



BERMUDA

BERMUDA HEALTH COUNCIL ACT 2004

2004 : 22

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WHEREAS it is expedient to provide for the establishment of a Bermuda Health Council to regulate, coordinate and enhance the provision of health services in Bermuda:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Short title

1 This Act may be cited as the Bermuda Health Council Act 2004.

Interpretation

2 In this Act—

“Council” means the Bermuda Health Council established under section 3;

“health professional” means a person who is registered to practise his or her health profession by the relevant regulatory authority;

“health service provider” means a person, group of persons or organization that operates a business offering health services to the public, but does not include a person who is an employee under a contract of service;

“health services” includes hospital, medical, dental and professional services related to health, including residential care;

“licence” means a licence issued under Regulations made under section 15;

“Minister” means the Minister responsible for Health.

[Section 2 definition "health services" amended by 2020 : 53 s. 5 effective 4 January 2021]

PART II

BERMUDA HEALTH COUNCIL

Establishment of the Council

3 (1) There is hereby established a body to be called “the Bermuda Health Council” which shall perform the functions assigned to it by this Act and by any other statutory provision.

(2) The Council shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

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(3) The Council may enter into contracts and do all things necessary for the performance of its functions.

General purpose of the Council

4 (1) The general purpose of the Council is to regulate, coordinate and enhance the delivery of health services.

(2) In pursuance of subsection (1) where there is any inconsistency between this Act and any Act dealing with health professionals or health service providers, this Act shall to the extent of the inconsistency prevail over that Act.

Functions of the Council

5 (1) The functions of the Council are—

- (a) to ensure the provision of essential health services and to promote and maintain the good health of the residents of Bermuda;
- (b) to exercise regulatory responsibilities with respect to health services and to ensure that health services are provided to the highest standards;
- (c) to regulate health service providers by monitoring licensing and certification, establishing fees in respect of the standard health benefit, and establishing standards and codes of practice;
- (d) to regulate health professionals by monitoring licensing, certification, standards and codes of practice;
- (da) to perform the administrative functions relating to the registers for, and registration and re-registration of, health professionals that are conferred on the Council by this Act and by any other provision relating to health professionals including the collection of fees, and matters connected thereto;
- (e) to licence health insurers;
- (f) to identify and publish goals for the health care system, to coordinate and integrate the provision of health services, and make recommendations to the Minister on the prioritisation of initiatives with respect to health services;
- (g) to licence health service providers;
- (ga) perform the functions assigned to it under the Residential Care Homes and Nursing Homes Act 1999;
- (h) to regulate the price at which drugs are sold to the public;
- (i) to establish and promote wellness programmes;
- (j) to conduct research, collect, evaluate and disseminate to the public information on the incidence of illness and other relevant information

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necessary to support objective decision making with respect to public health and the optimal use of resources; and

- (k) to advise the Minister on any matter related to health services that may be referred to the Council by the Minister.

(2) For the purposes of subsection (1)(a) and where directed by the Minister under section 7, the Council shall require licensed health service providers, licensed insurers, and approved schemes to provide returns, statistics or other information necessary to support objective decision making with respect to healthcare service delivery, healthcare utilization, health care costs, the payment of fees for health products and services, and to support implementation of universal health coverage.

(3) Where the Council requires returns, statistics or other information pursuant to subsection (2), it shall require such in a form that anonymizes patient names; and the Council may, if it deems necessary, anonymize other identifying information including the names of licensed health services providers, licensed insurers, and approved schemes.

(4) Any person who fails to supply the required returns, statistics or other information pursuant to subsection (2) commits an offence and is liable on summary conviction to a fine of \$20,000.

[Section 5(e) amended by 2009:10 s.17 effective 1 April 2009; section 5(e) amended by 2009:49 s. 13 effective 15 December 2009; section 5(c) amended by 2017 : 25 s. 2 effective 1 June 2017; Section 5 paragraph (da) inserted by 2020 : 47 s. 132 effective 11 December 2020; Section 5 paragraph (ga) inserted by 2020 : 53 s. 5 effective 4 January 2021; Section 5 amended by 2024 : 16 s. 2 effective 19 September 2024]

Composition etc. of the Council

6 (1) The Council shall consist of the following ex officio members—

- (a) the Chief Medical Officer;
- (b) the Chief Executive Officer;
- (c) the Permanent Secretary of the Ministry responsible for Health;
- (d) the Financial Secretary,

and not less than nine nor more than eleven other “ordinary members” appointed by the Minister.

