

CHAPTER 15:13

MEDICAL SERVICES ACT

Act 27/1998, 22/2001 (s. 4); S.I. 262/2007.

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AN ACT to ensure the provision and maintenance of comprehensive hospital services in Zimbabwe; to provide for the admission of persons to Government hospitals and the fixing of fees in respect of services provided thereat; to provide for the granting to medical practitioners and dental practitioners of the privilege of access to certain Government hospitals and for the appointment of consultant medical and dental practitioners; to provide for the registration of medical aid societies; to set conditions for the registration of private hospitals and to provide for matters incidental to or connected with the foregoing.

[Date of commencement : 9th February, 2001.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Medical Services Act [*Chapter 15:13*].

2 Interpretation

In this Act—

- “dental practitioner” means a dental practitioner registered as such in terms of the Medical, Dental and Allied Professions Act [*Chapter 27:08*];
- “fixed date” means the date fixed in terms of subsection (2) of section *one* as the date of commencement of this Act;
- “Government hospital” means a hospital which is administered by the state or by a board or other body the majority of whose members are appointed by the Minister;
- “health practitioner” means any person in respect of whose profession or calling a register is kept in terms of the Medical, Dental and Allied Professions Act [*Chapter 27:08*];
- “hospital” means any premises or part thereof used for the reception of and the providing of nursing for persons suffering from any illness or requiring medical care, whether or not such premises are also used for the treatment of outpatients, and includes— (a) a maternity home or ward; and
(b) any premises or part thereof used for the detention, care and treatment of persons who are mentally disordered or intellectually handicapped in terms of section 2 of the Mental Health Act, 1996;
- “medical aid society” means an association or organization which accepts subscriptions from members or other persons wholly or mainly for the purpose of—
(a) paying any expenses incurred by such members or persons and additionally, or alternatively, their dependants or employees, in respect of medical or dental treatment;
(b) meeting the whole or part of any expenses incurred by such members or persons and additionally, or alternatively, their employees, in respect of medical or dental treatment;
- “medical practitioner” means a medical practitioner registered as such in terms of the Medical, Dental and Allied Professions Act [*Chapter 27:08*];
- “medical service” means any service provided at a hospital, whether to persons admitted as in-patients or otherwise;
- “Minister” means the Minister of Health and Child Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “private hospital” means a hospital which is not a Government hospital;
- “private patient” means a patient of a private practitioner;
- “private practitioner” means a health practitioner who is not in the full-time employment of the State;
- “psychiatric unit” means any premises or part thereof referred to in paragraph (b) of the definition of “hospital”;
- “registered”, in relation to a medical aid society, means registered in terms of section *nine*;
- “responsible authority”, in relation to a medical aid society or hospital, means the person, body or organization responsible for the establishment and management of the medical aid society or hospital, as the case may be;
- “Secretary” means the Secretary for the Ministry for which the Minister is responsible;
- “special hospital” means a hospital to which only patients suffering from a particular disease are admitted;
- “State-aided hospital” means a private hospital whose responsible authority receives a grant from the State to cover the whole or part of the costs of administering the hospital;
- “superintendent”, in relation to a Government hospital, means the person in charge of the hospital;
- “teaching hospital” means a hospital which is used for the training of persons intending to be health practitioners and practitioners in associated or ancillary callings.

PART II

GOVERNMENT MEDICAL FACILITIES AND GOVERNMENT HOSPITALS

3 Provision of medical facilities

The Minister shall as far as is reasonably possible—

- (a) provide and maintain comprehensive and constantly developing medical services; and (b) encourage local authorities and other persons to provide such services.

4 Classification of Government hospitals

The Secretary shall classify Government hospitals as— (a)

open Government hospitals; or

(b) closed Government hospitals; according to whether or not any private practitioners may be permitted the privilege of access to them for the admission of their private patients.

5 Granting to private practitioners of privilege of access and appointment of consultants

(1) Subject to subsection (4), the Secretary may, on such conditions as he thinks fit, grant such private practitioners as he considers appropriate the privilege of access to any open Government hospital for the admission of their private patients.

(2) Subject to subsections (3) and (4) and, in the case of a health practitioner who is a member of the Public Service, to the law relating to the Public Service, the Secretary may, on such conditions as he thinks fit, appoint suitably qualified health practitioners as consultants to any Government hospital:

Provided that the remuneration and allowances of any such consultant shall be fixed by the Minister with the approval of the Minister responsible for finance.

(3) Subject to subsection (4), before appointing any consultant to a post at a Government hospital in terms of subsection (2), the Secretary shall publish a notice in a newspaper circulating in the area of the hospital concerned, specifying the nature of the post and calling for applications for appointment to the post.

(4) Where a board or other body has been established to administer any Government hospital, any function imposed or conferred by subsection (1), (2) or (3) upon the Secretary may, subject to any enactment relating to that board or body, be performed or exercised by the board or other body concerned or any committee thereof.

