the Act. In terms of subsection (3) of</p>

<p>Council must establish an inspectorate in his or her province to be known as the Inspectorate for Health Establishments.</p> <p>(2) .....</p> <p>(3) The relevant member of the Executive Council must submit an annual report to the Minister on the activities and findings of the Inspectorate for Health Establishments established in his or her province.</p>	<p>the Act, the MEC is obliged to submit an annual report to the Minister on the activities and findings of the Inspectorate for Health Establishments established in his or her province.</p> <p>Unfortunately, the provision dealing with the power, functions and responsibilities of the MEC (clause 27) does not make express provision for this. Instead clause 27(k) simply states that “the MEC must in general, exercise any power, perform any function and execute any duty that is necessary to realise the objects of this Act or any other law.” In our view, this provision should not be used as a catch-all for the express mandate accorded to the MEC by the Act. Such obligations must be captured in clause 27 of the KZN Bill.</p>
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