(2) Ordinary members of the Council shall hold office for such term as may be specified in their instrument of appointment and on the initial appointment the term of office shall be varied to ensure continuity in the management of the Council.

(3) Ordinary members are eligible for reappointment.

(4) The Minister shall appoint a Chairperson and a Deputy Chairperson from among the ordinary members of the Council who shall hold such office at the Minister’s pleasure.

(5) Subject to this section, the Council may regulate its own procedure.

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(6) The Minister may at any time declare the office of an ordinary member of the Council vacant if he is satisfied that the member—

- (a) has failed without sufficient cause to attend three consecutive meetings of the Council;
- (b) is incapacitated by physical or mental illness; or
- (c) has otherwise become unable or unfit to perform his duties as a member.

(7) A person appointed to fill a vacancy left by an ordinary member who did not complete his term of office may be appointed for the unexpired portion of that member's term and no longer, but an appointment to such a vacancy need not be made where the unexpired portion of the term is less than three months.

(8) Seven members constitute a quorum at any meeting of the Council.

(9) Any question for decision by the Council shall be decided by a majority of the members present and voting and each member shall have one vote, except that the person presiding shall have a second vote if there is a tie.

(10) An act of the Council is not invalid by reason only of a vacancy in the Council's membership or a defect in a member's appointment.

(11) The Council may establish committees for such purposes as it sees fit.

(12) Fees shall be paid to members of the Council in accordance with the Government Authorities (Fees) Act 1971.

[Section 6 subsection (1)(c) amended by 2020 : 47 s. 132 effective 11 December 2020]

Policy directions

7 The Minister, after consultation with the Council, may give general directions as to the policy to be followed by the Council in the performance of its functions as appear to the Minister to be necessary in the public interest, and the Council shall give effect to any such directions.

Employment of staff

8 (1) Subject to sections 9 and 10, the Council, after consultation with the Minister, may appoint such officers and engage such employees as it considers necessary for the purposes of this Act.

(2) Subject to subsection (1), the terms and conditions of employment of persons appointed or engaged shall be as determined by the Council.

Chief Executive Officer

9 (1) There shall be a Chief Executive Officer of the Council who shall be appointed by the Council with the approval of the Minister and whose services shall not be terminated by the Council except with the like approval.

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(2) The remuneration, emoluments, terms and conditions and period of service of the Chief Executive Officer shall be fixed by the Council with the approval of the Minister and shall not be altered except with the like approval.

Secondment of public officers

10 (1) A public officer may be appointed to employment with the Council by way of secondment, subject to such conditions as the Public Service Commission may determine.

(2) A public officer seconded in accordance with subsection (1) to employment with the Council shall, in relation to pension, gratuity or other allowance and rights and obligations of a public officer, be treated as continuing in a public office notwithstanding the secondment.

Accounts of Council

11 (1) The Council shall cause proper statements of its financial affairs to be maintained and shall prepare in respect of each financial year a statement of its accounts in such form as the Accountant-General may direct.

(2) The statement of accounts referred to in subsection (1) must—

- (a) present fairly the financial transactions of the Council during the financial year to which they relate; and
- (b) present fairly the financial position of the Council at the end of the financial year.

(3) The Council shall within three months after the end of the Council's financial year cause to be submitted to the Auditor General the statement of its accounts.

(4) The Council's financial year is to end on 31st March in each year or on such other day as the Council may, with the approval of the Minister, determine.

Annual report

12 (1) The Council shall, as soon as practicable after the end of each financial year, forward to the Minister—

- (a) a report on the operations of the Council during that year; and
- (b) a copy of the accounts of the Council for that year certified by the Auditor-General.

(2) The report prepared for the purpose of subsection (1)(a) shall set out any directions given by the Minister to the Council during that year.

(3) The Minister shall cause copies of the report of the Council and the accounts of the Council forwarded to him under subsection (1) to be laid before both Houses of the Legislature.

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PART III

REGULATION AND LICENSING OF HEALTH SERVICE PROVIDERS

Licensing of health service providers

13 (1) No person, group of persons or organization shall carry on a business as a health service provider unless licensed to do so under regulations made under section 15.

