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LAWS OF THE GAMBIA

MEDICAL SERVICES ACT

CHAPTER 39:01

Act No.

7 of 1988

Amended by

Decree No. 23 of 1994

**Note
on
Repeal**

This Act repealed the Hospitals and Dispensaries Act, 1939 with the saving of subsidiary legislation made under that Act.

CHAPTER 39:01**MEDICAL SERVICES ACT**

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MEDICAL SERVICES ACT

An Act to provide for the establishment of Hospital Management Boards, the charging of fees for medical and health services and the regulation of such fees, the regulation of conditions under which private hospitals or other health facilities may be established, and for connected matters.

[Act No. 7 of 1988 amended by Decree No. 23 of 1994.]

[Date of commencement: 30th May, 1988.]

PART I

Preliminary

1. Short title

This Act may be cited as the Medical Services Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Board**” means a Hospital Management Board established under section 3 of this Act;

“**Chairperson**” means the person appointed as Chairperson of a Hospital Management Board under section 4 of this Act;

“**committee**” means a committee established by a Board under section 7 of this Act;

“**Government Hospital**” means a hospital which is owned, fully financed, or managed by, or on behalf of, the Government;

“**health facility**” means a Government health centre, polyclinic, dispensary or any other health facility belonging to the Government and not forming part of, or attached to, a hospital;

“**Minister**” means the Minister responsible for health;

“**private health institution**” means any hospital, polyclinic, dispensary or other health facility not owned by the Government;

“**Secretary**” means the person appointed as Secretary to a Board;

“**senior staff**” means any staff of a Government hospital so prescribed by the Minister;

“**Vice-Chairperson**” means the person appointed Vice-Chairperson of a Board.

PART II

*Hospital Management Board***3. Establishment of Hospital Management Board**

(1) The Minister may by Statutory Instrument establish a Hospital Management Board for any Government hospital or group of Government hospitals.

(2) A Board established under subsection (1) of this section shall be a body corporate with perpetual succession and a common seal, and shall have power to sue or be sued in its corporate name and subject to this Act, to acquire hold and dispose of movable and immovable property.

(3) On the establishment of a Board, there shall be vested in the Board such properties, assets and liabilities as may be transferred to the Board by the Minister by Executive Instrument.

(4) The transfer of any assets to a Board under subsection (3) of this section shall be on such terms and conditions as may be agreed between the Minister and the Board, with the approval of the Minister of Finance and Economic Affairs.

(5) A Board established under this Act shall not dispose of any properties or assets vested in the Board under subsection (3) of this section without the prior written approval of the Minister.

4. Composition of a Board

(1) The Board shall consist of—

- (a) a Chairperson;
- (b) the Chief Executive of the Hospital;
- (c) one law officer nominated by the Attorney-General;
- (d) one person with accounting qualifications registered under the Accountants Act;
- (e) three persons nominated by the Minister at least two of whom shall be women.

[Cap. 51:07.]

(2) Subject to subsection (3) of this section, the members referred to under paragraphs (a), (c), (d) and (e) of subsection (1) of this section shall be appointed by the Minister on such terms and conditions as he or she may prescribe.

(3) A member of a Board, other than the Chief Executive, shall hold office for a period of two years from the date of his or her appointment and shall be eligible for re-appointment.

(4) A member of a Board may resign from the Board by giving one month's notice in writing to the Chairperson.

[Decree No. 23 of 1994.]

5. Duties of a Board

The duties of a Board shall be to—

- (a) monitor the affairs of the hospital for which it is established;
- (b) formulate and determine policies in respect of the hospital for which it is established;
- (c) consider policy issues referred to it by the Minister;
- (d) approve the annual budget of the hospital;
- (e) prepare the annual report of the hospital's activities;
- (f) help mobilise additional resources, and maximise cost recovery potential of the hospital; and
- (g) help improve the efficiency of resource management and services of the hospital.

[Decree No. 23 of 1994.]

6. Meetings of a Board

- (1) A Board shall meet not less than once every quarter and not more than once a month.

[Decree No. 23 of 1994.]

- (2) A meeting of a Board may be called by the Chairperson on giving fourteen days' notice of the meeting, and shall be called if not less than five members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called on giving shorter notice.

