

Free State, South Africa

Free State Initiation School Health Act, 2004

Act 1 of 2004

Legislation as at 5 March 2004

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Free State South Africa

Free State Initiation School Health Act, 2004

Act 1 of 2004

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(English text assented and signed by the Premier)

ACT

To provide for the observation of health standards in traditional Initiation Schools; to provide for the giving of permission for the performance of a circumcision operation and the holding of Initiation School; and to provide for matters incidental thereto.

Be IT ENACTED by the Provincial Legislature of the Free State Province, as follows:-

1. Definitions

In this Act, unless the context indicates otherwise—

“**circumcision**” means the circumcision of a person as part of a traditional practice;

“**Department**” means the Department of Health in the Province;

“**District Medical Officer**” means a medical officer referred to in [section 2](#);

“**Environmental Health Officer**” means a person referred to in [section 9](#) to inspect an Initiation School;

“**gazette**” means the *Provincial Gazette* of the Province;

“**Head of Department**” means the Head of the Department of Health in the Province;

“**initiate**” means a person who is in and stage of the initiation process as contemplated in this Act;

“**Initiation School**” means a place where one or more initiates are initiated, also referred to as “LEBOLLO”, “BOGWERA” or “BOJALE”;

“**MEC**” means the Member of the Executive Council responsible for Health in the Province;

“**medical practitioner**” means a person registered as such under the Health Professions Act, 1974 ([Act No. 56 of 1974](#));

“**parent**” means—

(a) the parent of an initiate or prospective initiate; or

(b) the person legally entitled to custody of an initiate or prospective initiate;

“**permission**” means permission in the form of a document referred to in Annexures A and B, issued by the District Medical Officer in terms of [section 8\(1\)\(a\)](#);

“**Province**” means the Province of the Free State established by section 103 of the [Constitution of the Republic of South Africa, 1996 \(Act No. 108 of 1996\)](#);

“**prescribed**” means prescribed by regulation;

“**surgical instrument**” means an instrument used for the performance of circumcision, and “instrument” has a corresponding meaning;

“**this Act**” includes regulations made under the Act;

“**traditional authority**” means a traditional authority established in terms of a law recognised by section 211 of the [Constitution](#);

“**traditional instrument**” means an instrument used by traditional surgeon for the performance of circumcision;

“**traditional practice**” includes a practice according to the custom, religion or any other rules of similar nature; and

“**traditional surgeon**” means a person trained and having experience in performing traditional circumcision and treatment of initiates.

2. Permission to hold Initiation School or treat initiates

- (1) A person may not hold an Initiation School or treat an initiate without submitting an application and obtaining written permission from the District Medical Officer for the district in which the Initiation School is to be held or the initiate is to be treated: Provided that this subsection does not apply to the treatment of an initiate in a hospital or by a qualified medical practitioner.
- (2) The MEC must prescribe the application procedures, which must include:
 - (a) approval by the Local Municipality;
 - (b) approval by the Traditional Authority where applicable;
 - (c) consent of parent of initiates Less than 18 years;
 - (d) the Medical and Environmental Health requirements; and
 - (e) proof of experience and expertise in holding of an Initiation School.
- (3) The District Medical Officer, or a person assisting the District Medical Officer and in the presence of the District Medical Officer, must read the prescribed requirements stated in the application form in the official language understood by the person applying for permission.
- (4) The traditional surgeon who applied to hold an Initiation School or treat initiates must complete the document referred to in Annexure B in the Schedule and the District Medical Officer must also countersign to declare that the conditions stated therein have been explained in detail to the traditional surgeon in the official language understood by the traditional surgeon.

3. Consent by parent

- (1) The parent of a prospective initiate must, in respect of a prospective initiate below the age of 18 years, complete and sign the consent form referred to in Annexure C.
- (2) The parent of an initiate must, in addition to all other responsibilities which such parent has in respect of the initiate, render the assistance and co-operation as may be prescribed in the interest of the health of the initiate.
- (3) The prospective initiate who is 18 years of age or older and who does not require parental consent must complete and sign a consent form referred to in Annexure D.
- (4) A person, including the parent of an initiate, may not interfere with or obstruct the District Medical Officer; in the performance of his or her duties under this Act.

4. Initiates

- (1) The minimum age for initiates shall be as prescribed.
- (2) All initiates must have a medical report of good health dated not more than 30 days and completed on a prescribed form from either a primary health care nurse or Medical Practitioner prior to admission to an Initiation School.
- (3) It is an offence to admit an initiate to an Initiation School without his or her expressed informed consent or the consent of a parent.
- (4) The period of initiation shall not exceed two calendar months.

5. Restriction of person to treat an initiate

- (1) An initiate may not treat or attempt to treat another initiate at any stage during or after the holding of an Initiation School.
- (2) Only the traditional surgeon, medical practitioner, the District Medical Officer or another person authorized by the District Medical Officer, may treat an initiate.