(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$20,000.00 or to imprisonment for twelve months or to both such fine and imprisonment.

[Section 13 effective 16 October 2024 by BR 107 / 2024 para. 2]

Inspection

14 (1) The Minister may designate public officers as inspectors.

(2) An inspector may at all reasonable times enter and inspect any premises operated by a health service provider and may require the production of records relating to fees and services provided by that health service provider.

(3) Any person who obstructs an inspector in carrying out his functions or fails to produce any records reasonably required by an inspector commits an offence and is liable on summary conviction to a fine of \$5,000.00.

Regulations

- 15 (1) The Minister, after consultation with the Council, may make regulations—
- (a) governing applications for the issue of licenses to health service providers;
 - (b) prescribing, in respect of the standard health benefit, fees for services provided by health service providers;
 - (c) establishing an appeals procedure where a licence is refused, suspended or cancelled by the Council;
 - (d) prescribing professional and other qualifications required by health service providers;
 - (e) requiring licensed health service providers to supply such returns, statistics or other information as the Council may, by notice in writing, require;
 - (f) governing inspections, their management and conduct;
 - (g) creating offences for any contravention of the regulations;
 - (h) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made under subsection (1) are subject to the affirmative resolution procedure.

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(3) Regulations made under this section may provide—

- (a) that any part or extract of the regulations shall be displayed in any prescribed manner or place; and
- (b) for offences subject to a fine not exceeding \$50,000 for breach of the regulations.

(4) The Bermuda Drug Formulary provided for under the Bermuda Health Council (Drug Formulary) Regulations 2021, may be amended in regulations subject to the negative resolution procedure.

[Section 15 subsection (1)(b) amended by 2017 : 25 s. 2 effective 1 June 2017; Section 15 subsections (3) and (4) inserted by 2021 : 15 s. 2 effective 10 September 2021]

Council notices

15A (1) The Council may, by notice, publish information relating to its functions and required to be publicised as may be provided in the regulations made under section 15.

(2) The Council may publish a notice as provided for in subsection (1)—

- (a) in the Gazette;
- (b) on its website, at an address as may be specified in the regulations; or
- (c) in such other manner as the Council may determine.

(3) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to a notice published by the Council under this section.

[Section 15A inserted by 2021 : 15 s. 2 effective 10 September 2021]

Fees

16 The fees for the issue or renewal of licences under this Part shall be prescribed under the Government Fees Act 1965.

PART IV

MISCELLANEOUS

Immunity

17 No proceedings shall lie against the Council, any member of the Council or any person acting on the direction of the Council for anything done in good faith in the exercise of their functions under this Act.

Confidentiality

18 (1) Except in so far as may be necessary for the due performance of a person's functions under this Act or any other statute and subject to subsections (3), (4) and (5), any person who is a member of the Council or who is acting as an officer, a servant, an agent or an adviser of the Council shall preserve and aid in preserving confidentiality

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with regard to all matters relating to the affairs of the Council or of any person, that may come to his knowledge in the course of his duties.

- (2) Any member, officer or servant of the Council who—
- (a) communicates any matter relating to the affairs of the Council or of any person, that may come to his knowledge in the course of his duties to any person other than—
 - (i) the Minister;
 - (ii) a member of the Council; or
 - (iii) an officer of the Council authorized in that behalf by the Chief Executive Officer; or
 - (b) permits any unauthorized person to have access to any books, papers or other records relating to the Council,

commits an offence and is liable on summary conviction, to a fine of \$10,000.00 or to imprisonment for a term of six months or to both such fine and imprisonment and on conviction on indictment to a fine of \$25,000.00 or to imprisonment for a term of two years or to both such fine and imprisonment.

- (3) Subsection (1) does not preclude the disclosure of information—
- (a) for the purpose of enabling or assisting the Minister to exercise any functions conferred on him by this Act or Regulations made under this Act or in connection with the dealings between the Minister and the Council when the Council is exercising its functions under this Act or any regulations made under this Act;
 - (b) if the information is or has been available to the public from other sources.

(4) No officer, servant, agent or adviser of the Council shall be required to produce in any court any book or document or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act, except on the direction of the court or in so far as may be necessary for the purpose of carrying into effect this Act or any other statutory provision.

