

HOSPITALS AND HEALTH FACILITIES ACT, 1994

ACT No 36 OF 1994

ACT To consolidate and amend the laws relating to state hospitals and private hospitals; to regulate the conduct of health facilities; and to provide for matters incidental thereto.

**(Signed by the President on 30 November 1994)
[including substitutes by amendment act of 1998]**

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PART I PRELIMINARY PROVISIONS (ss 1-4)

1 Definitions

In this Act, unless the context otherwise indicates-

"committee" means a hospital committee established under section 22;

"financial year" means the period of twelve months commencing on the first day of April in one year and ending on the thirty-first day of March in the ensuing year;

"health facility" means a health facility referred to in section 30 and includes a state health facility and a private health facility;

"hospital" means a state hospital or private hospital established in accordance with the provisions of this Act;

"in-patient" means a person who receives treatment at a hospital or health facility for a continuous period of longer than four hours;

"inspector" means an inspector of hospitals and health facilities designated under section 10;

"local authority council" means a local authority council established under the Local Authorities Act, 1992 (Act 23 of 1992);

"medicine" has the same meaning as in the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965);

"Minister" means the Minister of Health and Social Services;

"out-patient" means a person who receives treatment at a hospital or health facility for a continuous period of four hours or less;

"owner" in relation to a building or premises includes-

(a) the person, in whose name the premises or building are registered;

(b) where such building or premises are subject to a lease, the lessee thereof or the person who

controls or manages such building or premises; and

(c) the agent of a person referred to in paragraph (a) or (b);

"Permanent Secretary" means the Permanent Secretary: Health and Social Services;

"practitioner" means a person registered and authorized to practise under the-

(a) Allied Health Services Professions Act, 1993 (Act 20 of 1993);

[Para (a) substituted by sec 1(a) of Act 1 of 1998.]

(b) Medical and Dental Professions Act 1993, (Act 21 of 1993);

(c) Pharmacy Professions Act, 1993 (Act 23 of 1993); and

(d) Nursing Professions Act, 1993 (Act 30 of 1993);

"private health facility" means a privately-owned health facility licensed under section 31;

"private hospital" means a hospital registered or deemed to be registered as such under section 23;

"private patient" means any person classified as a private patient under section 18;

"private practice" means the conduct of professional practice, including the treatment of patients and provision of health services to patients, for personal profit;

"prescribe" means prescribe by regulation;

"register" means the register of private hospitals and private health facilities referred to in section 25;

"regulation" means a regulation made under section 38;

"state health facility" means a state owned health facility established or deemed to be established under subsection (3) of section 2;

[Definition of "state health facility" substituted by sec 1(b) of Act 1 of 1998.]

"state hospital" means a hospital established or deemed to be established under section 2 and includes a hospital procured by the Minister under subsection (1) or (2) of section 3;

"state patient" means any patient classified as a state patient under section 18;

"superintendent" means the medical superintendent appointed under section 5 and includes an acting medical superintendent;

"this Act" includes the regulations;

"treatment" means the provision to any patient of any one or more of the following-

(a) nursing;

(b) accommodation, food or clothing in any hospital;

(c) medical, surgical, gynaecological, obstetrical, dental, curative, diagnostic or preventative

examination, measure or services;

(d) immunisation services;

(e) essential medicines as prescribed by a medical practitioner in, at or from a hospital;

(f) any dressing, medical apparatus or appliance; and

(g) any other article, examination, measure or service as may be prescribed.

PART II ESTABLISHMENT AND MANAGEMENT OF STATE HOSPITALS, STATE HEALTH FACILITIES AND SERVICES (ss 2-10)

2 Establishment and closure of state hospitals and state health facilities

(1) The Minister may by notice in the Gazette, establish or close down a state hospital.

(2) The Minister may prescribe the categories into which state hospitals shall be classified and may declare any institution or facility to be a state hospital for the purposes of this Act.

[Subsec (2) substituted by sec 2(a) of Act 1 of 1998.]

(3) The Minister may-

(a) establish health facilities and related services in order to promote efficient health services;

(b) prescribe the categories into which state health facilities shall be classified;

(c) enter into an agreement with any Government or person for the supply of health services; and

(d) determine the terms and conditions on which persons may make use of such state health facilities and related services.

[Subsec (3) substituted by sec 2(b) of Act 1 of 1998.]

(4) No person, except a local authority council or other prescribed authority, shall without the written approval of the Minister, granted subject to such conditions as he or she may determine, establish or maintain an ambulance service.

(5) Subject to such conditions as the Minister may determine, he or she may out of moneys appropriated by law for such purpose, financially assist an ambulance service-

(a) established or maintained by a local authority council or other prescribed authority; or

(b) established or maintained by any person in accordance with an approval granted under subsection (4).

3 Taking over of private hospitals as state hospitals

(1) The Minister may in the public interest, take over, acquire, purchase, lease or otherwise procure a private hospital as a state hospital subject to the payment of just compensation and to such terms and conditions as may be mutually agreed upon between the Minister and the owner of the hospital,

and may thereafter conduct such hospital as a state hospital.

