



BERMUDA

**BERMUDA HEALTH COUNCIL (HEALTH SERVICE PROVIDERS)
(LICENSING) REGULATIONS 2024**

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The Minister responsible for health, after consultation with the Council and in exercise of the power conferred by section 15 of the Bermuda Health Council Act 2004, makes the following regulations:

Citation

1 These Regulations may be cited as the Bermuda Health Council (Health Service Providers) (Licensing) Regulations 2024.

Interpretation

2 In these Regulations—

“the Act” means the Bermuda Health Council Act 2004;

“Council” means the Bermuda Health Council;

“day” means a calendar day;

“financially-vested referral” has the meaning given in section 2 of the Act;

“website” means the website of the Council, namely, www.healthcouncil.bm.

Licensing of Health Service Providers

Applying for a licence

3 (1) A person, group of persons or organization intending to carry on a business as a health service provider shall make application to the Council in the form provided by the Council.

(2) The application shall be accompanied with any documents requested in the application form; and the applicant shall provide such additional information or documents requested by the Council as will assist it in determining the application.

(3) A person who, in relation to an application made under this regulation, provides false or misleading documents or information in a material respect commits an offence.

Granting application for a licence

4 (1) The Council may grant an application made under regulation 3 where it is satisfied—

(a) that the applicant is a fit and proper person;

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(b) that any health professional employed or contracted by the health service provider is a fit and proper person; and

(c) of any other matter which the Council considers appropriate.

(2) The Council may attach such conditions or restrictions to a licence as it considers appropriate.

(3) The Council shall issue to the health service provider a licence that sets out the following particulars—

(a) the name of the health service provider;

(b) the address at which the health service provider will carry on business;

(c) the conditions or any restrictions attached to the licence;

(d) the date on which the licence was issued;

(e) the date on which the licence expires; and

(f) such other particulars as the Council considers appropriate.

(4) Unless otherwise specified, a licence expires three years from the date of entry in the register of health service providers.

(5) The health service provider shall cause the licence to be prominently displayed at its place of business for public inspection.

(6) A health service provider that contravenes a restriction attached to its licence under this regulation commits an offence.

Denying application for a licence

5 (1) Where the Council is of the view that an application made under regulation 3 should be denied then the Council shall, before making its decision, give written notice to the applicant which shall—

(a) state that the Council is of such a view, and give its reasons; and

(b) inform the applicant that it may, within 21 days of the date on which the notice is given, make written representations to, or be heard by, the Council.

(2) The Council shall take into consideration any written or oral representations made under paragraph (1)(b), and give the applicant written notice of its decision.

(3) Where the decision of the Council, after considering any representations made under paragraph (1)(b), is to deny the application, then the notice under paragraph (2) shall give reasons for the decision, and inform the applicant of its rights under regulation 19.

Applying to renew a licence

6 (1) A health service provider intending to renew its licence shall make application to the Council in the form provided by the Council.

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(2) The application shall be made not less than 60 days before the date on which the licence expires and be accompanied with any documents requested in the application form; and the health service provider shall provide such additional information or documents requested by the Council as will assist it in determining the application.

(3) When considering an application, the Council shall have regard to the matters referred to in regulation 4(1), as well as information contained in returns filed by the health service provider under regulation 9.

(4) Unless otherwise specified, a licence that is renewed under this regulation expires three years from the date of renewal entered in the register of health service providers.

(5) Where the Council is of the view that an application made under paragraph (1) should be denied, regulation 5 applies with the necessary modifications.

(6) A person who, in relation to an application made under this regulation, provides false or misleading documents or information in a material respect commits an offence.

Applying to vary or remove a condition or restriction

7 (1) A health service provider may make an application to the Council in the form provided by the Council to have—

- (a) a condition attached to its licence under regulation 4(2) or regulation 11 varied or removed; or
- (b) a restriction imposed on its licence under regulation 4(2) or regulation 12 varied or removed.

(2) The application shall be accompanied with any documents requested in the application form; and the applicant shall provide such additional information or documents requested by the Council as will assist it in determining the application.

(3) Where an application under paragraph (1) has been granted, the Council shall issue a new licence to the health service provider.

(4) Where the Council is of the view that an application made under paragraph (1) should be denied, regulation 5 applies with the necessary modifications.

(5) A person who, in relation to an application made under this regulation, provides false or misleading documents or information in a material respect commits an offence.

Surrendering a licence

8 (1) Where a licensed health service provider intends to surrender its licence, it must—

- (a) make all reasonable efforts to notify its clients of its intention at least 90 days in advance of the intended date of surrender; and

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(b) notify the Council in writing of its intention at least 60 days in advance of the date of surrender.

(2) Where a notice has been given under paragraph (1), the Council must satisfy itself as far as possible that matters relating to clients and the operations of the health service provider have been administered prudently.

Returns and record keeping

9 (1) A health service provider is required to file with the Council such returns requested by the Council within the time specified in the return.

