

No. R. 176

2 March 2012

NATIONAL HEALTH ACT, 2003

REGULATIONS REGARDING THE RENDERING OF CLINICAL FORENSIC MEDICINE SERVICES

The Minister of Health has, in terms of section 68 of the National Health Act, 2003 (Act No. 61 of 2003), made the regulations in the Schedule.

SCHEDULE

1. *Definitions*

In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates

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

“application” means an application in terms of section 30 or 32 of Criminal Act

“body fluid” means anybody substance which may contain HIV or any other sexually transmissible infection, but does not include saliva, tears or perspiration;

“body specimen” means anybody sample which can be tested to determine the presence or absence of HIV infection;

“Clinical Forensic Medicine Service” means a clinical investigative process applied in the determination of cause and manner of injuries to living victims of sexual assault and related matters

“Criminal Law Amendment Act” means Criminal Law(Sexual Offences and Related Matters) Amendment Act, 2007

“Designated health facility” is a public health facility where investigative process are applied in the determination of cause and manner of injuries to living victims of sexual assault is conducted;

“HIV” means the Human Immuno-deficiency Virus;

“HIV test” means any validated and medically recognised test for determining the presence or absence of HIV infection in a person;

“interested person” means any person who has a material interest in the well-being of a victim, including a spouse, same sex or heterosexual permanent life partner, parent, guardian, family member, care giver, curator, counselor, medical practitioner, health service provider, social worker or teacher of such victim;

“investigating officer” means a member of the South African Police Service responsible for the investigation of an alleged sexual offence or any other offence or any member acting under his or her command;

“medical practitioner” means a person registered as a medical practitioner in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), and who is authorised to take body specimens as contemplated in the of the Criminal Amendment

“nurse” means a professional registered with the South African Nursing Council trained in forensic clinical medicine who, is authorised to examine, take forensic evidence for investigation and provide counseling and testing to the victim of sexual assault.

“offence” means any offence, other than a sexual offence, in which the HIV status of the alleged offender may be relevant for purposes of investigation or prosecution;

"Patient" means an individual who are receiving a service from, or are being cared for by, health worker

"PEP" means Post Exposure Prophylaxis;

"sexual offence" means a sexual offence in terms of this Criminal Act in which the victim may have been exposed to body fluids of the alleged offender; and

"victim" means any person alleging that a sexual offence has been perpetrated against him or her.

"Informed consent" means obtaining informed consent means explaining all aspects of the consultation to the patient;

Health Services provided for victims of sexual assault

1. (1) (a) If a victim has been has been sexual assaulted and accesses the designated health facilities he or she may—
 - (i) receive PEP for HIV infection, at a designated public health facility designated from time to time by the Minister of Health by notice in the *Government Gazette*
 - (ii) be given free medical advice surrounding the administering of PEP prior to the administering thereof;
 - (iii) receive voluntary counseling and testing and any other relevant treatment appropriate
 - (iv) be supplied with a prescribed list, containing the names, addresses and contact particulars of accessible public health establishments
- (b) Subject to section 30 of the Criminal Law amendment Act, the victim may apply to a magistrate for an order that the alleged offender be tested for HIV, at State expense.

(2) A victim who-

(a) lays a charge with the South African Police Service in respect of an alleged sexual offence; or

(b) reports an incident in respect of an alleged sexual offence at a designated health facility within 72 hours after the alleged sexual offence took place, will receive the services contemplated in (1)(a).

(3) A victim contemplated in (1) or an interested person must—

(a) when or immediately after laying a charge with the South African Police Service or making a report in respect of the alleged sexual offence be informed by the police official to whom the charge is made or by a medical practitioner or a nurse to whom the incident is reported, as the case may be, of the—

(i) Importance of obtaining PEP for HIV infection within 72 hours after the alleged sexual offence took place;

(ii) need to obtain medical advice and assistance regarding the possibility of other sexually transmitted infections; and

(iii) Services referred to in subsection (1); and

(b) in the case of an application contemplated in section 30 of the Criminal Law amendment Act, be handed a notice containing the prescribed information regarding the compulsory HIV testing of the alleged offender and have the contents thereof explained to him or her.

Designated health facilities for treatment of victims of sexual assault- Fundamental requirements

2. (1) (a) 24 hours forensic clinical medical services will be provided for all victims of sexual assault

(b) At both an individual and community level there adequate measures to protect the patients, staff, health records and the facility itself shall be taken.

(c) Unauthorised people should not be able to view or hear any aspects of the consultation. Alleged perpetrators must be kept separate from their victims.

Application

3. (a) These regulations are to be used by health professionals, communities and are applicable to both victims and perpetrators of crime or violence.
- (b) For purposes of these regulations, the term "injury due to crime and/or violence" includes-
- i. sexual assault
 - ii. physical assault
 - iii. psychological trauma
 - iv. domestic violence
 - v. substance, drugs and alcohol related injuries or violence.
 - vi. drunken driving
 - vii. child abuse
 - viii. elderly abuse

Clinical Forensic Medicine Service

4. (a) The relevant member of the Executive Council of a province must, within national policy and in terms of these regulations, ensure that there is a Clinical Forensic Medicine Service within the respective provincial Department of Health, with a dedicated manager at provincial level.
- (b) Wherever a clinical forensic examination is performed, informed, legally acceptable, consent must be obtained where relevant.
5. Clinical forensic medical examinations should entail the following minimum details:
- a) examination of complainants of sexual and physical assault.
 - b) examination of alleged perpetrators.
 - c) examination of victim for signs of alleged abuse.
 - d) Visit to crime scenes, evidence collection and documentation.