(2) Where the owner of a private hospital gives written notice under subsection (2) of section 26 of his or her intention to close down a private hospital or part thereof or any service therein, the Minister may for such period as he or she may deem necessary and upon such terms and conditions as may be mutually agreed upon between the Minister and the owner of the hospital, take over such hospital, part thereof or service, as the case may be, and conduct it as a state hospital or service.

(3) Where the terms and conditions referred to in subsection (1) and (2) cannot be mutually agreed upon, they shall be determined by arbitration under the Arbitration Act, 1965 (Act 42 of 1965).

4 State hospitals and state health facilities to be under the responsibility of the Minister

(1) Subject to the provisions of this Act, every-

(a) state hospital; and

(b) state health facility,

shall be under the responsibility and control of the Minister.

(2) The Minister may, subject to such conditions as he or she may determine, and with the concurrence of the Minister of Works, Transport and Communication, put out to lease to private practitioners, for the purpose of conducting a private practice, or to any other person for any other business purposes, any available rooms or other space in a state hospital or a state health facility which is not required for use by the State or for public purposes.

[Subsec (2) added by sec 3 of Act 1 of 1998.]

[Sec 4 amended by sec 3 of Act 1 of 1998.]

5 Appointment of superintendent

(1) The Minister shall appoint in respect of every state hospital a medical practitioner employed in the Public Service, who has been practising for not less than five years, to be the superintendent of such hospital.

[Subsec (1) substituted by sec 4(a) of Act 1 of 1998.]

(2) The superintendent shall in addition to the duties imposed on him or her elsewhere in this Act, be-

(a) the chief administrative officer and head of the hospital;

(b) responsible for the management and maintenance of the hospital and hospital services, including the making of hospital rules in respect of that hospital;

(c) responsible for directing and supervising the staff of the hospital; and

(d) accountable to the Minister in the performance of his or her duties under this Act.

(3) Until a superintendent is appointed in respect of a state hospital under subsection (1), the Permanent Secretary may designate a senior practitioner employed in the Public Service as acting superintendent, who shall perform the functions and duties of a superintendent under this Act.

[Subsec (3) substituted by sec 4(b) of Act 1 of 1998.]

6 Establishment of hospital services

The Minister may, subject to such conditions as he or she may prescribe, establish and maintain the following hospital services, namely-

(a) workshops, motor garages and depots for the manufacture, maintenance, service, repair and safekeeping of hospital apparatus, motor vehicles and equipment;

(b) laundries and linen services;

(c) medical stores;

(d) mortuaries; and

(e) any other hospital service which the Minister may deem necessary or expedient for the efficient functioning of state hospitals and health facilities.

7 Amenities and services for hospital staff and patients

Subject to such conditions as the Minister may prescribe, he or she may out of moneys appropriated by law for such purpose, establish or provide amenities and services which he or she may deem necessary or useful for the convenience of and the use by the staff or patients of a state hospital.

8 Services to other institutions

Subject to such conditions as the Minister may determine, he or she may make available to any health or other institution, supplies of any medicine, medical substance, preparation or hospital equipment and apparatus at a state hospital or state health facility.

9 Inspection of state hospitals and state health facilities

The Permanent Secretary, or an inspector designated under section 10, may at all reasonable times inspect any state hospital or state health facility, for the purpose of ascertaining whether the provisions of this Act are being complied with, or for such other purpose as the Permanent Secretary may determine.

10 Designation and duties of inspectors of hospitals and health facilities

(1) The Permanent Secretary may designate one or more officers in his or her Ministry to be inspectors of hospitals and health facilities under this Act, and shall furnish each officer with a certificate of appointment which shall be produced on demand in the performance of an inspector's duties.

(2) Subject to subsections (4) and (5), and for the purposes of ensuring compliance with this Act, an inspector may at all reasonable times and without a warrant or permission, enter premises upon which a hospital or health facility is being conducted, or is about to be conducted or is reasonably suspected of being conducted, and-

(a) inspect those premises in order to ascertain whether-

(i) they are a fit and proper place for the conduct of a hospital or health facility as the case may be;

(ii) the hospital or health facility, if privately owned, is duly registered or licensed, as the case may be, under this Act;

(iii) the hospital or health facility is adequately equipped; employs adequate qualified staff and is being conducted in a manner conducive to the physical, mental and moral welfare of the patients and staff thereof; and

(iv) the hospital or health facility, if privately owned, is being conducted in accordance with the conditions of the registration certificate or licence, as the case may be;

(b) require a person in charge of those premises to produce any book, record, document or other article in his or her possession or control for inspection;

(c) examine any book, record, document or other article found on the premises which in the inspector's opinion may contain information relating to the inspector's investigation; take samples therefrom and demand from the person in charge an explanation of any entry therein;

(d) seize and remove from those premises any book, record, document or other article which in the inspector's opinion may furnish proof of contravention of this Act or conditions in a registration certificate or licence issued thereunder;

(e) question any person found or believed to be employed on those premises or receiving treatment or health services thereat, about any matter relevant to the inspector's enquiries; and

(f) conduct any further or other investigation deemed necessary.

(3) An inspector may, in the performance of his or her functions under this Act, be accompanied and assisted by a police officer.