(2) Health service providers are required to retain all records relating to matters set out in a return filed with the Council for a period of six years.

(3) A person who, in relation to a return filed with the Council under this regulation, provides false or misleading documents or information in a material respect commits an offence.

Powers of Council in Relation to Licences

Council to establish register of licensed health service providers

10 (1) The Council shall establish and maintain a register of licensed health service providers.

(2) The register of licensed health service providers shall set out the following particulars—

- (a) the name of the health service provider;
- (b) the address at which the health service provider will carry on business;
- (c) any conditions or restrictions attached to the licence of the health service provider;
- (d) the date on which the licence was issued to the health service provider;
- (e) the date on which the licence will expire;
- (f) the date on which a licence was renewed, revoked or surrendered;
- (g) such other particulars as the Council considers appropriate.

(3) The Council shall publish the register on its website setting out such particulars referred to in paragraph (2) as it considers appropriate.

Council may attach or vary a condition

11 (1) The Council may at any time attach or vary a condition of the licence of a health service provider.

(2) Where the Council proposes to act in accordance with paragraph (1), it shall give the health service provider a written warning notice which shall—

- (a) state the Council's proposal to attach or vary a condition of the licence;

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- (b) give reasons for the proposed action;
- (c) specify the condition proposed to be attached or varied;
- (d) state the date on which the proposed attachment or variation is to take effect; and
- (e) state that the provider may, within 21 days of the date on which the notice is given, make written representations to, or be heard by, the Council.

(3) The Council shall take into consideration any written or oral representations made under paragraph (2)(e), and give the health service provider a written decision notice.

(4) Where the decision of the Council, after considering any representations made under paragraph (2)(e), is to act in accordance with paragraph (1), then the decision notice under paragraph (3) shall specify the condition to be attached or varied, give reasons for the decision, state the date on which the attachment or variation is to take effect, and inform the provider of its rights under regulation 19.

Council may impose restrictions

12 (1) The Council may at any time impose on the licence of a health service provider such restrictions as it considers appropriate where—

- (a) the Council is satisfied that the health service provider—
 - (i) is no longer a fit and proper person;
 - (ii) has in its employ or has contracted a health professional who is no longer a fit and proper person; or
- (b) the Council is satisfied that it is in the interest of clients of the health service provider to impose such restrictions;
- (c) the Council considers that, in all the circumstances of the case, it is necessary to do so.

(2) Where the Council proposes to act in accordance with paragraph (1), it shall give the health service provider a written warning notice which shall—

- (a) state that it proposes to impose restrictions on the licence;
- (b) specify the matters to which the proposed restrictions relate;
- (c) specify the actions the Council proposes that the provider take in order to remedy the matters; and
- (d) inform the provider that it may, within 14 days of the date on which the warning notice is given, make written representations to, or be heard by, the Council.

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(3) The Council shall take into consideration any written or oral representations made under paragraph (2)(d), and give the health service provider a written decision notice.

(4) Where the decision of the Council, after considering any representations made under paragraph (2)(d), is to act in accordance with paragraph (1), then the decision notice under paragraph (3) shall—

- (a) give reasons for the decision;
- (b) give such directions to the health service provider which shall—
 - (i) specify the manner in which the matters are to be remedied;
 - (ii) specify the period within which the direction is to be complied with; and
 - (iii) inform the provider that its licence is liable to be revoked under regulation 13 if it fails to comply with the direction within the period specified; and
- (c) inform the health service provider of its rights under regulation 19.

(5) A health service provider that contravenes a restriction attached to its licence under this regulation commits an offence.

Revoking a licence

13 (1) The Council may revoke the licence of a health service provider where the health service provider has contravened a restriction imposed on its licence under regulation 4(2) or regulation 12.

(2) Where the Council proposes to act in accordance with paragraph (1), it shall give the health service provider a written warning notice which shall—

- (a) state that the Council proposes to revoke its licence;
- (b) give reasons for the proposed revocation; and
- (c) inform the provider that it may, within 7 days of the date on which the notice is given, make written representations to, or be heard by, the Council.

(3) The Council shall take into consideration any written or oral representations made under paragraph (2)(c), and give the health service provider a written decision notice.

(4) Where the decision of the Council, after considering any representations made under paragraph (2)(c), is to revoke the licence, then the notice under paragraph (3) shall give reasons for the decision, and inform the health service provider of its rights under regulation 19.

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Decision notices

14 (1) Where the Council gives a written warning notice under regulation 11, 12, 13 or 18, it shall give a written decision notice within 90 days beginning with the day on which the warning was given.

(2) If the Council decides not to take the action proposed in the warning notice, it must give a written notice of discontinuance to the person to whom the warning notice was given.

(3) The notice of discontinuance must identify the action which is being discontinued.

(4) Notwithstanding paragraphs (2) and (3), if no written decision notice is given within the period of 90 days, then the Council shall be treated as having at the end of that period decided not to take the action proposed in the warning notice.