6 No choice of health practitioner at Government hospitals

No patient accommodated at any Government hospital, other than a private patient whose private practitioner has been granted the privilege of access to the hospital, shall have the right to the services of any specific health practitioner.

7 Accommodation of patients at Government hospitals

In accommodating any patient in a ward at a Government hospital, the superintendent of the hospital shall, as far as is reasonably practicable, take into account any desire of the patient for privacy and have regard to the comfort and ease of the patient.

8 Fees and charges at and admission to Government and State-aided hospitals

(1) Subject to this section, the Minister shall from time to time fix fees and charges payable for services and facilities provided at Government hospitals and State-aided hospitals.

(2) In fixing the fees and charges payable in respect of psychiatric units or special hospitals, the Minister may specify that no fees shall be payable in respect of all patients or certain specified classes of patients.

(3) Subject to the general directions of the Secretary, the superintendent of a Government hospital may waive or reduce any fees or charges in terms of this section.

(4) The superintendent of a teaching hospital may admit to that hospital such patients as he considers desirable for the purposes of training persons at that hospital.

PART III

MEDICAL AID SOCIETIES

9 Registration of medical aid societies

(1) Subject to this section and section *seventeen*, no person shall establish or conduct a medical aid society unless it is registered.

(2) Any person wishing to establish or conduct a medical aid society shall apply to the Secretary for the registration of the medical aid society.

(3) An application in terms of subsection (2) shall be made in the prescribed form and manner and shall be accompanied by such documents and information as may be prescribed or as the Secretary may reasonably require.

(4) Upon receipt of an application in terms of subsection (3), the Secretary shall make such inquiries as he considers necessary in order to determine the application.

(5) If in respect of an application referred to in subsection (3) the Secretary is satisfied that—

- (a) the minimum cover for medical services to be provided by the medical aid society is adequate for the purpose of meeting the costs of medical services at such level as may be prescribed; and
- (b) adequate financial provision has been made for the proper maintenance of the medical aid society; and
- (c) the applicant meets such other conditions and requirements as may be prescribed; he shall grant the application and register the medical aid society.

(6) If the Secretary is not satisfied as to any matter referred to in subsection (5), he shall reject the application and shall notify the responsible authority accordingly:

Provided that, before rejecting an application, he shall notify the applicant of his intention to do so and of his reasons therefor, and shall give the applicant a reasonable opportunity to make representations in the matter.

(7) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(8) This section shall not apply in relation to any scheme established in terms of the National Social Security Authority Act [*Chapter 17:04*].

10 Cancellation or registration of medical aid society

(1) If at any time the Secretary is not satisfied as to any matter referred to in subsection (5) of section *nine*, in relation to a registered medical aid society, he shall notify the responsible authority of the society in writing that he proposes to cancel the society's registration unless, within a reasonable period fixed by him, the responsible authority complies to the satisfaction of the Secretary with such requirements as to any matter referred to in subsection (5) of section *nine* as he may specify.

(2) If the responsible authority of a medical aid society who has been notified in terms of subsection (1) of the proposal of the Secretary to cancel the registration of the medical aid society fails within the period fixed by the Secretary or within any extension of such period granted by him, to comply to his satisfaction with the requirements of any matter specified by him, the Secretary shall cancel the registration and notify the responsible authority accordingly.

PART IV

PRIVATE HOSPITALS

11 Minister's approval required for establishment of private hospitals

(1) Subject to subsection (6), no person shall—

- (a) establish a private hospital unless the Minister has approved its establishment in terms of this section; or
- (b) maintain a private hospital whose establishment has not been approved by the Minister in terms of this section.

(2) Any person wishing to obtain the Minister's approval for the establishment of a private hospital shall make an application in the prescribed form and manner, and shall submit to the Minister such documents and information as may be prescribed or as the Minister may reasonably require.

(3) On receipt of an application in terms of subsection (2), the Minister shall make such inquiries as he considers necessary in order to determine the application and, if he is satisfied that—

- (a) there is a need for the private hospital concerned, having regard to the national needs, the nature of the services and facilities to be provided at the hospital and the proposed location of the hospital; and
- (b) the financial resources of the responsible authority are sufficient for the provision of the services and facilities intended to be provided at the hospital; he shall grant his approval, in writing, for the establishment of the private hospital concerned, and if he is not so satisfied he shall reject the application:

Provided that, before rejecting an application the Minister shall notify the applicant of his intention to do so and of his reasons therefor, and shall give the applicant a reasonable opportunity to make representations in the matter.

(4) The Minister may make his approval in terms of subsection (3) subject to such terms or conditions relating to—

- (a) the size or nature of the private hospital concerned or the services and facilities to be provided at it; or
- (b) the financial resources to be maintained by the responsible authority of the private hospital concerned; as in his opinion are reasonably necessary to ensure the maintenance of efficient and suitable services and facilities at the private hospital concerned.