(4) Notwithstanding subsection (2) the person or home of an individual shall not be searched by an inspector performing his or her duties under this section unless the search has been authorised by a warrant issued by a magistrate or a judge within the jurisdiction where the person or home is situated, upon oath by the inspector that-

(a) there are reasonable grounds to suspect that this Act or conditions in a registration certificate or licence issued thereunder are being contravened by that person or in that home, or that a book, record, document or other article required for inspection, is in that home; and

(b) the search is necessary for a purpose referred to in Article 13(1) of the Constitution,

but nothing in this subsection prohibits a search without a warrant under Article 13(2)(b) of the Constitution.

(5) The search of the person or home of an individual by an inspector shall-

(a) not be excessively intrusive, having regard to the contravention suspected; and

(b) comply with the provisions of subsection (3)(a) and (4) of section 21 and 29 of Criminal Procedure Act, 1977 (Act 51 of 1977).

(6) Where after an inspection under this section, the inspector is satisfied that the provisions of paragraph (a) of subsection (2) have been complied with, he or she shall issue a certificate to that effect, in respect of the inspected premises.

(7) Any person who-

(a) resists or obstructs an inspector in the course of duty under this Act;

(b) refuses to submit any article, book, record or document required by an inspector or to answer to the best of his or her knowledge, any question put to him or her by an inspector; or

(c) with intent to deceive or mislead an inspector into believing that the premises being inspected-

(i) if privately owned, are duly registered or licensed under this Act, as the case may be; or

(ii) meet the requirements referred to in paragraph (a) subsection (2) of section 10,

makes a false statement or representation to or withholds vital information from an inspector,

commits an offence and shall be liable on conviction to a fine not exceeding N\$10 000 or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

PART III ACCESS AND ADMISSION TO AND TREATMENT IN STATE HOSPITALS AND STATE HEALTH FACILITIES (ss 11-17)

11 Access to a state hospital or state health facility

(1) Subject to the provisions of this Act and to such rules as may be made, every person in Namibia shall have access to a state hospital or state health facility and shall be entitled to-

(a) receive treatment or other medical care; and

(b) benefit from any of the health services established thereat under this Act.

(2) The superintendent of a state hospital may deny any person, including a practitioner, access to that hospital where such person contravenes this Act or a hospital rule, or refuses or fails to comply with an order of a hospital authority, or for any other reason whatsoever deemed sufficient by the superintendent.

(3) Any person to whom access to a state hospital is denied under subsection (2) may within fourteen days after such denial, in writing and through the Permanent Secretary, appeal to the Minister against such refusal of access, and the Minister's decision on the matter shall be final.

12 Admission of in-patients to state hospital

(1) Subject to subsections (2), (3) and (4), and taking into consideration the urgency of the need for treatment, any person suffering from a disease or ailment for which treatment as an in-patient is essential, shall on the recommendation of a practitioner be entitled to be admitted to a state hospital, for the purposes of receiving such treatment.

(2) The superintendent may deny a person admission to a state hospital or may order the discharge of any person therefrom, if in his or her opinion-

(a) such admission is unnecessary or would adversely affect the health or treatment of other patients at that hospital;

(b) such person is guilty of conduct which justifies his or her discharge from the hospital; or

(c) there is other sufficient reason to justify the denial of admission or the discharge.

(3) The provisions of subsection (3) of section 11 shall mutatis mutandis apply to a person denied admission to or discharged from a state hospital under subsection (2).

(4) Notwithstanding subsection (1) the superintendent may, in consultation with the Permanent Secretary, temporarily close a state hospital or part thereof to the public in order to facilitate the admission or treatment of particular patients.

13 Assignment of ward, section and bed on admission

On admission of a person to a state hospital as an in-patient, the superintendent thereof or any other person duly authorised shall assign that in-patient the ward, section and bed for occupation during the period of admission and may thereafter transfer such patient to such other ward, section or bed in that hospital as he or she may deem necessary.

14 Transfer of state patients to other hospitals

(1) Notwithstanding anything provided to the contrary in this Act, the superintendent of a state hospital may authorise the transfer to any other hospital, of a state patient or a patient receiving free treatment, to receive treatment at that other hospital free of charge or as a state patient.

(2) Upon the completion of the treatment of a patient transferred under subsection (1), such patient shall be transferred back to the state hospital from which he or she had originally been transferred, and the costs incidental to the transfer of such patient shall be borne by the State.

(3) Where a patient in a state hospital requires urgent transportation to or from another hospital and no ambulance is available, he or she may be transported in any other vehicle that the superintendent may deem suitable.

(4) Subject to the provisions of subsections (5) and (6), where a patient transferred to another hospital under subsection (1) dies at that other hospital, the cost of returning the body of such patient to the state hospital from which the patient was originally transferred, shall be borne by the State.

(5) Notwithstanding the provisions of subsection (4), a relative or bona fide friend of a deceased patient referred to in that subsection may within fourteen days after the death of such patient, apply to the Minister for custody of the body and the Minister may, subject to such conditions as he or she may determine, grant custody of the body to such relative or friend.

(6) Notwithstanding the provisions of subsection (4), where a patient referred to in that subsection dies destitute and no relatives or bona fide friend claims his or her body within fourteen days after his or her death, the Minister may direct that the body of such patient be buried at a cemetery nearest to the hospital where he or she has died, or that it be disposed of in accordance with regulations prescribed for that purpose.