- h) age assessments for medico-legal purposes. Appearing in court to give objective, impartial expert evidence. (Expert witness are there to provide support to the court and do not "belong" to either of the parties)
 - i) general wound identification, documentation and interpretation as to causation factors.
6. The purpose of a clinical forensic medicine service is to meet the medical, forensic, advocacy / counseling and educational needs of the individuals, families, groups and communities that it serves.
 7. All victims of violence should be given access to CFM services, irrespective of age, gender, developmental level, health status (physical and mental), ethnicity or socioeconomic background.
 8. Facilities for Clinical Forensic Medicine services should be provided at designated health facilities

Health officials authorised to conduct clinical forensic examinations.

9. Medical practitioners and nurses trained in clinical forensic medicine are authorised to conduct Clinical Forensic Medicine examinations.
10. A person still in clinical forensic medicine training (in-service or formal training for nurses) may participate in a clinical forensic examination only under the direct guidance and supervision of an authorised person.

Additional evidence from a clinical forensic medicine examination

11. Subject to any other law, an authorised person may submit for examination, or cause to be submitted, to an authorised institution, any tissue, fluid, or object, for furthering the administration of justice.
12. An authorised person is the only person who has the authority to decide what samples to collect for special investigation.

Protection of Records

13. (1) The person in charge of a designated facility in which clinical forensic medicine examinations are conducted must set up control measures in order to prevent unauthorized access to records relating to such examinations; and to the storage facility in which records are kept.
- (2) Any person who-
- a) falsifies any record by adding or changing any information contained in that record;
 - b) creates, changes or destroys a record without authority to do so;
 - c) fails to create or change a record when properly required to do so;
 - d) provides false information with the intention that it be included in a record;
 - e) without authority, copies any part of the record;
 - f) without authority, connects the personal identification elements of a patient's record with any element of that record that concerns the patient's history and / or examination;
 - g) gains unauthorized access to a record or record-keeping system, including intercepting information in transit from one person, or one part of a record-keeping system, to another;
 - h) without authority, connects any part of a computer or other electronic system on which records are kept to-
 - (i) any other computer or electronic system; or
 - (ii) any terminal or other installation connected to or forming part of any other computer or electronic system; or
 - (j) without authority, modifies or impairs the operation of-
 - (i) any part of the operating system of a computer or other electronic system on which a patient's records are kept; or
 - (ii) any part of the programme used to record, store, retrieve or display information on a computer or other electronic system on which a patient's records are;

commits an offence.

14. The person in charge of a designated facility must ensure that a register is kept in which any file, or any part of a file, that is removed from the storage facility, is recorded, and in which he or she must enter all particulars of the person authorized to remove such file or any of its part, the purpose, date and time when removed and returned and the information extracted.

Establishment and Composition of NCFMC

15. (1) The Minister hereby establishes the National Clinical Forensic Medicine Service Committee (NCFMC).
- (2) The NCFMC consists of –
- (a) two officials from the National Department of health;
 - (b) one official from each provincial department of health who has experience in clinical forensic medicine service;
 - (c) one representative from each academic institution involved in teaching clinical forensic medicine or providing such a service

all of whom will be appointed to the NCFMC by the Minister.

Duties and powers of NCFMC

16. The committee shall advise the Minister on-
- (a) policy concerning any matter that will ensure, promote, improve or maintain clinical forensic medicine services;
 - (b) norms, standards and guidelines for the rendering of clinical forensic medicine services, including health and safety standards and the minimum standards for accreditation of designated facilities; and
 - (c) any technical matter related to clinical forensic medicine services that may have an impact on health policies and strategies.

Accounting and Reporting Requirements

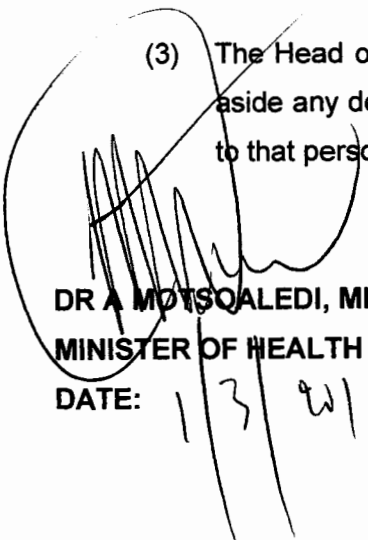
17. The Head of Department must submit annual returns of statistics covering all clinical forensic medical cases to the Director General in a format to be determined by the Director General from time to time.

Offences

18. Any person who fails to comply with any of the provisions of these regulations is guilty of an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

Delegation

19. (1) The Head of Department or the provincial head of the Service may, in writing, and on such conditions as he or she may determine, delegate or assign any power or duty to an official of the provincial department or staff of the designated facility, as the case may be, unless there is a specific prohibition of such delegation or assignment.
- (2) A delegation or assignment made under sub-regulation (1) does not-
- (a) divest the Head of Department or the provincial head of the Service of the responsibility or accountability concerning the performance of the function involved; or
 - (b) prohibit the performance of the function involved by the Head of Department or the provincial head of the Service.
- (3) The Head of Department or the provincial head of the Service may amend or set aside any decision taken by a person in the exercise of any such power delegated to that person.


DR A MOTSQALEDI, MP
MINISTER OF HEALTH

DATE: 13/2/12