



ESWATINI GOVERNMENT GAZETTE

VOL. LXI]

MBABANE, Friday, OCTOBER 13th, 2023

[No. 135B

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PUBLISHED BY AUTHORITY

THE HEALTH ACT, 2023

(Act No. 13 of 2023)



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MSWATI III
KING OF THE KINGDOM
OF ESWATINI

..... 2023

AN ACT
ENTITLED

AN ACT to strengthen health capacity system and its performance for effective health service delivery, protect public health and provide for incidental matters.

ENACTED by the King and Parliament of Eswatini.

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PART I PRELIMINARY PROVISIONS

Short title and commencement.

1. (1) This Act may be cited as the Health Act, 2023.

(2) The Act shall come into force on the date to be appointed by the Minister in Gazette and the Minister may, delay the coming into force of certain parts, sections, responsibilities and duties of certain persons or bodies under this Act.

Interpretation.

2. In this Act, unless the context otherwise requires -

“ancillary services” means services that support the delivery of health services;

“ambulance” means the exclusive emergency patient transportation means and may include automobiles, ships or aircraft suitable for the transportation of emergency patients;

“Commission” means the Health Service Commission appointed under the Act;

“Constitution” means the Constitution of the Kingdom of Eswatini Act No. 5 of 2005;

“Do not Resuscitate Order” means a medical order or directive inscribed on a wrist band, bracelet, strap or gadget or instrument worn by a person to any person that, in the event of death, that person shall not be resuscitated;

“Environmental Health Officer” means an officer employed as such with the requisite qualifications;

“emergency medical service provider” means medical personnel, paramedics and emergency medical technicians who are employed in the business of providing medical services to emergency patients under those who operate medical institutions or emergency patient

information centers or ambulances;

“emergency medical services” includes ambulance services and paramedic services for the provision of assistance out of hospital acute and immediate medical care or transportation to a health care facility;

“emergency patient” means a patient with a serious injury or in a critical condition which if left unattended medically may result in loss of life or bring about a grave mental and physical harm; “emergency treatment” means a lifesaving medical service offered to a person which if not provided might lead to a loss of life;

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

“health care provider” means a person or an organization that provides or arranges for the provision of personal health services or public health services;

“health establishment” means a whole or part of a public or private institution, facility, or premises designed to provide health services to users, whether for profit or not;

“health Inspector” means an officer employed as such or a person conducting the regulatory function of inspection as authorised by the Director of Regulatory Services;

“health Officer” means a health worker authorised by the Minister to carry out specific health related acts or duties;

“health professional” means a health professional with appropriate professional qualifications as may be prescribed;

“health services” means a service that is provided at a health establishment, may include but not limited to medical treatment, reproductive health care and emergency treatment, basic nutrition and emergency medical care;

“health system” means the cooperation or coordination of the public or private sector, where the primary objective is the financing, provision or delivery of health services;

“infertility” means a disease of the male or female reproductive system defined by the failure to achieve a clinical pregnancy after twelve (12) months or more of regular unprotected sexual intercourse;

“Medical Officer” means a general medical practitioner or doctor that is employed by the Government of the Kingdom of Eswatini;

“Medical Practitioner” means a person registered as a medical practitioner under the Medical and Dental Practitioner’s Act of 1970 or its successor;

“Minister” means the Minister responsible for health;

“Ministry” means the department of the public service dealing with national health issues;

“private health establishment” means a health establishment that is not under the control of any organ of state;

“population health” means the health outcomes and its distribution within the Kingdom;

“public health emergency” means an emergency need for health care or medical services to

respond to a disaster, significant outbreak of infectious disease, bioterrorist attack or other significant or catastrophic event;

“rehabilitative services” means physiotherapy, occupational therapy, speech and language therapy provided to restore users to functional health or productive life;

“self-dealing” means the unlawful conduct of a person who owes a duty of care to a client or institution, but that person uses the position to take advantage in a transaction for personal gain rather than for the best interest of the client or institution;

“sterilization” means a permanent form of birth control medical procedure for both men and women;

“tissue” means a group of structurally and functionally similar cells and their intercellular material;

“traditional medicine” means the sum total of the knowledge, skills and practices based on the theories beliefs, and experiences indigenous to different cultures whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness; and

“user” means a person other than a minor, who has access to a health establishment for medical treatment or other health service.

Purpose of the Act.

3. The purpose of this Act is to –

- (a) strengthen the health system capacity and its performance for effective health service delivery;
- (b) promotion and maintenance of the public health care system by ensuring that every person has access to age appropriate, risk avoidance, religious and culturally sensitive, morally acceptable and values based public health education, literature, knowledge, information, counselling, facilities and such other similar products and amenities, for the purpose of attaining optimal health ; and
- (c) improve access to essential, affordable and quality health services for the Eswatini populace.

**PART II
ADMINISTRATION**

Minister.

4. (1) The Minister shall, notwithstanding any other law, be responsible for the governance of the Ministry by ensuring effective and efficient administration of this Act and regulation of all health services and products in the Kingdom.

(2) The Minister shall, consult with and be assisted by technical advisors, in exercising powers and carrying out functions to improve, promote and protect public health under this Act.

(3) The functions and powers of the Minister shall include –

- (a) prevention, limitation and control of the spread of infectious diseases into and within the Kingdom;
- (b) promotion and maintenance of public health care system and by ensuring that every person has access to public health education, literature, knowledge, information, counseling, facilities and such similar products and amenities;
- (c) ensuring the equitable provision of facilities for early diagnosis and prompt treatment of diseases in order to limit disability and loss of life;
- (d) application of measures to rehabilitate any person incapacitated by disease, injury or by any physical or mental defect;
- (e) promotion of personal health, environmental health, mental health, infant and young child nutrition, maternal and neo-natal child health and oral health;
- (f) promotion, research and investigation of the prevention, control and treatment of diseases;
- (g) establishment or appointment of Boards or bodies, advisors and committees or similar bodies to assist in matters pertaining to public health;
- (h) liaison with development partners, international community and agencies on disease prevention and control, eradication and on other matters
- (i) establishment of mechanisms and entering into memorandum of understanding or contracts for ensuring of accountability and performance of sub-vented organizations;
- (j) establishment of mechanisms to grant degrees of autonomy over the management and operation of public hospitals and clinics, the medical stores, blood services and over other services of the Ministry; and
- (k) regulation of health services and products provided by private persons

Power to declare health emergency.

5. (1) The Minister in consultation with Cabinet may, by notice in the gazette, declare a health emergency.

(2) The Minister may prescribe measures to detect, prevent and respond to a health emergency.

Health Advisory Standing Committee.

6. (1) There shall be established a Health Advisory Standing Committee appointed by the Minister, comprising of the Principal Secretary, who shall be the Chairperson, Directors in the ministry, a Regional Administrator on a rotation basis, representatives from different private and public health sector disciplines, Non-Governmental Organizations, Faith-based Organizations, local authorities and any other Government Department or sector or body or person as the Minister may consider necessary.

