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PROVINCE OF WESTERN CAPE

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**WESTERN CAPE HEALTH  
FACILITY BOARDS ACT, 2001**

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PROVINSIE WES-KAAP

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**WES-KAAPSE WET OP  
GESONDHEIDSFASILITEITSRADE,  
2001**

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**No 7, 2001**

# ACT

To provide for the establishment, functions, powers and procedures of Health Facility Boards; to amend and repeal certain laws relating to Hospital Boards; and to provide for matters incidental thereto.

**B**E IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

## Definitions

1. For the purposes of this Act, and unless the context otherwise indicates—
- “**Board**” means a Health Facility Board established in terms of section 5; 5
  - “**Department**” means the provincial Department of Health as listed in column 1 of Schedule 2 of the Public Service Act, 1994, under the heading Western Cape;
  - “**Head of Department**” means the Head of the Department of Health in the Province of the Western Cape; 10
  - “**health facility**” means a facility designated as a health facility in terms of section 4;
  - “**member**” means a member of a Board appointed in terms of section 6;
  - “**Minister**” means the Provincial Minister responsible for health services in the Western Cape; 15
  - “**prescribe**” or “**prescribed**” means to prescribe or to be prescribed by regulation;
  - “**public sector health facility**” means a—
    - (i) clinic;
    - (ii) community health centre; 20
    - (iii) hospital;
    - (iv) maternity home;
    - (v) midwife obstetric unit;
    - (vi) convalescent home;
    - (vii) building, institution or place where persons receive treatment, 25  
diagnostic or therapeutic interventions or other health services;  
which is owned or administered by a provincial organ of state or a local government as the case may be, and
  - “**this Act**” includes regulations promulgated thereunder.

## Administration of Act 30

2. The Minister has overall responsibility for the administration of this Act, except where a contrary intention appears.

## Legislative purpose

3. These measures are enacted to ensure—
- (a) the establishment of representative, accountable Health Facility Boards as statutory bodies; 35
  - (b) accountability of health facility management to the community and responsiveness to the needs of patients and their families;
  - (c) community support for, and involvement in, health facilities and their programmes; 40
  - (d) responsible financial management of health facilities;
  - (e) effective and efficient use of resources at health facility level, and
  - (f) that Health Facility Boards are provided with a basic set of clearly defined functions and powers, which may be incrementally expanded in the public interest as the capacity of a Board increases. 45

### Designation of health facilities

4. (1) Despite any other law but subject to this section, the Minister may designate any public sector health facility as a health facility for the purposes of this Act.
- (2) For the purposes of this Act the Minister may designate a facility which is administered by a local government as a health facility only with the consent of the Provincial Minister responsible for local government in the Western Cape, and with the concurrence of the local government which administers the facility concerned. 5

### Establishment of Boards

5. (1) The Minister may establish a Health Facility Board for a health facility or a group of health facilities. 10
- (2) A Board is a juristic person, capable of suing and being sued in its own name.

### Appointment of members

6. (1) The Minister must, in accordance with this section, appoint to a Board not less than eight but not more than fourteen members, including—
- (a) persons representing a community or communities served by the health facility or facilities in respect of which the Board is established, and nominated in terms of subsection (5); 15
  - (b) at least one person with technical expertise in business or law, or finance, or accounting or some other area relevant to the functions of the Board;
  - (c) the head of the health facility or, in the case of a Board established for more than one health facility, at least one of the heads of those health facilities; 20
  - (d) at least one person representing the clinical staff of the health facility or facilities in respect of which the Board is established, and nominated by the clinical staff of such health facility or facilities;
  - (e) at least one person representing the non-clinical staff of the health facility or facilities in respect of which the Board is established, and nominated by the non-clinical staff of such health facility or facilities, and 25
  - (f) in the case of one or more health facilities where health professionals are trained, at least one person representing academic interests and nominated by the Vice-Chancellor or Vice-Chancellors of the relevant university or universities. 30
- (2) In addition to the members appointed in terms of subsection (1) the Minister may appoint to a Board—
- (a) a member of the Provincial Parliament, nominated by the Cabinet of that Parliament; 35
  - (b) one or more elected local councillors, nominated by a local council or a health-related committee of a local council, and
  - (c) a representative of the Department.
- (3) In the case of a Board established for a health facility or facilities administered by a local government, the Minister must appoint members in terms of subsections (1) and (2) in concurrence with the local government which administers the facility concerned. 40
- (4) The members appointed in terms of subsection (1)(a) must constitute at least fifty percent of the total number of members of a Board.
- (5) The members referred to in subsection (1)(a) must be nominated by a body which, in the opinion of the Minister, is sufficiently representative of the interest of the community or communities concerned. 45
- (6) A body referred to in subsection (5)—
- (a) may not be a political party;
  - (b) may be, but need not be, a:

- (i) Community Health Committee or Forum;
  - (ii) Community Development Forum;
  - (iii) civic organisation;
  - (iv) women's organisation;
  - (v) welfare organisation; 5
  - (vi) representative organisation of patients who use health services or health facilities;
  - (vii) community-based organisation;
  - (viii) non-governmental organisation;
  - (ix) religious organisation; 10
  - (x) youth structure, and
  - (xi) representative organisation of a community or communities with special health needs.
- (7) The Minister must prescribe procedures for the invitation of nominations for membership of a Board contemplated by subsections (1)(a) and (5). 15
- (8) Where nominations are required in terms of this section, all nominations received within a prescribed period must be considered by the Minister before the relevant appointment is made.
- (9) If the Minister does not receive a nomination required in terms of this section, any suitably qualified person may be appointed a member in accordance with the relevant paragraph of subsection (1) or (2). 20

#### **Terms of office of members**

7. (1) Members are appointed in terms of section 6 for a period of three years.
- (2) On the expiration of the term of office of a member, that member may remain in office until a successor has been appointed, but not for more than six months. 25
- (3) Subject to subsection (4), a member is eligible for reappointment to a Board at the expiration of that member's term of office.
- (4) A member, other than a member appointed in terms of section 6(1)(c), may not serve on a Board for more than three consecutive terms.
- (5) Despite the provisions of subsection (4), a member who has served for three consecutive terms may be reappointed after an interval of not less than one year. 30

#### **Vacancies**

8. (1) The chairperson of a Board must immediately declare an office on the Board vacant if a member— 35
- (a) dies;
  - (b) submits a resignation from office in writing to the chairperson;
  - (c) becomes insolvent;
  - (d) is declared to be of unsound mind by a court of the Republic;
  - (e) is convicted of any crime or offence for which that member is sentenced to imprisonment without the option of a fine, in the Republic as well as outside the Republic, if the conduct constituting the offence would have been an offence in the Republic; 40
  - (f) is absent, without leave of the Board, from three consecutive ordinary meetings of the Board;
  - (g) ceases to hold any office by virtue of which that member was appointed to the Board, or 45
  - (h) fails to disclose to the Board any direct or indirect personal financial interest in a matter before the Board, and that member is present during, or participates in, discussion of or voting upon, that matter.
- (2) Within seven days of declaring an office vacant in terms of subsection (1), a chairperson must in writing inform the Minister of the vacancy. 50
- (3) Upon receipt of notice of a vacancy in terms of subsection (2), the Minister must appoint another person, according to the same criteria used when the vacating member was appointed, to fill the vacancy for the unexpired period of office of the previous incumbent, and for the purposes of section 7(4) the unexpired period constitutes a term of office. 55

## Functions

9. The functions of a Board, which it must perform, are to—
- (a) approve the mission, vision and values of the health facility or facilities served by the Board within the context of laws, policies and affordable norms and standards at all levels of government, as defined by the relevant health facility management or managements; 5
  - (b) advise the relevant health facility management or managements on the formulation of health facility policies and strategies;
  - (c) participate in strategic planning and operational processes with a view to advising the relevant health facility management or managements; 10
  - (d) ensure that measures are taken by the relevant health facility management or managements to improve the performance and quality of service of the health facility or facilities;
  - (e) monitor the performance, effectiveness and efficiency of the health facility or facilities; 15
  - (f) take measures to ensure that the needs, concerns and complaints of patients and the community are properly addressed by the relevant health facility management or managements;
  - (g) foster community support for the health facility or facilities;
  - (h) raise funds for the Board; 20
  - (i) be involved in a consultative manner in the appointment and evaluation of the head or heads of the health facility or facilities served by the Board, and
  - (j) conduct regular inspection visits to the health facility or facilities served by the Board, and report on those visits to the head or heads of the health facility or facilities concerned and, where necessary, the Head of Department, but these visits must be conducted at reasonable times and must not unduly impede the proper performance of work at the health facility or facilities inspected. 25