15 Accommodation of person accompanying patient

The superintendent may permit any person accompanying a patient to stay in the state hospital and to be accommodated with that patient in such hospital, subject to such conditions as the Minister may prescribe, and may at any time order such person to leave such hospital.

16 State patients not to engage private practitioners without prior approval

(1) Save as is provided in this section, no patient in a state hospital who receives free treatment or who is a state patient shall engage a private practitioner to treat him or her in a state hospital except-

(a) in the case of an emergency; or

(b) with the written approval of the superintendent upon such conditions as he or she may determine.

(2) Where a patient engages a private practitioner contrary to subsection (1), he or she shall be treated as a private patient and shall be personally liable for the cost of such treatment.

(3) Notwithstanding the provisions of subsection (1) and (2), the Minister may by notice in the Gazette designate a state hospital or part thereof where treatment of patients by private practitioners is prohibited.

17 Private practitioners not to practise in state hospital or state health facility without authorization

(1) Subject to subsections (6) and (7), no practitioner who is not in the full-time employment of the Public Service shall-

(a) engage in the treatment of patients; or

(b) perform a procedure,

in a state hospital or state health facility except with the written authorization of the Minister.

(2) An application for authorization under subsection (1) shall-

(a) be in writing;

(b) be signed by the applicant;

(c) be submitted to the Minister through the superintendent of the state hospital or supervisor of the state health facility where the applicant intends to practise;

(d) contain an undertaking by the applicant that he or she will comply with this Act and any rules or regulations applicable to that state hospital or state health facility; and

(e) conform to any other prescribed requirements.

(3) On consideration of an application submitted under subsection (2) the Minister may-

(a) reject the application; or

(b) grant the application unconditionally or on any one or more of the conditions that the applicant shall restrict his or her practice in the state hospital or state health facility to-

(i) the specified part of that hospital or health facility;

(ii) the specified type of treatment;

(iii) the specified period or periods; or

(iv) such other conditions as the Minister may specify in the authorization.

(4) The Minister may at any time-

(a) withdraw an authorization granted under subsection (3);

(b) amend any of the conditions in the authorization; or

(c) impose additional conditions in the authorization,

and shall notify the practitioner concerned in writing, of such withdrawal or change in the conditions.

(5) A practitioner who is aggrieved by-

(a) a decision of the Minister rejecting his or her application for authorization under this section;

(b) a condition imposed under subsection (3) or (4); or

(c) the withdrawal of an authorization under subsection (4),

may after the expiry of six months from the date of the decision complained of, reapply to the Minister for the grant of authorization or for the amendment or withdrawal of the condition complained of, as the case may be, and the provisions of subsections (2) and (3) shall apply to an application under this subsection.

(6) Notwithstanding subsection (1) the superintendent of a state hospital may in the case of a patient requiring emergency treatment, permit a private practitioner to treat that patient in the state hospital without the Minister's authorization.

(7) Notwithstanding the provisions of subsection (1) the Minister may, subject to the Public Service Act, 1980, (Act 2 of 1980) enter into an agreement with a practitioner, whether or not such practitioner is employed in the public service, whereby he or she may treat private patients for his or her own profit, at a state hospital or state health facility, upon such conditions as may be specified in the agreement.

PART IV CLASSIFICATION OF AND FEES PAYABLE BY PATIENTS RECEIVING TREATMENT AT STATE HOSPITALS AND STATE HEALTH FACILITIES (ss 18-21)

18 Classification of patients at state hospitals

(1) Subject to subsection (2), a patient, upon admission to a state hospital or a state health facility for treatment, whether as an in-patient or an out-patient, shall elect to be classified as either a state patient or a private patient, and in the case of a patient being a minor or a person under legal disability, such election shall be made by the patient's guardian or curator.

(2) Any person who is not a Namibian citizen or who has not been lawfully been admitted to Namibia for permanent residence therein and who is admitted for treatment in a state hospital or state health facility shall not be classified as a state patient except with the approval of the Permanent Secretary.

(3) A patient admitted to a state hospital or state health facility for treatment may not without the approval in writing of the Permanent Secretary retract his or her election as a state patient or a private patient, as the case may be after having been so admitted to the state hospital or state health

facility in question.

(4) Any person aggrieved by a refusal of the Permanent Secretary to grant his or her approval in terms of subsection (2) or (3), may appeal against such refusal to the Minister within 21 days of the date on which he or she is notified of the Permanent Secretary's decision.

[Sec 18 substituted by sec 5 of Act 1 of 1998.]

19 Minister to prescribe fees

(1) The Minister may prescribe tariffs of fees to be paid for the treatment of patients at a state hospital or state health facility and for any other service which may be rendered or item supplied thereat, and the conditions upon which a patient may receive free treatment, at such state hospital or state health facility.

(2) The Minister may prescribe different tariffs of fees in respect of-

(a) the various categories of patients as determined by the Minister;

[Para (a) substituted by sec 6 of Act 1 of 1998.]

(b) the different classes of state hospitals or state health facilities in which patients may receive treatment;

(c) the different kinds of treatment, or an element of such treatment; and

(d) the different kinds of health services rendered by state hospitals and state health facilities.