(2) The Health Advisory Standing Committee shall consist of not more than fifteen (15) members.

(3) The Committee members shall be in office for a period not exceeding three (3) years.

(4) The functions of the Health Advisory Standing Committee shall be to advise the Minister on policy concerning any matter to protect, promote, improve and maintain the health of the population, which include-

- (a) advise on the implementation of the National Health Policy;
- (b) recommendations to the Minister in relation to the application and amendment of this Act and to any regulations to be made under this Act;
- (c) carrying out investigations on matters referred to it by the Minister; and
- (d) exercise of other powers and functions imposed upon it by this Act or by the Minister.

(5) The members of the Health Advisory Standing Committee shall be paid such allowances as may be determined by the Minister in consultation with the Minister responsible for finance.

Power to establish other health sector department, units and committees.

7. (1) The Minister may, in consultation with the ministry responsible for public service, establish other departments or directorates or units or structural posts, committees for the purpose of improving the capacity and strength of the public health system so as to achieve effectiveness.

(2) The Minister may establish regional and community advisory committees to coordinate health activities in the regions and communities.

(3) The activities in subsection (1) shall include –

- (a) identification of health needs, challenges and priorities of the region or community;
- (b) support of inter-sectoral collaboration;
- (c) budget and planning;
- (d) mobilize resources;
- (e) advise to the ministry on matters affecting the region; and
- (f) promotion and facilitation of health development in the region.

(4) The Minister shall, subject to section 238 of the Constitution, establish or operationalize any structure, office, committee or response unit required under international health regulation or treaty.

Coordination with traditional medicine practitioners.

8. The Minister shall establish a communication system between the Ministry and traditional medicine practitioners through an independent entity or body as established by the traditional medicine practitioners to represent their interests in the Kingdom.

PART III HEALTH SERVICES

Continuance of Directorate of Health Services.

9. (1) There shall continue to exist an office, in the ministry, known as the Directorate of Health Services, which is headed by the Director of Health Services appointed in terms of the law regulating appointments of public officers.

(2) The Directorate shall be responsible for the provision of clinical care services, pharmaceutical services, nursing services and the public health services, each of which shall be managed by a Deputy Director or such other title as may be designated.

Duties of Director of Health Services.

10. (1) The Director of Health Services shall be accountable, administratively, to both the Principal Secretary and the Minister in the performance of the duties of Director of Health Services.

(2) The duties of the Director of Health Services shall include –

- (a) directing, coordination, supervision and monitoring and evaluating the delivery and performance of health care services in the public and private sectors;
- (b) advising the Principal Secretary and the Minister on administrative, health planning and technical planning; and
- (c) any other duty that may be given to the Director from time to time by the Minister, Principal Secretary or other appropriate authority.

(3) A Deputy Director shall, in the absence of the Director, act and carry out the functions of the Director.

Delegation of powers by Director.

11. The Director may from time to time when necessary delegate to departmental employees such powers as the director may deem appropriate and that person shall exercise the powers, functions, duties of that office in accordance with any direction of the Director.

PART IV HEALTH REGULATORY SERVICES

Establishment of Directorate of Health Regulatory Services.

12. (1) There is established an office in the ministry known as the "Directorate of Health Regulatory Services", which shall be headed by a Director of Health Regulatory Services appointed in terms of the law regulating appointments of public officers.

(2) The Directorate of Health Regulatory Services shall be responsible for the protection and promotion of health and safety of users through –

- (a) quality management and standards, monitoring;
- (b) service as the central office for standards setting, enforcement;
- (c) publication and dissemination of information to the public;
- (d) inspections services; and
- (e) licensing of health facilities, establishments and activities specified in this Part.

(3) The Minister shall appoint a licensing advisory committee, which shall advise the Director of Health of Regulatory Service in exercising the functions in this Part.

(4) The committee referred to in subsection (3) shall consist of -

- (a) two persons with expertise in medicine, clinical governance and clinical risk management, occupational health and safety, pharmacy, dentist;
- (b) two representative of the private health sector;
- (c) one representative of the business community;
- (d) one representative of the urban local authority;
- (e) one representative of the rural local authority;
- (f) representative of the Attorney General; and
- (g) representative of the ministry responsible for commerce.

(4) The members of the committee shall be paid allowances as may be determined by the Minister in consultation with the minister responsible for finance.

Prohibition of operation or transportation without licence, permit or certificate.

13. A health facility, establishment or trade shall not operate or conduct business without a licence, certificate or permit, as the case may be, issued under this Act.

Entities requiring licence, permit or certificate.

14. (1) A health facility, establishment or trade that shall not operate or transport without a licence is a -

- (a) hospital, clinic and diagnostic facility, single health professional office, medical imaging, laboratory, blood banks, pre-hospital care, emergency service and rehabilitative centres, ambulance and transport service;
- (b) mortuary;
- (c) old age home, rehabilitation facility, or such similar institution and facility;

- (d) blood and body fluid samples;
- (e) body tissues and organs for donation; or
- (f) other health care services and things as the Minister may determine after consultation with the Director of Health Services and such determination shall be published by notice in the Gazette.

(2) The following entities shall not operate without a health certificate issued under this Act -

- (a) trading establishments;
- (b) restaurants;
- (c) salons, barbershops or such other similar entities;
- (d) food processing facilities;
- (e) funeral homes, mortuaries, crematoriums and cemeteries;
- (f) commercial food outlets;
- (g) imported foods;
- (h) establishments selling human hair;
- (i) bakeries;
- (j) buildings;
- (k) street food vendors;
- (l) vehicles for the conveyance of meat; or
- (m) other trade premises and entities as may be prescribed by the Minister.

(3) The following activities shall not operate without a permit issued under this Act-

- (a) import of salt, foods and medical products and supplies;
- (b) transportation of a body or the remains of an exhumed body into the Kingdom;
- (c) removal of a body from the Kingdom;
- (d) exhumation of a body; or
- (e) removal of body of person who died of infectious disease.

(4) A person shall not establish or operate at trade premises without first obtaining and maintaining a health certificate in respect of -

- (a) food premises;

- (b) dairy business;
- (c) slaughter facility; or
- (d) such other businesses or facilities as the Minister may determine after consultation with the Director of Health Services and such determination shall be published by notice in the Gazette.

Application for licence, permit or certificate.

15. A person who intends to operate or transport products specified in section 14 shall apply to the Director of Health Regulatory Services in the form and manner as may be prescribed.

Requirements and Conditions of licenses, permits, certificates or registration.

16. (1) The Minister may by regulation prescribe requirements for a licence, permit, certificate or registration.

(2) The Ministry may declare conditions to be attached to a licence, permit, certificate or registration.

(3) The holder of a licence, permit, certificate or registration shall comply with the conditions attached to the documents, and the renewal shall be dependent on sufficient compliance with the licence conditions.