## Powers

10. A Board has the power to— 30
- (a) advise and make recommendations to the relevant health facility management or managements, the Head of Department, or the local government, as the case may be, or the Minister on any matter relating to the performance of the Board's functions;
  - (b) advise and make recommendations to the Minister, or the local government, as the case may be, on the naming or renaming of the health facility or facilities served by the Board; 35
  - (c) obtain any information it requires from the relevant health facility management or managements, provided that this information does not violate a patient's or staff member's rights to privacy and confidentiality; 40
  - (d) request regular progress reports from the management or managements of the relevant health facility or facilities;
  - (e) request and review financial statements and annual financial statements of the relevant health facility or facilities at least once a year;
  - (f) conduct surveys, meetings and consultative workshops in the community or communities concerned; 45
  - (g) disseminate information to the community or communities concerned on the mission, vision, values, services, performance, standards, policies, strategies, needs and financial status of the health facility or facilities;
  - (h) appoint staff on a contract basis to serve the purposes of the Board; 50
  - (i) finance the provision, improvement or expansion of services, amenities and movable and immovable assets, provided that provincial Treasury approval is obtained where required in terms of any law, and
  - (j) raise or administer or raise and administer trust funds or Board funds for the purposes referred to in paragraph (h) or (i), or to give effect to any other provision of this Act. 55

### **Alteration of functions and powers of Board**

**11.** (1) Subject to subsection (4) and the provisions of any other law, the Head of Department may, on the recommendation of a Board, authorise that Board to perform additional functions or exercise additional powers if the Head of Department has reason to believe that— 5

- (a) the Board has the capacity to perform those additional functions or exercise those additional powers, and
- (b) it would be in the public interest for the Board to do so.

(2) Subject to subsection (4), the Head of Department may, after consultation with a Board, revoke the authority of the Board to perform additional functions or exercise additional powers if the Head of Department has reason to believe that— 10

- (a) the Board no longer has the capacity to perform the functions or exercise the powers concerned, or
- (b) it would be in the public interest for the Head of Department to do so.

(3) Subject to subsection (4), the Head of Department may, after consultation with a Board, exempt the Board from performing certain functions or powers as contained in sections 9 and 10. 15

(4) When exercising the powers contemplated in subsection (1), (2) or (3) the Head of Department must act—

- (a) after consultation with the head or heads of the health facility or facilities concerned, and 20
- (b) in accordance with any procedures which the Minister may prescribe for the exercise of those powers.

### **Performance of functions and exercise of powers**

**12.** (1) In performing its functions or exercising its powers, a Board must act in accordance with relevant and applicable health laws and policies made by the national, provincial or local government. 25

(2) The Head of Department may, if he or she deems it necessary, request the Board to provide a quarterly report on its activities.

### **Co-operation between Boards and health facility managements** 30

**13.** (1) A Board must forge strong and co-operative relations with the relevant health facility management or managements.

(2) The head of a health facility must—

- (a) take measures to assist the relevant Board when the Board performs its functions and exercises its power, and 35
- (b) forge strong and co-operative relations with the relevant Board.

(3) If irreconcilable differences arise between any health facility management and a Board, the Board or the head of the relevant health facility may request mediation or arbitration by the Head of Department.

### **Chairperson and deputy chairperson** 40

**14.** (1) Subject to subsection (2), a Board must at its first meeting and from among the members referred to in section 6(1)(a) elect a chairperson and a deputy chairperson and subsequently whenever either of those offices become vacant.

(2) The chairperson and the deputy chairperson are elected for a period of one year.

(3) Within 14 days of the election of a chairperson or deputy chairperson in terms of subsection (1), the chairperson must in writing notify the Head of Department of the name and address of the office bearer concerned. 45

(4) In the absence of both the chairperson and the deputy chairperson at a meeting of the Board, the Board must elect a person from among its members to act as chairperson for that meeting. 50

(5) The chairperson of a Board is the accounting officer for that Board.

(6) The chairperson must report regularly on the activities of the Board to the head or heads of the health facility or facilities for which the Board is established.

### General support

**15.** (1) The health facility or facilities for which a Board is established must provide a venue as well as secretarial, administrative and financial accounting support required by the Board, but no additional personnel may be appointed to a health facility for this purpose. 5

(2) If a Board is established for more than one health facility, a venue and secretarial, administrative and financial accounting support must be provided by one or more of the health facilities, as determined by—

(a) agreement between the heads of the health facilities concerned, or

(b) the Head of Department, in the absence of such agreement. 10

(3) Despite the provisions of this section, a Board may make alternative arrangements for the provision of a venue, as well as secretarial, administrative and financial accounting support, but the Board must pay for such alternative arrangements from its funds.

### Scheduling of meetings 15

**16.** (1) The Head of Department must determine the time and place for the first meeting of a Board.

(2) A Board must determine the time and place of subsequent ordinary meetings, which must take place at least once every two months.

