

DEPARTMENT OF HEALTH

NO. 5360

4 October 2024

NATIONAL HEALTH ACT, 2003 (ACT No. 61 of 2003)

ESTABLISHMENT OF THE MINISTERIAL ADVISORY COMMITTEE ON ORGAN
TRANSPLANTATION

I, Pakishe Aaron Motsoaledi, Minister of Health after consultation with the National Health Council, in terms of section 91(1) of the National Health Act, 2003 (Act No. 61 of 2003), read with sections 91(2) of the Act, hereby establish a Ministerial Advisory Committee on Organ Transplantation and determine its composition, functions and working procedure, and in consultation with the Minister of Finance, determine the items, conditions, remuneration and allowances payable to its members.



DR PAKISHE AARON MOTSOALEDI, MP
MINISTER OF HEALTH

DATE:

3/9/2024

1. Definitions

In this Notice, a word or expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context otherwise indicates-

“ad hoc sub-committee” means a committee appointed by the Ministerial Advisory Committee on Organ Transplantation;

“Committee” means the Ministerial Advisory Committee on Organ Transplantation;

“Department” means the National Department of Health; and

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

2. Background

2.1 The Ministerial Advisory Committee on Organ Transplantation will advise the Minister on all matters related to organ transplantations in line with Section 91(1) of the National Health Act, 2003 (Act No: 61 of 2003).

2.2 The Committee will ensure that problems related to organ trafficking and abuse of potential donors by health practitioners/participants are avoided. It will also ensure that approval to perform organ transplantation which includes foreign nationals is granted by the Minister as a control measure.

3. Purpose and mandate

The Committee must advise the Minister on all matters related to organ transplantation in line with Section 91(1) of the National Health Act.

4. Composition of the committee

4.1 The Committee consists of the following members: -

- (a) One representative from the National Department of Health;
- (b) One Bioethicist; and
- (c) Seven Nephrologists;

- 4.2 In appointing members of the Committee, the factors which include, but are not limited to the appropriate representation of race, gender, and disability, must be taken into account.

5. Appointment of members of the Committee

- 5.1 The Minister may appoint members of the Committee from amongst persons nominated by interested persons.
- 5.2 If a suitable person or the required number of persons is not appointed as contemplated in paragraph 5.1, the Minister must appoint an appropriate person or persons who qualify to be appointed in terms of paragraph 4.1.
- 5.3 A member of the Committee is appointed for a period of five years and is eligible for reappointment for an additional term of five years.
- 5.4 A member of the Committee, excluding a member who is in full-time employment of the State, must be appointed on such conditions, as the Minister may determine, with the concurrence of the Minister of Finance.

6. Chairperson and Vice-Chairperson of Committee

- 6.1 The Minister must appoint a Chairperson and vice-chairperson of the Committee from the members contemplated in paragraph 4.
- 6.2 Whenever the Chairperson of the Committee is absent or unable to perform his or her functions as the Chairperson, the vice-chairperson must act as chairperson.
- 6.3 If the Vice-Chairperson is absent or unable to act as the Chairperson, the members present must designate another member of the Committee to act as Chairperson until the Chairperson or Vice-Chairperson is available.
- 6.4 A person acting as the Chairperson of the Committee in terms of paragraphs 6.2 and 6.3 exercises the powers and performs the duties of the Chairperson.

7. Appointment of ad hoc sub-committee

- 7.1 The Committee may appoint one or more ad hoc sub-committees from among its members to assist the Committee with performing its functions and exercising its powers.
- 7.2 The Committee may appoint one or more specialist ad hoc sub-committees consisting of members other than members of the Committee, to assist it with performing its functions and exercising its powers.

8. Disqualification from membership of the Committee and vacation of office

- 8.1 A person may not be appointed as a member of the Committee if that person-
- (a) is not a citizen of South Africa and ordinarily resident in the Republic;
 - (b) is an un-rehabilitated insolvent;
 - (c) has at any time been convicted of an offence involving dishonesty, whether in the Republic or elsewhere, and sentenced to imprisonment without the option of a fine;
 - (d) has been removed from an office of trust; or
 - (e) is suffering from an infirmity of mind or body which prevents him or her from properly discharging his or her duties as a member of the Committee.
- 8.2 A member of the Committee must vacate his or her office if-
- (a) he or she becomes disqualified in terms of paragraph 8.1, from being appointed or serving, as a member of the Committee; or
 - (b) he or she submits his or her resignation to the Minister in writing;
 - (c) he or she has, without the leave of the committee, been absent from more than two consecutive meetings of the committee without an apology;
- 8.3 If a member of the Committee dies or vacates his or her office in terms of paragraph 8.1 or 8.2, the Minister may, subject to paragraph 5, appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.