Grant, suspension or revocation of licence, permit or certificate.

17. (1) The Director of Health Regulatory Services may grant, suspend, cancel or revoke a licence, permit or certificate issued under this Act.

(2) The Director shall exercise the functions in sub-section (1) on the advice of a committee appointed by the Minister.

Register for licences, permits or certificates.

18. The Director of Health Regulatory Services shall maintain a register for all licences, certificates, permits and registrations and publish these periodically in the Gazette and on the official website of the Ministry to reflect changes in the register.

Appointment and designation of Inspectors.

19. (1) The Director of Health Regulatory Services may appoint any suitably qualified health officer to be a Health Inspector.

(2) An Environmental Health Officer or any suitably qualified health officer designated by the Director of Health Regulatory Services shall perform the functions of a Health Inspector.

Powers of Health Inspector.

20. (1) A Health Inspector shall, subject to the provisions of this Act -

- (a) enter any land, place, premises or thing with or without a search warrant where a reasonable belief exist that obtaining a warrant would defeat the object of the

search, for the purpose of examining it to ascertain whether any nuisance or other condition endangering health exists in the land, place, premises or thing, at any reasonable time and for the proper execution of the duties provided under this Act;

- (b) open up the ground of the premises if necessary and cause the sewers to be tested or other work to be done that is necessary for the effectual examination of the premises;
- (c) enter and inspect any premises where there is reason to believe that a person suffering from or recently suffered from an infectious disease is or has been in the premises;
- (d) request a Medical Officer to examine or cause to be medically examined any person found on the premises;
- (e) examine or inspect any certificate of marketing authorization, license, book, electronic information storage system or other document on the premises and, for that purpose, may do such other things necessary or deemed fit, including the taking of extracts from documents in the possession of the person as may be necessary, to effect the examination or inspection;
- (f) take samples for analysis or for other examination of any products or of any substance capable of being used in the manufacture of product intended for human consumption or use;
- (g) seize and temporarily detain any products, substances or articles consisting of or containing any prohibited substances which the Health Inspector has reasonable cause to suspect is liable to forfeiture under this Act or other law;
- (h) temporarily close premises or thing, or suspend the licence, permit, registration or health certificate of any premises the Health Inspector has reasonable grounds to believe may cause harm to humans or poses a potential danger or danger to public health and such closure shall be for a period of no longer than three (3) business days for the purpose of remediation of the dangerous conditions; and
- (i) recommend the institution of administrative, civil or criminal proceedings and refer matters of non-compliance with licences, permits, certificates, registrations and other requirements to the Internal Review Board.

(2) A person aggrieved by a decision of a Health Inspector, Environmental Health Officer or other authorized officer may appeal to the Court with competent jurisdiction.

Obstruction of inspection or Inspector.

21. (1) A person, who -

- (a) fails to give or refuses access to an officer or authorized person entry, for purposes of execution or investigation as stated or required under this section or Act;
- (b) obstructs or hinders that authorized person or officer in the execution of the duties given or required under this Act;

- (c) fails or refuses to give information that may lawfully be required and be given to that authorized person or officer; or
- (d) gives that authorized person or officer false or misleading information knowing it to be false or misleading, commits the offense of obstruction or any other applicable offence.

(2) A person who commits an offence specified under subsection (1) shall be liable on conviction, to a fine not exceeding ten thousand (E10,000) or to a term of imprisonment not exceeding three (3) years.

PART V EMERGENCY MEDICAL SERVICES

Reporting by health emergency care services.

22. The licensee shall periodically report and provide emergency care data to the national coordinating structure in the manner prescribed.

Emergency medical officer.

23. (1) The licensee of an emergency medical service shall have a scene commander or emergency medical officer.

(2) The emergency medical officer shall be responsible for -

- (a) assigning the degrees of urgency to wound, injuries and illness; and
- (b) deciding the order of treatment for casualties (triage).

Duties of emergency medical officer.

24. An emergency medical officer shall -

- (a) provide resuscitation to casualties on scene site unless an individual has a "Do not Resuscitate Order";
- (b) not refuse care that is deemed clinically necessary to any patient in need of emergency medical care; and
- (c) convey casualties to the nearest public or private health facility for purposes of resuscitation and stabilization.

Declaration of dead at the scene.

25. (1) A person shall be declared dead at the scene by emergency medical personnel if -

- (a) there is a decapitation; or
- (b) all other conditions are declared dead by a doctor at a health facility.

(2) For purposes of this section any other person at the scene shall not certify death.

PART VI
ESTABLISHMENT OF ESWATINI HEALTH AND
HUMAN RESEARCH REVIEW BOARD

Establishment of Health and Human Research Review Board.

26. (1) There is established a Board known as the "Eswatini Health and Human Research Review Board" appointed by the Minister.

(2) The Board shall consist of members with qualifications and experience in epidemiology, statistics, research, law and human rights, public health, laboratory technology, medicine and other health disciplines as may be appropriate and a person, who does not hold a science or health qualification, appointed by the Minister and an Executive Secretary.

(3) The Board may, from time to time, co-opt reviewers outside of it-self based on its need and capacity, and guided by the National Ethics Policy.

(4) In the exercise of its functions under this Act, the Board or member of the Board shall not be subject to the direction or control of any person or authority.

(5) The members of the Board shall be appointed for a term not exceeding three years, and may be eligible for re-appointment for an additional term not exceeding three years.

(6) The Minister shall appoint a Chairperson from among the members of the Board.

(7) A vacancy in the Board may 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.

(8) There shall be a Secretariat of the Board headed by an Executive Secretary who shall be appointed by the Board in consultation with the Principal Secretary in the Ministry of Health.

(9) The Secretariat shall be responsible for carrying out administrative, managerial and technical functions in support of Board work with oversight of the Board Chairperson.

(10) The members of the Board and the secretariat shall be paid such emoluments as determined by the Minister of Finance.

Functions and responsibilities of Board.

27. (1) In exercising its functions, the Board shall ensure the protection of human subjects from harm as a result of participating in health research and coordinate or work closely with Ministries, Departments and such other relevant entities.

(2) The functions of the Board shall be to -

- (a) regulate health research ethics in the country in keeping with international health research ethics related best practices.
- (b) review and approve research ethics clearance applications;
- (c) monitor implementation of approved research protocols;

- (d) facilitate exportation of research related materials; and
 - (e) creation of demand for ethical research.
- (3) For purposes of this section, the Board shall have the power to -
- (a) ensure international registration of the Board;
 - (b) develop institutional and technical capacity;
 - (c) receive, review and adjudicate on research protocols submitted;
 - (d) provide advice on scientific and ethical issues to the research community;
 - (e) conduct post approval monitoring;
 - (f) suspend, terminate or fine non-compliant research activities or studies based on established guidelines;
 - (g) process material transfer applications involving data and biological samples;
 - (h) archive and manage databases and study reports that shall arise from approved studies;
 - (i) ensure that researchers take appropriate action to address adverse events;
 - (j) take action on researchers that breach conditions of approved protocols;
 - (k) ensure proper management and dissemination of research findings;
 - (l) promote a culture of ethical research practice among researchers;
 - (m) create research ethics related public;
 - (n) develop local and international partnerships; and
 - (o) submit periodic monitoring and evaluation reports.