6. Permission to perform circumcision

- (1) A traditional surgeon may not perform a circumcision in the Province without written permission of the District Medical Officer for the district in which the circumcision is to be performed: Provided that this subsection does not apply to the treatment of an initiate in a hospital or by a qualified medical practitioner.
- (2)
 - (a) A traditional surgeon must apply as prescribed for permission to perform circumcision and such permission may only be given if the conditions referred to in Annexure A are complied with.
 - (b) The District Medical Officer may:
 - (i) refuse the use of a surgical instrument that the traditional surgeon intends to use; and
 - (ii) prescribe or supply a suitable surgical instrument where the use of a particular instrument has been refused in terms of subparagraph (i).
 - (c) Where a suitable surgical instrument has been prescribed or supplied in terms of paragraph (b)(ii), the District Medical Officer concerned or another person authorized by the District Medical Officer must demonstrate to, or train, the traditional surgeon in use of the instrument.
 - (d) The District Medical Officer or a person assisting such District Medical Officer, must read the conditions in the official language understood by the traditional surgeon applying for permission.
 - (e) A traditional surgeon who applies for permission to perform a circumcision and the District Medical Officer must complete the document containing the conditions referred to in Annexure A.
- (3) A traditional surgeon who has applied for permission to perform circumcision must, within one month of the date of the application, submit proof of compliance with the conditions referred to in Annexure A, failing which the application shall lapse.
- (4) A traditional surgeon whose application has lapsed as contemplated in subsection (3) may apply anew for permission to the District Medical Officer concerned, and the provisions of this Act apply as if application for permission is made for the first time.

7. Validity period permission

- (a) The period of validity of permission granted in terms of this Act shall be as prescribed.
- (b) When an existing permission expires and an application for its renewal has been lodged with the District Medical Officer, the permission shall remain valid until the application has been disposed of.

8. Powers and functions of District Medical Officer

- (1) The District Medical Officer must, in addition to any other power and functions entrusted to him or her by or under this Act, exercise and perform the following power and functions:
 - (a) issue of permissions to circumcise or treat an initiate;
 - (b) keeping of records and statistics pertaining to circumcision and reporting thereon, as prescribed to the Department;
 - (c) refer an initiate to a health institution if deemed necessary;
 - (d) order the closure of an Initiation School where such school does not comply with the provisions of this Act.
- (2) The District Medical Officer has the right of access to any premises or to attend any occasion or instance, where circumcision is performed or an initiate is treated.

9. Designation of Environmental Health Officer

The MEC must designate in writing at least one Environmental Health Officer per district as an inspector for Initiation Schools.

10. Duties and responsibilities of Environmental Health Officer

The Environmental Health Officer must inspect an Initiation School to ensure that -

- (i) there is adequate supply of clean water;
- (ii) there are acceptable ablution facilities;
- (iii) the food is prepared in a hygienic manner;
- (iv) there is adequate shelter against natural elements;
- (v) there are no other factors in the environment that could have a negative impact on the lives or health of the initiates in terms of any other relevant Act;
- (vi) The instruments to be used for circumcision are kept, prepared and used in a manner that will not place an initiate at risk of injury, disease or death.

11. Penalties

- (1) A person who contravenes the provisions of sections 2(1), 3(4) and 5 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.
- (2) A person who contravenes the provisions of section 6(1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding ten years, or to imprisonment for a period of five years without the option of a fine.

12. Appeal against the decision made by the District Medical Officer

- (1) The prospective applicant for the holding of an Initiation School or treating of initiates and performing circumcision may appeal to the Head of the Department if he or she is not satisfied with the decision made by the District Medical Officer in terms of sections 2(1) and 6(1).
- (2) The appeal must be lodged within 30 days after being notified of the decision, of the District Medical Officer.
- (3) The appeal must state:
 - (a) The decision against which the appeal is lodged;
 - (b) The grounds on which the appeal is based.
- (4) The Head of Department must respond within 14 days of receipt of the appeal, and the appellant must be duly notified of the outcome.

13. Regulations

The MEC may make regulations in regard to any matter which in the opinion of the MEC may be necessary or desirable for the purposes of achieving the objects of this Act.

14. Short title

This Act is called the Free State Initiation School Health Act, 2004.