(5) For the avoidance of doubt, this section does not apply to the publication of a statement by the Council pursuant to section 25(4A) of the Health Insurance Act 1970.

[Section 18 subsection (5) inserted by 2015 : 23 s. 3 effective 12 June 2015]

Consequential amendments

19 The amendments set out in the Schedule shall have effect.

Commencement

20 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette and different days may be appointed for different provisions of this Act.

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SCHEDULE

(section 19)

CONSEQUENTIAL AMENDMENTS

1. (1) The Hospital Insurance Act 1970 ("the Act") is retitled as "the Health Insurance Act 1970".

(2) Section 1 of the Act is amended—

(a) in subsection (1)—

(i) by deleting the definition of "the Commission" and substituting the following—

“the Council” means the Bermuda Health Council established under section 3 of the Bermuda Health Council Act 2004”,

(ii) by deleting the definition of "the Fund" and substituting the following—

“the Fund” means the Health Insurance Fund established under section 12”,

(iii) in the definition of "hospital insurance" by deleting "hospital insurance" and substituting "health insurance" in both the definition and the text of the definition,

(iv) in the definition of "indigent person" by deleting "of Health and Social Services" and substituting "responsible for Health",

(v) by deleting the definition of "Minister" and substituting the following—

“the Minister” means the Minister responsible for Health”,

(vi) in the definition of "school leaving age" by deleting "26 of the Education Act 1954" and substituting "40 of the Education Act 1996";

(b) in subsection (3), by deleting paragraph (d).

(3) Sections 6 to 11 of the Act are repealed and the heading to Part II is deleted and "BERMUDA HEALTH COUNCIL" substituted.

(4) Section 40(1) of the Act is amended—

(a) by inserting after "may" where it first occurs " , acting on the recommendations of the Council, ”;

(b) in paragraph (l) by deleting "\$250" and substituting "\$2,000.00".

(5) The Act is amended generally by deleting "Commission", "Hospital Insurance Fund" and "hospital insurance" wherever they appear and substituting "Council", "Health Insurance Fund" and "health insurance" respectively.

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Amendment of statutory instruments

2. The following statutory instruments—

Hospital Insurance (Licensing of Insurers) Regulations 1971

Hospital Insurance (Approval Scheme) Regulations 1971

Hospital Insurance (Certificate of Entitlement) Regulations 1971

Hospital Insurance (Audit of Accounts) Regulations 1971

Hospital Insurance (Portability) Regulations 1971

Hospital Insurance (Standard Premium) Regulations 2003

Hospital Insurance (Health Insurance Plan) Regulations 1987

Hospital Insurance (Health Insurance Plan) (Premium) Order 1987

Hospital Insurance (Health Insurance Plan) (Additional Benefits) Order 1988

Hospital Insurance (Standard Hospital Benefit) Regulations 1971

Hospital Insurance (Deductions) Regulations 1971

Hospital Insurance (Cover) Regulations 1971

Hospital Insurance (Procedure for Subsidy Payments) Regulations 1971

Hospital Insurance (Health Insurance Plan) (Enrolment) Rules 1981

Hospital Insurance (Inspection of Records) Regulations 1971

Hospital Insurance (Maternity Benefit) Regulations 1971

Hospital Insurance (Artificial Limbs and Appliances) Regulations 1971

Hospital Insurance (Exemption) Regulations 1971

Hospital Insurance (Statistical Reports) Regulations 1986

Hospital Insurance (Double Cover) Regulations 1971

Hospital Insurance (Portability of Subsidy) Regulations 1973

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Hospital Insurance (Mental Illness, Alcohol and Drug Abuse) Regulations 1973

Hospital Insurance (Mutual Reinsurance Fund) (Prescribed Sum) Order 1999

are amended—

- (a) in the title and generally throughout the text by deleting “hospital insurance” and substituting “health insurance”;
- (b) generally by deleting “Commission”, “Hospital Insurance Fund” and “hospital insurance” wherever they appear and substituting “Council”, “Health Insurance Fund” and “health insurance” respectively.

[Assent Date: 20 July 2004]

[Operative Date: 1 January 2006]

[Amended by:

2009 : 10

2009 : 49

2015 : 23

2017 : 25

2020 : 47

2020 : 53

2021 : 15

2024 : 16]