Research and Experimentation on Human Subjects.

28. (1) The principal investigators and researchers who conduct health research in the country involving human subjects shall comply with the Constitution of Eswatini, this Act, the National Ethics Policy and any other law as a means of ensuring the practice of ethical health research.

(2) Notwithstanding anything to the contrary in any other law, research or experimentation on a living person may only be conducted -

- (a) in the manner prescribed or approved by the Board;
- (b) with the voluntary written consent of the person after that person has been informed of the objects of the research or experimentation and any possible positive or negative health consequences;

- (c) in the case of a minor, the research or experimentation shall be -
 - (i) in the best interest of the minor;
 - (ii) with the consent of a parent, legal guardian or caregiver's informed and written consent;
 - (iii) in the case of minor that is capable of understanding, with the voluntary and informed assent of the minor; and
 - (iv) in the manner and under such conditions as may be prescribed by the Board;
- (d) in the case of an adult incapable of consenting, with the voluntary and informed consent of their spouse, adult children, siblings, or any other authorized person.

Institutional Review Boards and Research Ethics Committees.

29. (1) The Board shall facilitate establishment and registration of institutional research review Boards at institutional or departmental levels based on established guidelines.

(2) The Institutional Review Boards shall-

- (a) review internal research proposals in preparation for submission to the Eswatini Health and Human Research Review Board for final review and adjudication; and
- (b) recommend research proposals or protocols that meet ethical standards as prescribed by national research ethics guidelines for final approval by the Eswatini Health and Human Research Review Board.

Research Ethics Review

30. (1) A person shall not carry out health research or related assessments in the country without approval of the Board.

(2) A researcher shall submit for review study protocols based on the classic scientific structure of a research proposal with supporting documents as provided for in established national guidelines for researchers.

(3) The review process shall not be initiated until all required documentation in support of the application has been submitted and the prescribed fee has been paid.

Secretariat of Board

31. (1) There shall be a Secretariat to the Board which shall be established in consultation with the Minister, Chairperson of the Board and the Executive Secretary.

(2) The Secretariat shall be charged with the responsibility of carrying out administrative, managerial and technical functions in support of Board work with oversight of the Chairperson as defined by established standard operational procedures.

(3) The Secretariat shall be headed by an Executive Secretary who shall be appointed by the Board in consultation with the Principal Secretary.

(4) The Executive Secretariat shall appoint staff members through consultation with the Chairperson.

PART VII HEALTH FACILITIES

Transition to autonomous status.

32. (1) The Minister, in consultation with the Health Advisory Committee, may grant full or partial autonomy to any public health facility such as a hospital or clinic, the Central Medical Stores, the Blood Transfusion Service or any other service or unit of the Ministry, and such autonomy shall be with regard to aspects of the management, administration or operation of the facility as may be specified in an order of the Minister and subject to any other terms and conditions as may be specified in the order.

(2) The transformation to an autonomous status may be all at once or gradual.

Hospital services or stores management during transition.

33. (1) As part of the transition to autonomous status, the Minister may establish and appoint not less than five and not more than seven members to a Board or committee to manage the operations of any Government or public hospital, the Blood Transfusion Service or the Central Medical Stores.

(2) The members of the Board or committee shall have qualifications as determined by the Minister on recommendation of the Health Advisory Committee.

(3) The Minister may, if the Minister deems it fit, appoint a person to be the chief executive officer of the hospital or service or store in transition on recommendation of the members of the Board or committee.

(4) The functions of the Board or committee shall be determined by the Minister in consultation with the Health Advisory Committee, and may include any or all aspects of the management, administration or operation of the facility such as -

- (a) providing care and treatment;
- (b) conducting negotiations with the Ministry with respect to any grants or other monies appropriated by the Government or other donors;
- (c) ensuring best use of resources available to the hospital in the interests of patients;
- (d) implementing Government health policies;
- (e) establishing and strategizing on means of financing the operations of the hospital to achieve financial sustainability;
- (f) ensuring maintenance and improvement of the facilities of the hospital;
- (g) paying regard to the social obligation of the hospital to the community in which it operates;
- (h) formulating institutional health management arrangements;

- (i) ensuring compliance with any laws, regulations or standards applicable to private and public health actors or entities;
- (j) keeping proper books of accounts in relation to the hospital;
- (k) submitting annually and as and when directed by the Minister audited accounts reflecting the operations of the hospital; and
- (l) such other responsibilities as the Minister may determine and provide in the terms of reference for the Board or committee.

(5) The terms of reference and the aspects of the management, administration or operation may be changed by the Minister on the recommendation of the Board or committee or the Health advisory Committee.

(6) Unless otherwise specified in the order of the Minister, the Board or Committee shall comply with the rules of procedure as set out in the Schedule.

Obligations of private health facilities.

34. (1) A private health facility shall -

- (a) provide for the resuscitation of all emergency care victims, including persons without medical aid; and
- (b) report patient data to the Ministry as required on medical conditions seen at the facilities and other emerging diseases as guided by the Ministry.

Relationship between public and private health facilities.

35. (1) The Minister shall prescribe coordination mechanisms and conditions for referral of patients between public and private health facilities.

(2) For the purposes of subsection (1), the Minister may enter into an agreement with a private health practitioner, private health facility or non-governmental organization for the delivery of services to the public.

PART VIII THE RIGHTS AND RESPONSIBILITIES OF USERS AND HEALTH CARE PERSONNEL

Emergency treatment.

36. (1) A health care worker, health care facility or health provider shall not deny a person emergency medical treatment.

(2) Where emergency medical treatment is administered, all the ethical principles and standards of medical care in the provision of health care to save a life shall apply.

User to have full knowledge.

37. (1) A health care provider shall inform the user in clear and unambiguous terms and in a language best known to the user of -

- (a) of the various available health services, diagnosis procedures and treatment options at the disposal of the user;
- (b) the costs, benefits and risks associated with any treatment intervention process;
- (c) the right of the user to refuse treatment and the implications and risks associated with the refusal; and
- (d) of the general health status of the user for purposes of informed decision making on available options of treatment or health, whether or not consent is made for them or has no legal capacity to give informed consent.

(2) For purposes of subsection (1) (d), consent shall not be withheld unreasonably and it is to be given by the user, spouse, partner, major child, parent, guardian, major brother or sister.

(3) Where health services have been provided without the consent of the user, the Head of Clinical Services of the facility shall inform the Director of Health Services immediately within twenty four (24) hours.