Financial Interests, Codes of Practice, Standards of Operations

Financially-vested referrals

15 When making a financially-vested referral, a health service provider is required to comply with any code of practice published by the Council under regulation 16.

Code of practice

16 (1) Any code of practice issued by the Council in respect of financially-invested referrals shall be published on the Council's website.

(2) Notwithstanding the generality of paragraph (1), the code of practice may provide for—

- (a) guidance as to the duties, requirements, and matters to be complied with by the health service provider when making a financially-vested referral;
- (b) the procedures and principles to be observed by the health service provider when making a financially-vested referral;
- (c) the circumstances under which a financially-vested referral may be considered clinically appropriate, medically necessary, cost-effective, or necessary for early intervention in client care;
- (d) a requirement that the referring health service provider—
 - (i) inform its client that it intends to make a financially-vested referral; and
 - (ii) provide the client with information and an opportunity to decide an effective alternative option.

(3) The Council shall, before publishing or amending the code of practice, publish a draft of the code on its website and take into consideration any representations made by health service providers, insurers, and other interested associations or persons in respect of the draft.

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Standards of operation for health businesses

17 (1) The Council may publish on its website standards of operation for health businesses.

(2) The procedure under regulation 16(3) applies, with the necessary modifications, to the procedure for publishing standards of operation under this regulation.

(3) A health service provider is required to comply with any code of practice which has been published under this regulation.

Civil Penalties, Judicial Review and Penalties for Offences

Civil penalties

18 (1) Where a health service provider has failed to comply with a requirement under regulation 9(1) or (2), regulation 15, or regulation 17(3), or a condition attached to its licence, and the Council is of the view that a civil penalty should be imposed, then the Council shall, before making its decision, give a written warning notice to the health service provider which shall—

- (a) state that the Council is of such a view, and give its reasons; and
- (b) inform the provider that it may, within 21 days of the date on which the written warning notice is given, make written representations to, or be heard by, the Council.

(2) The Council shall take into consideration any written or oral representations made under paragraph (1)(b), and give the health service provider a written decision notice.

(3) Where the decision of the Council, after considering any representations made under paragraph (1)(b), is to impose a civil penalty, then the notice under paragraph (2) shall give reasons for the decision, state the amount of the penalty and the date of payment, and inform the health service provider of its rights under regulation 19.

Judicial review

19 (1) A health service provider aggrieved by a decision of the Council to—

- (a) deny its application made under—
 - (i) regulation 3 for a licence;
 - (ii) regulation 6 for the renewal of its licence;
 - (iii) regulation 7 for the variation or removal of a condition or restriction attached to its licence;
- (b) impose a restriction on its licence under regulation 12;
- (c) revoke its licence under regulation 13; or
- (d) impose a civil penalty under regulation 18,

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may, within 28 days of the date on which the written decision notice was given, apply to the Supreme Court for the decision to be reviewed.

(2) Subject to paragraph (3), the health service provider may at the time of making an application under paragraph (1), apply to the Court for suspension of the operation of the Council's decision pending the Court's determination of its application under paragraph (1).

(3) Paragraph (2) does not apply to a decision of the Council to deny an application made under regulation 3 or regulation 7.

(4) The matter for determination by the Court in respect of an application made under paragraph (1) is whether, for the reasons adduced by the applicant, the decision of the Council was unlawful or not justified by the evidence on which it was based.

Penalties for offences

20 (1) A person who commits an offence under—

- (a) regulation 3(3);
- (b) regulation 6(6);
- (c) regulation 7(5);
- (d) regulation 9(3),

is liable on summary conviction to a fine of \$20,000.00.

(2) A person who commits an offence under regulation 4(6) or regulation 12(5) is liable on summary conviction to a fine of \$20,000.00 or on conviction on indictment to a fine of \$30,000.00.

(3) Where an offence under these regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to have committed an offence and is liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(5) Where a partnership commits an offence under these regulations, every partner, other than a partner who is proved to have been ignorant or to have attempted to prevent the commission of the offence, is also deemed to have committed the offence and is liable to be proceeded against and punished accordingly.

(6) Where any other association, incorporated or not, commits an offence under these regulations—

- (a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or

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- (b) if there is no such officer, every member of the governing body other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,

is also deemed to have committed the offence and is liable to be proceeded against and punished accordingly.

Transitional and Final Provisions

Transitional

21 Where, immediately before these Regulations come into operation a person, group of persons or organization—

- (a) was carrying on a business as a health service provider; and
(b) applies to the Council for a licence in accordance with regulation 3 within 90 days from the day these Regulations come into operation,

may, notwithstanding section 13 of the Act, continue to carry on such business until its application is determined by the Council.

Commencement

22 These Regulations come into operation on such date as the Minister appoints by Notice published in the Gazette.

Made this 16th day of October 2024

Minister of Health

[Operative Date: 16 October 2024]