(3) The chairperson may at any time and must, if requested in writing by at least two members of the Board, call a special meeting. 20

(4) The chairperson must notify members of the time, place and reason for a special meeting contemplated in subsection (3) at least three working days in advance of the meeting, except where a shorter notice period is necessitated by the exceptional urgency of the circumstances. 25

### Procedure at meetings

**17.** (1) The procedure at a meeting of a Board must, in so far as it has not been prescribed, be determined by the Board.

(2) A quorum of not less than one half of the members must be present at a meeting at any time when business is transacted. 30

(3) A decision of a Board should be by consensus, but in the absence of consensus the decision of a majority of the members present at the meeting is the decision of the Board.

(4) In the event of an equality of votes on any matter, the chairperson at the meeting has a casting vote in addition to a deliberative vote.

(5) A Board may request or permit any person to participate in a meeting or meetings of the Board in an advisory capacity. 35

(6) The chairperson must ensure that—

(a) a proper record is kept of attendance at, minutes of and resolutions adopted at, every meeting, and

(b) a copy of a record referred to in paragraph (a), signed by the chairperson, is sent to the Head of Department, if the Head of Department requests this. 40

### Public attendance at meetings

**18.** (1) Subject to the provisions of subsection (2), all meetings of a Board are open to the public.

(2) If a Board decides on good and sufficient grounds that members of the public should not be present at a meeting while a particular issue is being discussed, the chairperson may exclude the public from the meeting for the duration of that discussion. 45

(3) The Board may utilise any means it deems appropriate, to inform members of the public about Board meetings.

### **Executive committee**

- 19.** (1) A Board may appoint an executive committee composed of members of the Board, at least half of whom must be members appointed in terms of section 6(1)(a).
- (2) Subject to the directions of a Board and subsections (3) and (4), an executive committee may perform all the functions and exercise all the powers of the Board between meetings of the Board. 5
- (3) An executive committee does not have the power to set aside or vary any decision of the Board, except in so far as the Board otherwise directs.
- (4) Any action taken or decision made by an executive committee may at the first meeting of the Board following that action or decision be reviewed and altered without prejudice to any person. 10

### **Committees**

- 20.** (1) A Board may appoint specialist committees consisting of Board members to perform certain functions or exercise certain powers on behalf of the Board.
- (2) Where executive power is delegated to a committee, the mandate, terms of reference, procedure and quorums of the committee must be agreed to and recorded by the Board. 15
- (3) A committee may co-opt a person or persons not serving on the Board to serve on the committee in an advisory capacity.
- (4) Any action taken or decision made by a committee may, at the first meeting of the Board following that action or decision, be reviewed and altered by the Board without prejudice to any person. 20

### **Raising and utilisation of funds**

- 21.** (1) Subject to the provisions of this section, a Board may receive services, finances, stores or equipment for the purpose of performing its functions or exercising its powers in terms of this Act. 25
- (2) A Board may dispose of finances, stores or equipment belonging to it for the purpose of performing its functions or exercising its powers in terms of this Act.
- (3) A Board may establish a trust for the benefit of a health facility served by it and may accept and administer a trust already established for the benefit of a health facility served by it. 30
- (4) A Board must keep records of all funds received and spent by it and of its assets, liabilities and transactions.
- (5) A Board must annually within two months of the end of its financial year, submit to the Head of Department and to the Auditor-General financial statements compiled according to generally accepted accounting practice. 35
- (6) The records and annual financial statements must be audited by the Auditor-General who must submit an audit report to the Head of Department and the Board concerned within two months of the receipt of the statements referred to in subsection (5). 40
- (7) The financial year of a Board means a year ending on 31 March.
- (8) If a Board does not comply with the requirements of subsection (5), or in the event of any financial mismanagement by a Board, the Head of Department may take whatever remedial steps are considered necessary.

### **Travelling and other allowances** 45

- 22.** (1) Subject to tariffs set by the Minister, the Board may from its funds reimburse a member, an advisor in terms of section 17(5) or any person co-opted to serve on a committee of the Board, for—
- (a) transport expenses between that member's, advisor's or person's normal place of residence or business and the venue of a meeting of the Board or the committee concerned, and 50
- (b) travelling and subsistence expenses incurred as a result of attendance at conferences, seminars or training courses or other business of the Board, but in the case of conferences, seminars and training courses outside the Republic of South Africa, the Minister's prior written approval must be obtained. 55



(2) A Board may not compensate its members for time spent on Board business.