(4) A user accessing medical care and treatment shall -

- (a) treat all health workers with respect and dignity at all time
- (b) adhere to the rules of the health facility;
- (c) provide accurate and relevant information to the healthcare provider regarding their health or previous known status;
- (d) sign a refusal of hospital treatment form when rejecting the recommended treatment; and
- (e) alert the health provider on preferences regarding medical care, including but not limited to issues whether to resuscitate or not, gender preferences or disability.

(5) A person above the age of twelve (12) years requiring medical examination has a right to choose the sex of the medical practitioner who may perform the examination.

Discharge report.

38. (1) A user, whether as an in or out patient, shall be provided, in writing, with a discharge report from the health care provider after medical care and treatment.

(2) The report in subsection (1) shall state the nature of the health service granted to the user, prognosis and need for follow-up treatment.

Rights of health care provider.

39. (1) A health care provider shall not be discriminated against based on personal health status.

(2) Notwithstanding subsection (1), the head of a health care may according to the guidelines determined by the Minister impose conditions on the services that may be rendered by a health care provider.

(3) If a user is physically, verbally or sexually abusive, the health care provider may refuse to treat that user and may find an alternative health care provider to care for that user.

(4) Subsection (3) shall not deprive the health worker of lodging a complaint against the user for any form of abuse.

(5) A health facility shall implement measures to prevent injury or damage to persons and property of health personnel and reduce disease transmission within a facility.

Dissemination of information.

40. A health facility shall ensure that appropriate, adequate and comprehensive information is disseminated on the health services for which they are responsible, which may include -

- (a) types and availability of health services;
- (b) organization of health services;
- (c) operating hours and time-tables of visitation;
- (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
- (g) rights and duties of users and health care providers.

Keeping and protection of records.

41. (1) A health facility shall keep records of every user accessing medical care.

(2) The head of a health facility shall put in place measures to protect user records.

(3) A person shall not -

- (a) falsify health records through adding or deleting information;
- (b) create, change or destroy records; or
- (c) breach or access computer health records without prior authorization

(4) A person who contravenes subsection (3) shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E 20, 000) or imprisonment for a period not exceeding four (4) years.

Confidentiality.

42. (1) For purposes of this section, all information pertaining to a user, including but not limited to the user's stay at a health facility, health status, or treatment is confidential.

(2) Notwithstanding subsection (1), information pertaining to a user may be disclosed if-

- (a) written consent for disclosure by the use is given;
- (b) there is a court order or law that requires the disclosure;
- (c) it is required in the interest of public health;
- (d) it is done for legitimate purposes within the health care provider's scope of duty and in the interest of the user; or
- (e) it is for the purpose of study, teaching or research with authorization of the user, head of health facility or ethics committee.

Duty to provide health information.

43. (1) The Minister may, by written notice, require a health facility to provide information, statistics on the conditions, treatment or services provided to individuals for purposes of health education, research or health knowledge.

(2) The information in terms of subsection (1) may not be submitted provided -

- (a) the individual consents to the provision of such information;
- (b) the identifying information is important for the purposes for which the information is sought; or
- (c) if the individual is under eighteen (18) years, the representative of the individual consents.

(3) Notwithstanding any other law or obligation, any person may provide health information to another person that does not enable the identification of the individual to whom the information relates.

Prohibition of termination of pregnancy.

44. (1) Abortion is prohibited or unlawful but may be allowed -

- (a) on medical or therapeutic grounds including where a doctor certifies that-
 - (i) continued pregnancy will endanger the life or constitute a serious threat to the physical health of the woman;
 - (ii) continued pregnancy will constitute a serious threat to the mental health of the woman; or
 - (iii) there is a serious risk that the child will suffer from physical or mental defect of such a nature that the child will be irreparably seriously handicapped;
- (b) where the pregnancy resulted from rape, incest or unlawful sexual intercourse with a mentally retarded female.

(2) A person who -

- (a) terminates a pregnancy other than on the grounds provided for in subsection (2); or
- (b) advertises, distributes, publishes, exposes material on abortion services under this Act,

commits an offence and shall on conviction, be liable to a fine not exceeding fifty thousand Emalangeni (E50,000) or a term of imprisonment not exceeding ten (10) years or both.

- (3) For purposes of this section, no sentence or a part of it shall be suspended or postponed.

Sterilization.

45. (1) Sterilization shall be done on a person capable of consenting and who is above the age of eighteen years.

(2) Notwithstanding subsection (1), sterilization may be done on a person where failure to do so would jeopardize the person's life or cause serious physical health impairment.

(3) The procedure and manner of conducting a sterilization medical service shall be prescribed by the Minister.

Reproductive technology.

46. (1) Where a couple fails to achieve pregnancy normally, assisted reproductive technology may be conducted.

(2) A person shall not be paid for donating a gamete.

(3) If a person donates a gamete, the prescribed health facility shall-

- (a) protect the identity of the donor;
- (b) ensure that only the characteristics of the donor are on the donated gamete; and
- (c) store gamete for an unrestricted time period.

(4) A spouse or partner shall not be allowed to use the sperm of a deceased partner in an In-vitro fertilization procedure unless consent is expressly given in the decedent's will.

Medical treatment and care for the indigent and emergency medical treatment.

47. (1) All disadvantaged persons shall have access to medical care or treatment, as the Minister may determine.

(2) The Minister, for purposes of this section, shall ensure that Government provides for the medical treatment and care of disadvantaged persons and set standards or guidelines for their classification and identification.

(3) A health care provider or health establishment shall not refuse a person emergency medical treatment for the purposes of stabilizing that person.

PART IX
BLOOD, BLOOD PRODUCTS, BODY TISSUES AND ORGANS

Continuance of Eswatini National Blood Transfusion Service.

48. (1) There shall continue to exist a blood center in the Ministry known as the "Eswatini National Blood Transfusion Service".

(2) The Eswatini National Blood Transfusion Service shall perform the following functions -

- (a) educate and inform donors, stakeholders, partners and the public at large on all aspects of blood donation;
 - (b) collect safe and sufficient blood from voluntary non-remunerated blood donors to meet the national demand;
 - (c) implement and maintain a blood management system to establish, develop and maintain an adequate pool of voluntary non-remunerated blood donors;
 - (d) provide accurate test results within required timelines to ensure blood safety;
 - (e) to providing safe, adequate and effective blood and blood products in a cost effective and environmentally friendly manner with the principal objective of consistently meeting or exceeding customer requirements and expectations;
 - (f) establish and maintain hemovigilance system to ensure safe blood transfusion through compatibility testing, appropriate rational use of blood and blood products;
 - (g) establish and maintain a blood regulatory framework system to ensure proper donor recruitment, blood collection, processing, pre-transfusion testing and ethical use of blood and blood products;
 - (h) management of blood stock reagents and supplies inventory;
 - (i) employ and maintain cutting edge technology and simplify ENBTS business process to improve healthcare delivery;
 - (j) establish and maintain a cost recovery system to ensure the proper use of excess plasma produced at ENBTS and the provision of plasma-derived blood products (PDMP);
 - (k) Capacitate ENBTS staff to conduct independent health research, and to promote use of research results in decision-making and planning in order to improve health care delivery; and
 - (l) implement, maintain and strengthen blood bank quality management system to ensure customer satisfaction, blood safety and quality service delivery.
- (3) Subject to subsection (3), where it is deemed necessary, the Minister may authorize a non-profit entity or organization to provide blood transfusion and other related services to the public.
- (4) An entity or organization who intends to operate a blood bank shall-

- (a) apply for a licence to the Director of Regulatory Services to operate blood transfusion and other related services;
- (b) comply with established standards prescribed by the Director of Regulatory Services;
- (c) operate region facilities; and
- (d) comply with all the conditions and restrictions of the Directorate of Health Regulatory Service may deem suitable subsequent to the grant of the licence.