9. Functions of the committee

- 9.1 Determine the need for the establishment of transplant facilities;
- 9.2 Provide advice to the Minister on transplant operations involving unrelated donors and recipients as well as non-South African citizens,
- 9.3 Provide recommendations on related living donor's applications, where genetic tests have failed to confirm relationships for the Minister's approval or disapproval;
- 9.4 Propose granting of authority to units to perform organ transplantation as a form of control;
- 9.5 Monitor unethical behavior in transplantation;
- 9.6 Work with relevant unit/s within the public and private health systems to determine the cost of the transplantation;
- 9.7 Determine future requirements in the transplantation services;
- 9.8 Appraise annual reports from transplant units and recommend remedial actions for the Minister's consideration;
- 9.9 Provide recommendations for living organ transplant operation between donor and recipient from other countries for the Minister's approval/disapproval; and
- 9.10 Provide recommendation to a request to place non-South African citizens on the South African transplant waiting list for the Minister's approval/disapproval.

10 Working procedures

10.1 Meetings of the Committee

- (a) The Committee must, in its first sitting, determine the rules for the conduct of proceedings at its meetings.
- (b) A quorum for a meeting of the Committee is the simple majority (50% plus 1) of its members.
- (c) A decision of the majority of the members of the Committee present at a meeting constitutes a decision of the Committee and, in the event of an equality of votes, the member presiding at the meeting must have a casting vote in addition to his or her deliberative vote.
- (d) A decision taken, or an act authorised, by the requisite majority of the

members of the Committee who were present at the time and entitled to sit as members, is not invalid by reason only of a vacancy on the Committee, or that a person who is not entitled to sit as a member of the Committee sat as a member at the time when the decision was taken, or the act was authorised.

- (e) Minutes of the proceedings of a meeting of the Committee must be properly prepared and recorded.
- (f) Minutes of the proceedings of a meeting must be submitted at the next meeting of the Committee and, if approved as correct, must be confirmed by the signature of the chairperson or that of a member who chaired the meeting and may, when so confirmed, be evidence, in a court of law, of the proceedings of the meeting.
- (g) Members must disclose their conflict of interest in each case discussed and possibly excuse him/her or themselves for all matters affecting them in terms of paragraph 11.

10.2 Activities of the Committee

- (a) Receives the applications including supporting documents from the "Department" for related or unrelated living organ transplantation or placement of foreign nationals on South African citizens on the South African waiting list for living organ transplantation.
- (b) Appraise the applications and make recommendations for the Minister's consideration based on the merit of each case.
- (c) Compile their recommendations for submission to the Minister for approval or disapproval.
- (d) Adhere to the applicable Code of Conduct.

11. Conflict of interest

A member of the Committee may not take part in a discussion of, or the making of decisions on, a matter before the Committee in which -

- (a) The member treated a potential recipient in the past few years;
- (b) Potential recipient is a family member, or a friend, or close acquaintance of the member; or
- (c) Potential recipient was treated in the same health establishment where the member was or is employed.

12. Remuneration and allowances of Committee members

12.1 The members of the committee who are not employed by the State, State Agencies or State Entities are entitled to be remunerated in accordance with the National Treasury annual rates.

12.2 Processing of each application for organ transplantation is equivalent to one hour's rating.

13 Termination of membership

13.1 A member of the Committee may, at any time, resign as a member of the Committee by giving not less than 30 days written notice to the Minister.

13.2 Despite paragraph 13.1, the Minister may terminate the appointment of a member of the Committee with immediate effect if the member-

- (a) is or becomes an un-rehabilitated insolvent;
- (b) is suffering from an infirmity of mind or body which prevents him or her from properly discharging his or her duties as a member of the Committee;
- (c) has been removed from an office of trust; or
- (d) is suffering from an infirmity of mind or body which prevents him or her from properly discharging his or her duties as a member of the Committee.

13.3 The Minister may terminate the appointment of a member of the Committee after consultation with the Committee and after hearing the member if the member-

- (a) fails to perform duties and functions of the Committee to the best of his or her ability;
- (b) has engaged in conduct, which, in the opinion of the Minister, brings or may bring the Department of Health or the activities of the Committee into disrepute or threatens the integrity of the Committee or Department of Health; and
- (c) is, in the opinion of the Minister, incompetent or unfit to fulfil his or her duties.