(3) Notwithstanding subsection (1) and (2) the Minister may at any time in his or her discretion determine that a patient, or category of patients, be exempted from the payment of fees for treatment or for other services rendered at a state hospital or state health facility or be liable for payment only of such reduced fees as the Minister may determine.

20 Agreement of undertaking

The Minister may enter into an agreement with any Government, organisation, company or person wherein such Government, organisation, company or person undertakes to pay for the treatment or health services rendered to any person by a state hospital or state health facility at such tariff of fees and subject to such other conditions as may be agreed upon by the parties in such agreement.

21 Payment for transportation and treatment of emergency cases

(1) Where in the case of an emergency owing to serious illness or injury, a patient other than a state patient or a patient receiving free treatment, has to be transported by road, rail, sea or air to a hospital within or outside Namibia for urgent treatment and that patient or any other person liable to pay for the cost of that treatment and transportation are unable at that time to pay, the Minister may, subject to subsection (2) pay for the treatment and transportation of that patient.

(2) Subject to such conditions as the Minister may determine. the patient or other person referred to in subsection (1) shall refund to the Minister the amount paid under subsection (1) for that patient's treatment and transportation.

(3) In an emergency the Permanent Secretary may authorise the conveyance by road, rail, sea or air of any patient referred to in subsection (1), and the treatment of such patient in any hospital whether

in or outside Namibia.

(4) Any authorization under subsection (3) shall for the purposes of this Act be regarded as an authorization by the patient himself or herself, or an authorization by such other person, as the case may be, who may by law for and on behalf of such patient authorise such conveyance or treatment.

PART V HOSPITAL COMMITTEES (s 22)

22 Hospital committees

(1) The practitioners practising at a state hospital and other staff employed at that hospital shall, annually elect from amongst themselves a hospital committee in respect of that hospital, consisting of such number of members as the Minister may prescribe, and the members of the Committee shall elect one of themselves to be the chairperson of such committee.

(2) A hospital committee shall perform such functions as are required of it by the Minister or superintendent.

(3) A hospital committee shall meet for the performance of its duties, as often as is necessary or whenever required to do so by the superintendent.

(4) The Minister may prescribe-

(a) the manner of election of a committee member;

(b) the grounds upon which a committee member may vacate office;

(c) the manner in which vacancies on the committee may be filled;

(d) the procedure of meetings of a hospital committee; and

(e) any other procedural or administrative matter necessary for the proper functioning of a hospital committee under this section.

PART VI PRIVATE HOSPITALS (ss 23-29)

23 Registration of private hospitals

(1) Subject to the provisions of subsection (2) of section 39, no person shall-

(a) establish, conduct or maintain a private hospital;

(b) offer consultations to or engage in the treatment of patients at a private hospital; or

(c) render any health service at or from a private hospital,

unless such hospital has been duly registered under this section as a private hospital; or continue to do so after the expiry of a registration certificate unless such registration certificate is renewed in accordance with the provisions of this section.

(2) An application for registration or the renewal of a registration certificate under this section shall be in the prescribed form, accompanied by the prescribed fee and submitted through the Permanent

Secretary to the Minister.

(3) Where on consideration of an application submitted under subsection (2) the Minister is satisfied that-

(a) the premises upon which the applicant conducts or intends to establish or conduct a private hospital have been duly inspected under section 10 and have been certified as a fit and proper place for the conduct of such hospital;

(b) the applicant undertakes to employ adequate, qualified staff in that hospital and to conduct the hospital in a manner conducive to the physical, mental and moral welfare of the patients and staff of that hospital;

(c) any other prescribed requirements or conditions relating to the maintenance of business or professional premises under this Act or any other law, have been complied with; and

(d) it is in the public interest to do so,

he or she shall grant the application and register the hospital as a private hospital under this Act.

[Subsec (3) substituted by sec 7 of Act 1 of 1998.]

(4) Where the Minister registers a private hospital under this section, he or she shall issue the applicant with a registration certificate in the prescribed form, and may classify that hospital into such prescribed category as he or she may deem expedient.

(5) A registration certificate issued under this section-

(a) shall entitle the holder to establish and conduct a private hospital on the registered premises, subject to the provisions of this Act and to any conditions specified in such registration certificate;

(b) shall remain in force for a period of twelve months from the date of its issue; and

(c) may be renewed in accordance with the provisions of this Act.

(6) The Minister may reject an application for the registration of a private hospital or for the renewal of a registration certificate under this section, on the grounds that any one or more of the conditions referred to in subsection (3) has not been complied with, and may require the applicant to furnish further or better particulars or to comply with a specified condition, in respect of his or her application.

24 Cancellation of registration

(1) The Minister may, subject to the provisions of subsection (2), cancel the registration of a private hospital and withdraw the registration certificate from the owner of that hospital if-

(a) the building, premises or equipment of such hospital or part thereof have become unsuitable or inadequate for the purposes of a private hospital;

(b) such hospital or part thereof does not have adequate, qualified staff;

(c) the manner in which such hospital or part thereof is conducted is detrimental to the physical, mental or moral welfare of the patients or staff of such hospital;

(d) the owner of such hospital has failed to comply with the conditions stipulated in the registration

certificate issued under subsection (4) of section 23;

(e) the owner of such hospital is convicted of an offence under this Act;

(f) the registration of such private hospital was secured on false or incorrect information; or

(g) in the Minister's opinion, it is in the public interest to do so.