- (3) The Chairperson shall preside at any meeting of a Board and in his or her absence a member of the Board appointed by the members present, from among themselves shall preside.

[Decree No. 23 of 1994.]

- (4) A decision of a Board on any question shall be by a majority of the members present and voting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote.

- (5) The quorum at any meeting of a Board shall be four.

[Decree No. 23 of 1994.]

- (6) Where a member referred to under paragraphs (d) and (e) of subsection (1) of section 4 of this Act is for any reason unable to attend any meeting of the Board, he or she may nominate another person in writing from the same organisation to attend the meeting in his or her stead and the person so nominated shall be deemed to be a member for the purposes of the meeting.

(7) A Board may invite a person whose presence is, in its opinion, desirable, to attend and participate in the deliberations of the Board at any meeting, but the person shall have no vote.

(8) The validity of any proceedings of a Board shall not be affected by a vacancy among its members or by a defect in the appointment of any of them or by reason that a person not entitled so to do took part in its proceedings.

(9) Minutes shall be kept of the proceedings of a Board and every committee established by the Board.

(9A) The minutes kept in accordance with subsection (9) shall be circulated to members at least five days before the next meeting and shall be copied to the Permanent Secretary, Ministry of Health and Social Welfare.

[Decree No. 23 of 1994.]

(10) Subject to the provisions of this Act, each Board may, by standing orders, regulate its own procedure.

7. Committees of a Board

(1) A Board may, in the discharge of its duties under this Act, establish committees and delegate to any of them such of its functions as it thinks fit.

(2) A Board may appoint as member a of a committee established under subsection (1) of this section, persons who may or may not be members of the Board and those persons shall hold office for such period as the Board may determine.

(3) Subject to any directions of the Board establishing it, a committee established under subsection (1) of this section, may regulate its own procedure.

8. Disclosure of interest

If a member is present at a meeting of a Board at which a matter in which he or she is directly or indirectly interested in a private capacity is the subject of consideration, he or she shall, as soon as practicable after the commencement of the meeting, disclose the interest and shall not, unless the Board otherwise directs, take part in any deliberations on the matter.

9. Information to be given to the Minister

A Board shall afford the Minister every facility for obtaining information with respect to the discharge of the duties of the Board and shall furnish him or her

with returns, reports, accounts and other information in respect of the Board and shall afford him or her facilities for the verification of information furnished, in such manner and at such times as he or she may require.

PART III

Staff of a Government Hospital

10. The Chief Executive Officer

(1) The Public Service Commission shall, on the recommendation of a Board, appoint a qualified person to be the Chief Executive Officer of a Government hospital.

(2) The Chief Executive Officer of a Government hospital shall, subject to the directions of the Board, be responsible for the administration of that hospital.

(4) The Chief Executive Officer shall attend meetings of the hospital Board but shall not be entitled to vote on any matter.

(5) The provisions of section 8 of this Act shall, *mutatis mutandis*, apply to a Chief Executive Officer.

11. Hospital Secretary

The Public Service Commission shall, on the advice of a Board, appoint a Hospital Secretary who shall be the Secretary to the Board and who shall assist the Chief Executive Officer with the day-to-day administration of the hospital.

12. Appointment of Government hospital staff

(1) The Public Service Commission may appoint for a hospital, on such terms and conditions as it may determine in consultation with the Board, such other senior staff as the Board considers necessary for the efficient operation of the hospital.

(2) Each Board may, within such powers as may be delegated to it by the Public Service Commission, and on such terms and conditions as it may determine in consultation with the Permanent Secretary, Personnel Management Office, appoint such other staff as it may consider necessary for the efficient operation of the hospital.

13. Secondment of public officers to Government hospital

The Public Service Commission may, at the request of a Board, second to a hospital on such terms and conditions as may be agreed on with the Board, any public officer.

14. Secondment of Government hospital staff

A Board may permit the secondment of its staff to another Board or any other section of the public health service on such terms and conditions as may be agreed between all parties concerned.

15. Discipline of staff

(1) The Public Service Commission may, in consultation with a Board, make regulations for the exercise of disciplinary control by the Board over its staff or staff on secondment to the Board.