Consent for blood use.

49. (1) The removal of blood and blood products shall only be done with the consent of the individual under this Act, except where there is an order of court.

(2) For purposes of subsection (1), only a registered medical practitioner shall prescribe blood and blood products.

(3) Where the transfusion of blood and blood products is required, a qualified and registered health worker shall provide the service.

(4) The removal of blood and blood products from a mentally incapacitated individual is prohibited.

(5) A person who contravenes this section shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E 20,000) or a term of imprisonment not exceeding four (4) years.

Body tissues and organs.

50. (1) The Minister may, upon consultation with the Health Advisory Committee, approve the removal, storage of body tissues and organs by a health facility.

(2) The removal of a body tissue or organ from a deceased or living person shall be allowed only with the consent of the individual.

(3) Tissues and body organs shall not be removed from a person who is -

- (a) below the age of eighteen (18) years of age, if the tissues are un-replaceable; or
- (b) mentally incapacitated.

(4) In this section the use of tissues shall be according to prescribed medical conditions or standards of use.

(5) A person who contravenes this section shall, on conviction, be liable to a fine not exceeding hundred thousand Emalangeni (E 100,000) or a term of imprisonment not exceeding twenty (20) years.

Organ donation and transplantation.

51. (1) A person shall not remove tissues or organs from a living person or transplantation to another living person.

(2) Notwithstanding subsection (1), tissues or organs may be transplanted where-

- (a) there is written consent from for the tissue or organ removal;
- (b) the tissue or organ removal procedure is done in an authorized facility by a licensed medical practitioner; or
- (c) there is written authority by the head of clinical services in the established facility.

(3) The consent given in subsection (2) (a) for organ tissue or donation may be withdrawn any time prior to the transplantation.

(4) For purposes of this section, only a registered medical practitioner or dentist shall prescribe the transplantation of use of organs or use of donated tissues.

(5) A person who contravenes this section shall, on conviction, be liable to a fine not exceeding one hundred thousand Emlangeni (E 100,000) or a term of imprisonment not exceeding twenty (20) years.

(6) A transplant of organs or tissues may not be done to persons who are not citizens or permanently resident in Eswatini.

Donation of human bodies and tissues of deceased persons.

52. (1) The donation of human bodies and tissues of deceased persons may be done for purposes of advancing medical research and training of students.

(2) A spouse, parent, major child, guardian, brother or sister, may authorize the donation of a body or tissue of a deceased person to an institution or training facility.

(3) A person with legal capacity may make a will or sign a document with two competent witnesses for the-

- (a) donation of organs to be used after death; or
- (b) giving of consent to post-mortem examination for determination of death or medico legal purposes.

Removal of tissues during post-mortem examination.

53. (1) A post-mortem examination of a body of a deceased person shall be authorized in writing by a medical practitioner and may be conducted where -

- (a) the person whilst alive gave consent;
- (b) the spouse, partner, major child, major brother or sister, parents or the guardian gave consent; or

(c) when such examination is necessary for determining the cause of death.

(2) The removal of tissues for a post-mortem for the purposes of medical training, research and advancement of medical knowledge shall be authorized by the Minister.

(3) This provision shall not apply to cases of criminal investigations.

PART X HEALTH SERVICE COMMISSION

Establishment of Health Service Commission.

54. (1) There is established an independent and impartial service commission to be the Health Service Commission to exercise powers of appointment of officers in the Health Service within public sector for the better management and exercise of powers and functions regulating or relating to the Health Service.

(2) The Commission shall consist of not be more than five (5) members, one of whom shall be appointed a Chairperson.

(3) The members of the Commission shall, be appointed by the King on the recommendation of the Minister.

(4) In making the recommendation to the King for appointment, the Minister shall proceed in a competitive, transparent and open manner on the basis of suitable qualifications, competence and relevant experience, the Minister shall then endeavor to recommend a person who can effectively discharge the responsibilities of the office of Commission.

(5) A member of the Commission not shall enter upon the duties of the office until that member has taken the subscribed oath or affirmation of allegiance and another for the due execution of office as set out in the Second Schedule of the Constitution.

Independence of the Commission.

55. The Commission in the exercise of its authority or delegated powers under this Act shall, be independent of and not be subject to the direction or control of any other person or authority.

Tenure of office.

56. (1) The tenure of office of an inaugural Chairperson and each member shall, be six (6) years and four (4) years respectively.

(2) The Chairperson and a member shall be eligible for re-appointment for a single term of four (4) years

(3) The Chairperson or member may vacate office -

(a) by written resignation to the Minister on notice of three (3) months;

(b) at the expiration of the term of the normal appointment or such shorter appointment agreed to by the parties contained in the letter of appointment;

(b) on the abandonment of post or absence from work without authority and missing three (3) consecutive meetings of the Commission without a valid reason; or

(c) on the death of that Chairperson or member.

(4) A member of the Commission shall be removed from office by the King where a tribunal appointed under sub-section (5) recommends that the member ought to be removed from office for -

(a) inability to exercise the functions of office due to infirmity of the body or mind or any other cause; or

(b) misbehavior

(5) Where the Minister in the case of the Chairperson or the Chairperson in the case of any other member represents to the King that the question of removing a member of the Commission under sub-section (4) ought to be investigated then-

(a) the King shall appoint a tribunal consisting of a Chairperson, selected by the Chief Justice from persons who hold or held or qualify to hold a high judicial office, and two (2) other persons recommended by the Minister; and

(b) the tribunal shall enquire into the matter and report on the facts to the King and recommend whether the member ought to be removed under sub-section (4).

(6) If the office of Chairperson or any other member of the Commission falls vacant or the holder of that office becomes unable for any reason to discharge the functions as Chairperson or member of the Commission the King shall appoint another person to be Chairperson or member of the Commission.