(2) The Minister shall, before he or she exercises the power conferred by subsection (1), of his or her intention to do so and afford such owner an opportunity to make representation to him or her concerning the proposed action within 21 days of the date of such notification.

[Sec 24 substituted by sec 8 of Act 1 of 1998.]

25 Register of private hospitals and private health facilities

(1) The Minister shall keep and maintain in the prescribed form, a register of private hospitals and private facilities health facilities, in which shall be recorded the prescribed particulars of every-

(a) private hospital registered under section 23;

(b) private hospital whose registration is cancelled under section 24;

(c) registration certificate issued, expired or cancelled in respect of a private hospital under this Act;

(d) private health facility licensed under section 31;

(e) private health facility whose licence has been cancelled under subsection (6) of section 31;

(f) licence issued, expired or cancelled in respect of a private health facility under this Act.

(2) A register maintained under this section shall be open to public inspection, on payment of the prescribed fee and it shall be the duty of every owner of a private hospital or private health facility whose particulars are recorded therein to ensure that the entries in the register with respect to that hospital or health facility, as the case may be, are accurately recorded.

26 Minister's authorization required for certain acts

(1) No person shall effect any alterations or extensions to a private hospital registered under section 23 without the prior written authorization of the Minister, in accordance with prescribed procedure.

(2) No person shall-

(a) close a private hospital or part thereof;

(b) cease to treat patients in such hospital; or

(c) cease to render health services at or from such hospital,

unless he or she has given the Minister six months prior written notice of his or her intention to do so.

27 Financial assistance to private hospitals

(1) The Minister may, in consultation with the Minister of Finance and out of moneys appropriated by law for such purpose-

(a) subsidise, or financially assist a private hospital or private health facility; and

(b) make payments to a private hospital or private health facility in respect of fees for the treatment of and health services rendered to any state patient by that hospital or private health facility,

subject to such conditions as the Minister may determine.

[Subsec (1) substituted by sec 9 of Act 1 of 1998.]

(2) The owner or person in charge of a private hospital or private health facility which receives a subsidy or financial assistance from the Minister during a financial year shall as soon as is practicable after the close of that financial year, submit or cause to be submitted to the Minister-

(a) a report in the prescribed form of the hospital's or health facility's activities; and

(b) a copy of the hospital's or health facility's audited accounts, in respect of that financial year.

[Subsec (2) substituted by sec 9 of Act 1 of 1998.]

28 Accommodation in private hospitals

(1) Except in the case of an emergency no owner of a private hospital shall accommodate or permit to be accommodated therein-

(a) any person other than bona fide in-patients and other persons in respect of whom his or her registration certificate grants authority; or

(b) at any one time more than the number or numbers of patients of the class or classes stated in the registration certificate issued in respect of such private hospital.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and shall upon conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

29 Offences relating to private hospitals

(1) Any person who-

(a) contravenes the provisions of subsection (1) of section 23;

(b) with intent to deceive or mislead the Minister into believing that his or her private hospital is fit to be registered under section 23, makes a false statement or representation or withholds vital information in the application for registration or renewal of a registration certificate; or

(c) in the conduct or maintenance of a private hospital contravenes a condition subject to which a registration certificate has been issued under this Act,

commits an offence and shall upon conviction be liable to a fine not exceeding N\$10 000 or to a term

of imprisonment not exceeding one year, or to both such fine and imprisonment.

(2) Any person convicted of an offence under this section who, after conviction, persists in the conduct constituting such offence, shall be guilty of a continuous offence and shall upon conviction be liable to a fine not exceeding N\$1 000 or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment, in respect of every day that he or she so persists in such conduct.

PART VII PRIVATE HEALTH FACILITIES (ss 30-32)

30 Health facilities

(1) For the purposes of this Act, a "health facility" means an institution, facility, building or place, other than a hospital, where patients receive treatment, diagnostic or therapeutic interventions or other health services, and includes the facilities specified in Schedule 1.

(2) The Minister may, by notice in the Gazette, amend Schedule 1.

31 Licensing of private health facilities

Notwithstanding the provisions of-

(a) the Allied Health Services Professions Act, 1993 (Act 20 of 1993);

[Para (a) substituted by sec 10(a) of Act 1 of 1998.]

(b) the Medical and Dental Professions Act, 1993 (Act 21 of 1993);

(c) the Pharmacy Professions Act, 1993 (Act 23 of 1993); and

(d) the Nursing Professions Act, 1993 (Act 30 of 1993),

no person shall establish, conduct or maintain a private health facility, or offer consultations to or engage in the treatment of patients or render any health service at such private health facility without obtaining a licence issued under this section in respect of such health facility, or continue to conduct or maintain such private health facility after the expiry of such licence unless that licence has been renewed in accordanced with the provisions of this section.

(2) An application for the issue or renewal of a licence under this section shall be in the prescribed form, accompanied by the prescribed fee and submitted through the Permanent Secretary, to the Minister.