Annexure A

Conditions for obtaining permission to perform circumcision

1. There must be proof in the form of a birth certificate or an identity document that the prospective initiate in respect of whom permission is requested is at least 18 years old, or if the parents of the initiate so specifically request, is of a prescribed age.
2. Parental consent must be obtained in respect of a prospective initiate who is under 18 years of age.
3. A prospective initiate must undergo a pre-circumcision medical examination by a medical practitioner or a primary health care nurse. The medical certificate must indicate as to whether the prospective initiate, based on the Examination by the medical practitioner who must have considered amongst others the medical history of the prospective initiate, is fit to undergo circumcision or not.
4. A traditional surgeon, who is to perform a circumcision within an area falling under a traditional authority, must inform such traditional authority thereof.
5. Where a traditional surgeon does not comply with the necessary prescribed requirements to perform a circumcision, he or she must perform it under the supervision of an experienced traditional surgeon.
6. An instrument used to perform a circumcision on one initiate must not be used again to perform a circumcision on another initiate.
7. The traditional surgeon must use the instruments supplied or prescribed by the District Medical Officer where the traditional surgeon has to perform more than one circumcision on more than one initiate but does not have sufficient instruments.
8. The traditional surgeon must keep instruments to be used by him or her to perform circumcision clean at all times before a circumcision, and shall use a substance prescribed by a District Medical Officer for the sterilization of the instruments.

9. The traditional surgeon must co-operate at all times with the District Medical Officer concerned in respect of any directive given or decision made by the District Medical Officer under the powers vested in the District Medical Officer by this Act.
10. The traditional surgeon must keep a register which indicates the names of the initiates, the dates on which he or she admitted the initiates, when the circumcision was done, as well as when an initiate completed his or her stay at the Initiation School.
11. Under no circumstances must the traditional surgeon apply any form of corporal punishment on the initiates.
12. The contents of this Annexure must be explained to an initiate or his or her parent.

I, _____, traditional surgeon, hereby accept and agree to the conditions referred to in Annexure A and undertake to provide the District Medical Officer with proof regarding compliance with above conditions within one month of the date below.

Traditional surgeon

Name _____

Date _____

I, _____, District Medical Officer, hereby confirm that the conditions referred to in Annexure A have been explained to the traditional surgeon in the official language understood by him or her.

District Medical Officer

Name _____

Date _____

Annexure B

Conditions for obtaining permission for holding an Initiation School or for treating initiates

1. The District Medical Officer is entitled to impose a deviation from the use of traditional instruments only in cases where there are early signs of sepsis or other similar health conditions and insist on the use of surgical instruments.
2. The District Medical Officer must be allowed by the traditional surgeon to visit the Initiation School at any time and as regularly as the District Medical Officer deems necessary in order to inspect the health and the condition of the initiate.
3. The initiate must, at least for the first eight days of the circumcision, be allowed by the traditional surgeon to have a reasonable amount of water to avoid the initiate suffering any dehydration.
4. The traditional surgeon must not expose an initiate to any danger or harmful situation and shall exercise reasonable care in the holding of the Initiation School.
5. The traditional surgeon must report any sign of illness of the initiate to the District Medical Office, as soon as possible.
6. The traditional surgeon must stay with the initiate at the Initiation School 24 hours a day during the first eight days of the initiation process, and after the lapse of the first eight days of the initiation process, he must be available to the initiate, and such a measure may in appropriate circumstances include a departure from the traditional methods.

7. The District Medical Officer is entitled to prescribe and supply any measure at any stage of the circumcision process that he or she on reasonable grounds deems necessary in the interest of the good health of the initiate, and such a measure may in appropriate circumstances include a departure from the traditional methods.
8. The traditional surgeon must co-operate at all times with the District Medical Officer in respect of any directive given or decision made by a District Medical Officer under the powers vested in the District Medical Officer by this Act.

I, _____, traditional surgeon, hereby accept and agree to the conditions referred to in Annexure B and undertake to provide the District Medical Officer with proof regarding compliance with above conditions within one month of the date below.

Traditional surgeon

Name _____

Date _____

I, _____, District Medical Officer, hereby confirm that the conditions referred to in Annexure B have been explained to the traditional surgeon in the official language understood by him or her.

District Medical Officer

Name _____

Date _____

Annexure C

Parental consent

I, _____,

ID No _____

Residential address

1. confirm that I am the parent of:

_____ (name of the prospective initiate), who is attending Initiation School and who will be undergoing a circumcision;

2. acknowledge that I understand the conditions for obtaining permission to perform circumcision and the conditions for obtaining permission for holding an Initiation School or for treating initiates, which conditions bind the traditional surgeon; and

3. consent to my child attending Initiation School and undergoing a circumcision operation.

Signature of the parent

Name _____

Date _____

Witnesses:

1. _____

2. _____

Annexure D

Consent by initiate

I, _____,

ID No _____,

Residential address

1. confirm that I, as a Prospective Initiate, will be attending Initiation School and be undergoing a circumcision operation;

2. acknowledge that I understand the conditions for obtaining permission to perform circumcision and the conditions for obtaining permission for holding an Initiation School or for treating initiates, which conditions bind the traditional surgeon; and

3. consent to attendance of the Initiation School and to the circumcision.

Signature of the prospective initiate

Name _____

Date _____

Witnesses:

1. _____

2. _____