Qualification for appointment

57. A person shall not be qualify for appointment as a member of the Commission if that person -

(a) holds a public office, is a Minister, Deputy Minister, Principal Secretary, a member of Parliament or is a member of the King's Advisory Council or similar body;

(b) is declared insolvent or is an un-rehabilitated insolvent in accordance with the law of any country;

(c) has been convicted by a Court of an offence involving dishonesty or of moral turpitude in respect of which that person has been sentenced to a fine or imprisonment or both;

(d) has been certified insane or of unsound mind;

(e) is a member of anybody which, in the opinion of the Minister, is a staff association, a trade union or has as its object or one of its objects the control or influence over salaries, wages or other terms and conditions of service of any class of employees; or

- (f) does not possess relevant training or qualifications and is not of high moral character and proven integrity.

Functions and responsibilities of the Commission

58. (1) The Commission shall -

- (a) appoint, promote, transfer, discipline and terminate from office officers within the Ministry;
- (b) advise the Minister on issues related to the employment of persons in the health sector;
- (c) develop a training system to ensure continuous training and retention of competent health care officers;
- (d) develop mechanisms to collaborate with training institutions and service providers to ensure a match between supply and demand of appropriate skills and competences for health services;
- (e) establish norms, standards, guidelines and practices for the effective management of human resource in the public health sector;
- (f) develop and coordinate codes of conduct, training and qualifications of health workers in the public health sector and matters related to their management and welfare;
- (g) confirm and terminate appointments of health workers in the public sector in the Ministry; and
- (h) do such other things conferred under the Act after consultation with the Minister, incidental or conducive to the exercise of its powers and functions.

(2) In the performance of its functions under this section, the Commission shall -

- (a) act in a transparent manner;
- (b) consider and decide matters before it as expeditiously as may be possible; and
- (c) act with fairness, probity and objectivity at all times.

Delegation of power.

59. The Commission may, in writing delegate, subject to any conditions that it may consider necessary, any of its functions under this Act to any of its members, head of department, Principal Secretary, body of persons or councils.

Proceedings of the Commission.

60. (1) The quorum at any meeting of the Commission shall be the Chairperson or any person presiding over the meeting as Chairperson and two other members.

(2) A decision of the Commission shall be by a majority of votes of the members present and voting, and in the event of an equality of votes, the Chairperson shall have a casting vote in addition to the Chairperson's deliberate vote.

(3) The Commission shall meet at a time and place that it deems expedient for the transaction of its business.

(4) Except as otherwise expressly provided in this section, the Commission may prescribe its own procedure.

Employment of Commissioners.

61. The members of the Commission shall hold office on a full time basis.

Powers of the Commission.

62. (1) The Commission shall have powers to-

- (a) require any member of the health service or any other person to attend and give information or evidence before it, concerning any matter which it is required to consider and may require the production of any documents relating to that matter by any person attending before it or whom, in writing it requires to do so;
- (b) examine official documents, books or other records;
- (c) obtain information or advise from any public officer; and
- (d) do all other things, including taking evidence on oath and administering the oaths, as are incidental or conducive to the exercise of its functions.

(2) The Commission may cause a person called before it to give evidence to be examined on oath or affirmation which shall be administered by the Secretary or by any other person authorized by the Commission.

Irregular representations.

63. In the performance of its functions, the Commission, a member of the Commission, the Secretary, any other officer or any person or body of persons exercising functions delegated or entrusted by the Commission shall not take into account any representations made otherwise than in accordance with this Act, regulations made under this Act or any other matter prescribed in pursuance of the objects of this Act.

Unauthorized disclosure of information.

64. (1) A member of the Commission, Secretary, any other officer of the Commission or any other person shall not, without the written permission of the Commission, publish or disclose to any person, otherwise than in the exercise of official functions of that person, the contents of any document, communication or information of whatsoever nature which comes to the notice of the person in the course of that persons duties.

Protection of members of the Commission.

65. A member of the Commission shall be protected against any action or suit brought against that member for any act done or omitted to be done during the honest execution of the duties of that member.

Remuneration and allowances of members.

66. A member of the Commission shall be paid such remuneration and allowances as the Minister may, after consultation with the Minister for finance, may determine.

Secretariat of the Commission.

67. (1) The Commission with the assistance of the Minister shall, set up and maintain a competent and qualified secretariat consisting of support staff and a secretary.

(2) The Secretariat in the exercise of its functions shall-

- (a) convene and prepare for meetings of the Commission as the Chairperson may direct;
- (b) keep proper files and correspondences of the Commission;
- (c) keep proper records of the minutes of the Commission;
- (d) advertise new or vacant posts as the Commission may direct;
- (e) process employment applications and related information as may be necessary;
and
- (f) carry out any other function as the Commission or Chairperson may direct.

(3) The Secretary shall be responsible for-

- (a) the proper organization and management of the Secretariat, managing the staff of the Secretariat;
- (b) managing the assets of the Commission;
- (c) reporting to the Chairperson, as a public relations officer of the Commission.

(4) The Secretary and staff of the Commission shall be appointed by the Civil Service Commission.

Right to administrative justice.

68. (1) Subject to sub-section (2), a person appearing before the Commission or anybody exercising delegated functions of the Commission shall have a right to administrative justice in terms of the applicable law.

(2) The right to administrative justice shall include legal representation at the expense of that person.

Appeal.

69. A person aggrieved by a decision of the Commission may, within (30) days after the decision is communicated to that person, appeal to the High Court.

Annual reports.

70. The Commission shall, not later than three (3) months after the end of each financial year, submit to the Minister a report of its activities relating to that financial year, and the Minister shall lay that annual report before Parliament.

PART XI OFFENCES AND PENALTIES

Offence.

71. A person -

- (a) who fails to report a thing, the happening or non- happening of a thing as mandated or required by this Act shall, on conviction, be liable to a fine not exceeding ten thousand Emalangeni (E10,000) or a term of two (2) years imprisonment;
- (b) who is a public or private health facility owner, manager or keeper who fail to report health information as required under this Act shall, on conviction, where it is -
 - (i) a public health facility, the chief medical officer or any other person who was required to report, be subjected to a disciplinary action or proceedings by the Commission and the matter treated as one of failure to perform under the employment contract; or
 - (ii) a private health facility, the facility or owner be liable to a fine not exceeding fifteen thousand Emalangeni (E15, 000) or a term of three (3) years imprisonment and the conviction may include the loss of or non-renewal of a licence for the health facility;
- (c) who operates without a licence, certificate or permit the sentencing authority on conviction, shall take into consideration the size of the business, the likely income and other related factors when sentencing and in any event the fine shall not exceed twenty thousand Emalangeni (E20, 000) or a term of four (4) years imprisonment or both.

Violation of orders, notices and standards.

72. It is a violation to fail to comply with or delay to comply with any requirement, regulation or order or notice or a Ministry's standard and any person who commits such violation shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E20, 000) or a term of imprisonment not exceeding four (4) years and a further penalty of five hundred Emalangeni (E 500, 00) for each day the violation continues.

False and misleading statements and unauthorized advertising.