(3) Where on consideration of an application submitted under subsection (2) the Minister is satisfied that-

(a) the applicant, if a practitioner, is duly registered under a relevant Act referred to in subsection (1) or, if not a practitioner, the applicant undertakes to employ adequate qualified staff in the private health facility and to conduct it in a manner conducive to the physical, mental and moral welfare of the patients and staff therein;

(b) the premises upon which the applicant conducts or intends to conduct the private health facility have been duly inspected under section 10 and have been certified as a fit and proper place for the conduct of such practice;

(c) any other prescribed requirements or conditions relating to the maintenance of business or professional premises under this Act or any other law, have been complied with; and

(d) it is in the public interest to do so,

he or she shall grant the application and issue a licence in the prescribed form to the applicant in respect of the private health facility.

[Subsec (3) substituted by sec 10(b) of Act 1 of 1998.]

(4) A licence issued under this section-

(a) shall entitle the holder to conduct or maintain the licensed health facility as a private health facility, on the licensed premises, under the business or professional name specified in the licence, and subject to this Act and such conditions as may be specified in the licence;

(b) shall remain in force for a period of twelve months from the date of its issue; and

(c) may be renewed in accordance with the provisions of this Act.

(5) The Minister may reject an application for the issue of a licence or for the renewal of an expired licence, under its section, on the grounds that any one or more of the conditions referred to in subsection (3) has not been complied with, and may require the applicant to furnish further or better particulars or to comply with a specified condition, in respect of the application.

(6) Subject to the provisions of subsection (6A), the Minister may cancel and withdraw a licence issued under subsection (3) if-

(a) the building or premises of the private health facility have become unsuitable or inadequate for its purposes;

(b) the manner in which such private health facility is conducted is detrimental to the physical, mental or moral welfare of patients or staff therein;

(c) the owner of such private health facility has failed to comply with a condition stipulated in the licence issued under subsection (3);

(d) the owner of such private health facility is convicted of an offence under this Act;

(e) the licensing of such private health facility was secured on false information; or

(f) in the Minister's opinion, it is in the public interest to do so.

[Subsec (6) substituted by sec 10(c) of Act 1 of 1998.]

(6A) The Minister shall, before he or she exercises the power conferred by subsection (6), notify the owner of the private health facility concerned of his or her intention to do so and afford such owner an opportunity to make representation to him or her concerning the proposed action within 21 days of the date of such notification.

[Subsec (6A) inserted by sec 10(d) of Act 1 of 1998.]

(7) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 32, a person who at the commencement of this Act conducts or maintains a private health facility, may within three months from the date of such commencement, apply for and obtain a licence to conduct such private health facility in accordance with the provisions of this section, during which period the provisions of

that paragraph shall not apply with respect to such person.

32 Offence relating to private health facilities

(1) Any person who-

(a) contravenes the provisions of subsection (1) of section 31;

(b) with intent to deceive or mislead the Minister into believing that his or her private health facility is fit to be licensed under this Act, makes a false statement of representation or withholds vital information in the application for the issue or renewal of a licence; or

(c) in the conduct or maintenance of a private health facility contravenes a condition subject to which a licence has been issued under this Act,

commits an offence and shall be liable on conviction to a fine not exceeding N\$10 000 or to a term of imprisonment not exceeding one year, or to both such fine and imprisonment.

(2) A person convicted of an offence under subsection (1) who after conviction persists in the conduct constituting such offence, commits a continuous offence and shall on conviction be liable in respect of every day that he or she persists in such conduct, to a fine not exceeding N\$1 000 or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.

PART VIII GENERAL AND SUPPLEMENTARY PROVISIONS (ss 33-40)

33 Hospitals and health facilities to submit returns to Minister

(1) The Minister shall by notice in the Gazette, and in such other manner as he or she may deem expedient, require-

(a) the superintendent of a state hospital;

(b) the person in charge of a state health facility;

(c) the owner of a private hospital; and

(d) the owner of a private health facility,

to submit to the Permanent Secretary a written report of the activities of that hospital or health facility, as the case may be, not later than the date specified in the notice.

(2) A report submitted under subsection (1) shall-

(a) be in the prescribed form;

(b) cover the period specified in the notice; and

(c) contain the information specified in the notice.

34 Research into diseases and mental defects

The Minister may commission or authorize the conduct of research into any matter relating to the occurrence, cause, prevention, diagnosis or treatment of any illness, disease or mental defect in

human beings, or may by means of grants or otherwise, aid such research.

35 Exemptions

Notwithstanding anything provided to the contrary in this Act, the Minister may, whenever he or she deems it expedient, by notice in the Gazette, exempt any state hospital or state health facility from all or any of the provisions of this Act.

36 Exemption from provisions of the Pharmacy Professions Act

The Pharmacy Professions Act, 1993 (Act 23 of 1993), shall not apply to a pharmacy established under subsection (3) of section 2.

37 Delegation of powers

(1) The Minister may delegate to the Permanent Secretary or any other officer in his or her Ministry any power conferred upon him or her by this Act, except a power conferred by section 38.