(5) Any person who—

- (a) contravenes subsection (1); or
- (b) contravenes or fails to comply with any term or condition subject to which the Minister granted his approval in terms of subsection (4); shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(6) This section shall not apply in relation to a private hospital that was established before the fixed date.

(7) The requirements of this section shall be additional to those of any other enactment relating to the establishment or registration of hospitals.

12 Prohibition against discrimination in exercise of right to admit patients

(1) Subject to subsections (2) and (3), the responsible authority of a private hospital shall have the right to determine who may be admitted to that hospital and the conditions of such admission.

(2) In the exercise of the right referred to in subsection (1), no person of a particular description by race, tribe, place of origin, gender, political opinions, colour or creed shall be prejudiced—

- (a) by being subjected to a condition, restriction or disability to which other persons of another such description are not made subject; or
- (b) by the according to persons of another such description of a privilege or advantage which is not accorded to persons of the first-mentioned description; and the imposition of that condition, restriction or disability or the according of that privilege or advantage is wholly or mainly attributable to the description by race, tribe, place of origin, gender, political opinions, colour or creed of the persons concerned.

(3) The Minister may in the public interest require services and facilities at a private hospital to be made available to such class of patients on such terms and conditions relating to payment of fees and charges as the Minister may direct.

(4) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(5) It shall be a defence in any criminal proceedings for an offence under subsection (2) for the accused to show that, though he committed the act alleged against him on the grounds of the gender of the person against whom the act was committed—

- (i) the act was reasonably justified in view of physiological differences between persons of different gender; or
- (ii) the act was reasonably necessary in the interest of defence, public safety or public morality.

13 Fees and charges payable at private hospitals

(1) No responsible authority shall in respect of any patient receiving any care at a private hospital— (a) impose any fee or charge above such amount as may be prescribed; or

(b) increase any such fee or charge by more than such percentage as may be prescribed; except with the approval of the Minister:

Provided that paragraph (a) shall not apply in respect of any fee or charge that was being charged by any responsible authority immediately before the fixed date.

(2) Any responsible authority who wishes to obtain approval of any fee or charge or increase therein in terms of subsection (1) shall apply to the Minister in writing, setting out the full details of the proposed fee or charge or increase therein, and the basis of the proposal.

(3) The Minister shall forthwith consider any application made in terms of subsection (2) and, if he is satisfied that the proposed fee or charge or increase therein is fair and reasonable having regard to—

- (a) the cost of operating and maintaining the hospital; and
- (b) any proposed improvements to the medical facilities or services provided at the hospital; and
- (c) any other relevant economic factors justifying the proposed fee or charge or increase therein; he shall grant the application.

(4) If, after due consideration, the Minister is not satisfied in respect of any of the matters specified in subsection (3), he shall refuse the application:

Provided that, before rejecting an application the Secretary shall notify the applicant of his intention to do so and of his reasons therefor and shall give the applicant a reasonable opportunity to make representations in the matter.

(5) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

PART V

GENERAL

14 Appeals

(1) A responsible authority who is aggrieved by a decision of the Secretary— (a) to reject an application for the registration of a medical aid society; or

(b) to cancel the registration of a medical aid society; may appeal against the decision to the Minister.

(2) An appeal in terms of subsection (1) shall be made within the period and in the form and manner prescribed.

(3) In an appeal in terms of subsection (1) the Minister, after making such inquiries into the matter as he considers necessary, may confirm, vary or set aside the decision appealed against:

Provided that the Minister shall afford the appellant a reasonable opportunity to make representations in the matter.

(4) A responsible authority who is aggrieved by a decision of the Minister in terms of subsection (3), of section *twelve* or section *thirteen* may appeal against the decision to the Administrative Court.

(5) An appeal in terms of subsection (4) shall be made within the period and in the form and manner prescribed in rules of court.

(6) In an appeal in terms of subsection (4), the Administrative Court may confirm, vary or set aside the decision appealed against and may give such other order, whether as to costs or otherwise, as it thinks fit.

15 Keeping of records and provision of information

The responsible authority of every medical aid society or private hospital shall keep and maintain such records and provide such information as the Secretary may, from time to time, in writing, require.

16 Regulations

(1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in the Minister's opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the books to be kept by responsible authorities, the entries to be made in such books and the accounts, reports, returns, extracts, copies, statements, notices, documents and information to be sent to the Minister or the Secretary;
- (b) the forms to be used for the purposes of this Act;
- (c) the conditions governing the establishment and maintenance of any medical aid society;
- (d) the conditions governing the establishment and operations of any private hospital;
- (e) the duties of responsible authorities;
- (f) such other matters as, in the opinion of the Minister, are likely to promote the efficient administration and regulation of the provision of health care services.

(3) Regulations made in terms of subsection (1) may provide for penalties for any contravention thereof:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

17 Existing medical aid societies deemed to be duly registered

Any medical aid society established before the fixed date and subsisting immediately before the fixed date shall be deemed to have been duly established and registered in terms of this Act.