73. (1) A person shall not make false or misleading statements in connection with an advertisement, promotion or offer for sale of a product or service related to health.

(2) A person who contravenes subsection (1) shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E20, 000) or a term of imprisonment not exceeding four (4) years or to both and a further penalty of (one thousand Emalangeni (E1000,00) for each day of contravention after the immediate conviction.

(3) A Court of competent jurisdiction, may impose or issue, in addition to or as an alternative to the penalty under subsection (2), a cease and desist order to a person found guilty of contravening this section.

Self-dealing and violation of confidentiality of information.

74. (1) A person who has a client, patient or a fiduciary relationship to a client, patient or other person shall act in the best interests of that person and not without just cause abuse the relationship in whatever manner or transaction, and publish confidential information without the person's consent.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E20, 000) or to imprisonment for a term not exceeding four (4) years and forfeiture to the aggrieved person any benefits earned as result of contravening this section.

Fraudulent conduct with respect to licences and other documents.

75. A person who -

- (a) for the purposes of obtaining a licence, certificate, permit or other document under this Act, makes a false statement or is a party to a false pretense or conduct, knowing it to be false;
- (b) forges or falsifies a licence, certificate, permit or other document under this Act, or keeps or accepts a forged or falsified licence, certificate, permit or other document knowing it to be forged or falsified; or
- (c) uses or attempts to use a forged or falsified licence, certificate, permit or other document knowing it to be forged or falsified, commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E20,000) or to imprisonment for a period not exceeding four (4) years.

Disclosure of confidential information.

76. (1) A person who has in that person's possession a confidential document, communication or information and who publishes or communicates it to another person otherwise than for the purpose of prosecution under this Act or another law or any regulations made under this Act or in the course of official duty commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E 20, 000) or to imprisonment for a term not exceeding four (4) years or to both.

(2) A person who has, in that person's possession any document, communication or information which to the knowledge of that person has been disclosed in contravention of this Act, and who publishes or communicates it to another person otherwise than for the purpose of prosecution under this Act or another law, or in the course of official duty, commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E 20, 000) or to imprisonment for a term not exceeding four (4) years or to both.

(3) The document, communication or information referred to in subsections (1) and (2) shall be in respect of this Act, operation of this Act, the Ministry, Government or the rights of a patient or other person or administration of the Ministry.

Undue Influence.

77. Without prejudice to any other law, any person who otherwise than in the course of the official duty of that person improperly, whether acting directly or indirectly, alone or acting through another person, unduly influences or attempts to unduly influence, a decision of any Public Officer, Medical Officer, any Board or Committee, commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand Emalangeni (E10 000) or to imprisonment for a period not exceeding two (2) years or to both.

General penalty

78. Where a person commits an offence under this Act and a penalty is not specified either in this Act or any other law, that person shall be liable, on conviction, to a fine not exceeding fifty thousand Emalangeni (E50,000) or to imprisonment for a term not exceeding ten (10) years or to both.

**PART XII
GENERAL PROVISIONS**

Proceedings to be in camera and reports not to be published.

79. (1) The proceedings and enquiries done under this Act shall be confidential and conducted in camera, the records and reports are to be kept in a confidential manner and not published for public consumption, unless the Minister or Court directs in writing otherwise.

(2) It is an offence under this Act to divulge information of an infected person or publish an inquiry, record or report and for an unauthorized person to be found in possession of such records or reports.

(3) This section shall not apply to reports by a person that is mandated to report under this Act as long as that person strictly observes the non-violability of a person's rights to personal security and confidentiality.

Willful withholding of information

80. A person who willfully or deliberately -

- (a) withholds information required by the Ministry; or
- (b) refuses to appear before, the Internal Appeals Board or otherwise contravenes the provisions of this Act, commits an offence and shall, on conviction, be liable to a fine not exceeding E10, 000 (ten thousand Emalangeni) or to imprisonment for a

term not exceeding five (5) years or to both.

Protection of the Government, local authorities and other persons.

81. (1) Where it is alleged by any person that the Government or any authorized persons have caused injury to any person or damage to any property, or otherwise to have detrimentally affected the rights of any person whether in respect of property or otherwise, it shall be a defense in the legal proceedings brought against the Government or such other authorized persons that the defendant or respondent, as the case may be, used the best known, and only practicable method in the exercise of powers or performance of that persons duties in that case.

(2) In the case of proceedings against a local authority or other authorized officer or person, a certificate signed by the Principal Secretary or the Director of Health Services that the defendant or respondent has, with regard to all the circumstances, used the best known or the only or the most practicable and available methods, shall be accepted by a court as prime facie evidence of the fact until the contrary is proved.

Protection of officers and other persons.

82. Where a person or legal entity acts in good faith and without negligence in the exercise of any powers conferred or performance of any duties imposed by this Act, that person or legal entity shall, be immune from any legal proceeding.

Protection of and access to information and health records.

83. (1) Where information or data is provided to the Ministry or any of its staff members, by any private citizen or entity, that information or data shall be confidential, unless an express written exception is provided.

(2) It shall be unlawful to disclose to any other person or entity any information or data acquired by the Ministry or any of its staff in the exercise of its powers or in the performance of functions under this Act to use such information or data for self-gain, malicious intent or for the benefit of another.

(3) A person may be permitted to disclose information -

- (a) for the purpose of the exercise of that person's powers or for the performance of that person's functions under this Act with the written authority of the Principal Secretary;
- (b) when required to do so by a competent Court or under any law; or
- (c) if it is in the public interest as determined by the Executive Management Committee prior to disclosure.

(4) A Health Worker that has access to health records of a client or patient may disclose such personal information to a health care provider or health care establishment as is necessary for any legitimate purpose within the scope of that health worker's duties where such access or disclosure is in the interest of the client or patient.

(5) Notwithstanding subsection (4), a person, including a Health Worker, shall keep patient information confidential.

(6) A person in-charge of a health facility shall set up control measures to prevent unauthorized access to patient health records and to the storage facility or system in which the records are kept.

(7) Without prejudice to any other law, a person who, in connection with the exercise of that person's functions or duties, willfully gives the Ministry false information knowingly to be false or is false by reason of the omission of any particular relevant material, commits an offence and in addition may be subjected to disciplinary action.

(8) A person that contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E20,000) or to imprisonment for a period not exceeding 5 (five) years or to both.

Rights of persons to recover for damages suffered

84. A person shall, have a right to institute legal proceedings and claim for damages in a competent Court of law for loss or injury sustained through the negligence of any person to whom a duty is imposed by this Act or any other law.

Regulations and other instruments.

85. (1) The Minister may make regulations, to give effect to the purposes of this Act.

(2) The Minister may cause regulations, guidelines, standards, form or application made under this Act, to be placed on the web site of the Ministry, and notify the public of the placement through the media, and invite anyone to submit comments.

(3) The Minister whilst making regulations under this Act, may prescribe fees, offences and penalties.