(2) The Permanent Secretary may, with the approval of the Minister, authorise any officer in his or her Ministry to exercise on his or her behalf any power conferred upon him or her by this Act.

38 Regulations

(1) The Minister may make regulations not inconsistent with this Act, prescribing-

(a) the categories into which state hospitals and state health facilities may be classified and the criteria for such classification;

[Para (a) substituted by sec 11 of Act 1 of 1998.]

(b) the categories referred to in subsection (4) of section 23 into which private hospitals may be classified and the criteria for such classification;

(c) the conditions upon which a hospital service referred to in section 6 may be established, financed, maintained or controlled;

(d) matters in relation to state hospitals regarding-

(i) the control of persons entering and leaving the hospital including patients, staff and visitors on the hospital premises;

(ii) the custody of property belonging to admitted patients including the disposal of soiled or infected articles;

(iii) the keeping of records in respect of patients visiting the hospital;

(iv) the control of articles and objects that may be brought into the hospital by persons visiting the hospital;

(v) the supply of medicine to a state hospital and the dispensing of such medicine to patients and other persons at a state hospital pharmacy;

(vi) any other matter concerning the conduct or and administration of a state hospital that requires regulation;

(e) the conditions upon which a person referred to in section 15 may be accommodated with a patient

in a state hospital;

(f) the disposal of a body which has not been claimed for burial under section 14;

(g) the format of any application or certificate required to be prescribed under this Act;

(h) the tariff of fees payable under this Act, including rebates and special rates payable at state hospitals and state health facilities for treatment and hospital services, and the manner of payment thereof;

(i) the conditions upon which patients at state hospitals and state health facilities may receive free or subsidised treatment and health services;

(j) the number and categories of members of a hospital committee, the manner of electing those members and the procedure of meetings of such committee;

(k) matters in relation to private hospitals and private health facilities regarding-

(i) the requirements for registration of a private hospital or licensing of a private health facility;

(ii) the duties of a registered owner of a private hospital or licensed owner of a private health facility;

(iii) the standard of buildings, structures and unattached units that comprise the hospital or health facility;

(iv) the standard of accommodation if any, available to patients including an intensive care unit, and a maternity unit;

(v) the standard of furniture, equipment and apparatus used in a private hospital or private health facility;

(vi) the keeping and submission to the Minister of records in respect of patients visiting a private hospital or private health facility; and

(vii) the format of the register of private hospitals and private health facilities to be kept under section 25;

(l) the procedure for obtaining approval of the Minister to alter or extend a private hospital under subsection (1) of section 26;

(m) the format of any report or returns required to be submitted under this Act; and

(n) generally any other matter which the Minister considers necessary or expedient for the effective implementation of this Act.

(2) The Minister may prescribe different regulations in respect of the different categories of hospitals and health facilities under this Act and may provide for offences and penalties for breach of any regulation, but such penalty shall not exceed a fine of N\$2 000 or imprisonment for a term of six months or both such fine and imprisonment.

39 Repeal of laws and savings

(1) Subject to the provisions of subsection (2) the laws specified in the first and second columns of Schedule 2 are hereby repealed to the extent correspondingly set out in the third column thereof.

[Subsec (1) substituted by sec 12 of Act 1 of 1998.]

(2) Notwithstanding the provisions of subsection (1)-

(a) any state hospital or state health facility established, or hospital taken over, maintained, managed, controlled and financed as a state hospital or state health facility under the repealed laws and in existence immediately before the commencement of this Act, shall be deemed to have been established, taken over, maintained, managed, controlled, financed as the case may be, under the corresponding provisions of this Act;

(b) any private hospital registered under the repealed laws and in existence immediately before the commencement of this Act, shall be deemed to have been registered under this Act; and

(c) any regulation, notice, approval, authority, certificate or document made, issued, given or granted, or any other act done under any law repealed by subsection (1) and not inconsistent with this Act, shall continue in force and shall be deemed to have been made, issued, given, granted or done under the corresponding provisions of this Act, until expressly revoked.

40 Short title and commencement

This Act shall be called the Hospitals and Health Facilities Act, 1994 and shall come into operation on a date to be determined by the Minister by notice in the Gazette.

Schedule I HEALTH FACILITIES

(Section 30)

1. A clinic;
2. A mobile clinic;
3. A community health centre;
4. A maternity home or unattached delivery suite;
5. A convalescent home;
6. A consulting room of a practitioner;
7. A dispensary of health-related treatment, aids and appliances;
8. A first-aid station;
9. An orthopaedic workshop;
10. A dental laboratory or workshop;
11. An ambulance;
12. An unattached operating theatre;
13. A sanatorium;
14. A medical laboratory;
15. A pharmacy;

16. An occupational health clinic;

17. A radiological clinic;

18. A health spa or hydro.

Schedule II
LAWS REPEALED
(Section 39(1))

No. and year of law	Short title	Extent of repeal
Ordinance 14 of 1972	Hospitals Ordinance, 1972	The whole.
Ordinance 3 of 1973	Hospitals Amendment Ordinance, 1973	The whole.
Ordinance 27 of 1973	Hospitals Further Amendment Ordinance, 1973	The whole.
Ordinance 10 of 1979	Hospitals Amendment Ordinance, 1979	The whole.

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