(3) Subject to tariffs set by the Minister, the Board may out of its funds compensate an advisor in terms of section 17(5) or a person co-opted to serve on a committee of the Board, for time spent on Board business.

#### **Dissolution of health facility** 5

**23.** In the event of the closure of a health facility served by a Board established in terms of this Act, the Head of Department must, at least three months prior to its closure and after consultation with that Board, instruct the Board in writing regarding—

- (a) its intended dissolution, in the case of a Board established only for that health facility; 10
- (b) any intended alteration of its composition necessitated by the closure of that health facility, in the case of a Board established for more than one health facility, and
- (c) the disposal of assets and liabilities which vest in that Board.

#### **Vesting of immovable property** 15

**24.** (1) All immovable property which, at the commencement of this Act, vests in or is registered in the name of hospital trustees contemplated by section 11 of the Hospitals Ordinance, 1946 (Ordinance 18 of 1946), vests in the Provincial Government of the Western Cape from the date of that commencement.

(2) The Head of Department must take the measures necessary to ensure that the transfer of immovable property to the Provincial Government of the Western Cape in terms of subsection (1) is effected in terms of the applicable legislation. 20

#### **Regulations**

**25.** (1) Subject to subsection (2), the Minister may make regulations regarding— 25

- (a) the formulation and approval of budgets of a Board; 25
- (b) procedures with regard to the authorisation of expenditure;
- (c) procedures with regard to the handling of unauthorised, fruitless, wasteful or irregular expenditure;
- (d) procedures with regard to the handling of audit reports, including the periods following receipt of such reports in which the necessary corrective action, if any, must be taken; 30
- (e) the investment of funds by a Board, and
- (f) any other matter which may or must be prescribed by regulation under this Act, or which may be necessary or expedient to prescribe in order to achieve the objects of this Act. 35

(2) In the case of regulations which have financial implications for the State, the Minister must issue these regulations with the concurrence of the Provincial Minister responsible for finance.

#### **Delegation**

**26.** (1) The Minister may delegate any function or power conferred upon her or him under this Act, except the power to make regulations, to the Head of Department, subject to any condition that the Minister may determine. 40

(2) The Head of Department may delegate any function or power conferred upon her or him under this Act to any officer employed by the Department, subject to any condition that the Head of Department may determine. 45

(3) A delegation in terms of subsection (1) or (2) does not prevent the performance of the delegated function or the exercise of the delegated power by the Minister or the Head of Department, as the case may be.

### Hospital trustees

27. The office of hospital trustee, established in terms of section 11 of the Hospitals Ordinance, 1946 (Ordinance 18 of 1946), and any concomitant trust is abolished.

### Transitional provisions

28. (1) Despite the repeal of Chapters II and IV of the Hospitals Ordinance, 1946 in terms of section 29 and subject to subsection (2), a Hospital Board in existence in terms of that Ordinance immediately before that repeal remains in existence as if that repeal had not taken place. 5

(2) The Head of Department may replace a Hospital Board referred to in subsection (1) with a Board established in terms of this Act, but the Head of Department must give the Hospital Board concerned at least three months written notice of the intended replacement. 10

(3) After consultation with a Hospital Board which is to be replaced, the Head of Department must make a determination concerning the disposal of the assets and liabilities of that Board, and that determination must be included in the written notice referred to in subsection (2). 15

(4) A determination referred to in subsection (3) may provide that all or certain named assets and liabilities of the Hospital Board concerned may be transferred to a trust referred to in section 21(3).

### Repeals, amendments, conflict of laws and savings 20

29. (1) The Hospitals Ordinance, 1946 (Ordinance 18 of 1946), is amended—

(a) in section 2, by the substitution for the definition of “Board” of the following definition:

“ ‘Board’ means a Health Facility Board established under section 5 of the Western Cape Health Facility Boards Act, 2001,” and 25

(b) by the repeal of the whole of Chapters II and IV.

(2) The Local Authorities (Investment of Funds) Ordinance, 1935 (Ordinance 23 of 1935), is repealed in so far as it relates to Hospital Boards.

(3) In so far as this Act is inconsistent with the Local Authorities (Audit) Ordinance, 1938 (Ordinance 17 of 1938), this Act prevails. 30

(4) Any proclamation, regulation, notice, order, authority, permission or document issued, promulgated, given or granted and any other action taken under a law repealed by this section is, if not inconsistent with this Act, deemed to have been issued, promulgated, given, granted or taken under this Act.

### Short title and date of commencement 35

30. This Act is called the Western Cape Health Facility Boards Act, 2001 and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.