(2) Without prejudice to subsection (1) of this section, and any enactment in force which makes provision for the discipline of any class of professionals working in any Government hospital, a Board may provide for the holding of inquiries into any alleged or suspected malpractice or professional negligence by any staff employed in a hospital.

16. Specialists and teaching staff

Subject to any regulations made under this Act, a Board may, in consultation with the Minister, determine the terms and conditions on which—

- (a) a specialist not in full-time service of its hospital may be permitted by the Board—
 - (i) to render *ad hoc* or part-time service to the Board, or
 - (ii) on part-time basis, to treat and attend to patients of the hospital; or
- (b) a person not in the service of the Board may be permitted by the Board to carry out teaching duties or research at its hospital.

PART IV

*Financial Provisions***17. Funds of a Board**

- (1) The funds of a Board shall consist of such moneys as may—
- (a) be appropriated by the National Assembly for the purposes of the Board;
 - (b) be paid to the Board as subvention from the Revolving Fund established under the Finance and Audit Act and approved by the Minister;
 - (c) be paid to the Board by way of fees not related to the Revolving Fund and approved by the Minister;
 - (d) be paid to the Board by way of grants or donations; or
 - (e) vest in, or accrue to, the Board.

[Cap. 75:01.]

- (2) The Board may—
 - (a) accept moneys by way of grants or donations from any source in The Gambia and, subject to the approval of the Minister, from any source outside The Gambia;
 - (b) in accordance with any regulations made under this Act, charge and collect fees in respect of consultations, prescriptions, treatment and other medical services provided by the Board; and
 - (c) charge and collect fees in respect of programmes, seminars, consultancy services, and other services provided by the Board.
- (3) There shall be paid from the funds of a Board—
 - (a) the salaries and allowances of the staff of the Board; and
 - (b) such reasonable travelling, transport and subsistence allowances for members of the Board and any committee of the Board, when engaged in the business of the Board, at such rates as the Minister may determine.
- (4) A Board may, with the approval of the Minister, in consultation with the Minister of Finance, invest in such manner as it thinks fit, such of its funds as it does not immediately require for the exercise of its functions.

18. Financial year

The financial year of a Board shall be the period of twelve months ending on the thirty-first day of December in each year.

19. Accounts

A Board shall cause to be kept proper books of accounts and proper records in relation thereto.

20. Audit

- (1) The Auditor-General shall each year audit the accounts of a Board.
- (2) In the performance of his or her duties under this Act, the Auditor-General shall be entitled at any time during such audit, to have access to all books, records of accounts, vouchers and other financial documents of the Board, and to require such information and explanation in respect of such books, records of account, vouchers and documents as he or she thinks fit.
- (3) The Auditor-General shall submit the report of his or her audit to the Minister on such date as the Minister may determine.

21. Annual report

- (1) As soon as practicable, but not later than two months after the expiry of each financial year, each Board shall submit to the Minister, a report concerning its activities during the financial year.

(2) The report referred to in subsection (1) of this section shall include information on the financial affairs of the Board and such other information as the Minister may require.

(3) The Minister shall, not later than three months after the end of each financial year, cause the report of each Board to be laid before the National Assembly.

22. Payment of fees for medical services

(1) The Minister shall prescribe a scale of fees for medical services provided in any Government hospital.

(2) In prescribing fees for any medical services provided in any hospital, the Minister shall ensure that the fees are related to costs and expenses incurred in the provision of the medical services.

PART V

Private Health Institutions

23. Establishment of private health institutions

(1) A private health institution shall not be established or operated, unless a licence has first been obtained from the Director of Health Services.

(2) The Director of Health Services may, with the approval of the Minister, grant licences, which shall be for such periods and in such form as the Minister may prescribe for the establishment of private health institutions.

(3) A licence issued under this section shall be displayed in a conspicuous place at the institution for which it was issued.

24. Minister may withhold approval for grant of licence

(1) The Minister may withhold approval for the granting of a licence for the establishment of any private health institution, where—

- (a) in his or her opinion, the owner is not a fit or proper person to operate the institution;
- (b) conditions as required by any regulations made under this Act have not been fulfilled to the satisfaction of the Director of Health Services;

- (c) the institution is, in the opinion of the Minister, not in the public interest; or
- (d) having regard to any other health institutions available in the area, he or she is of the opinion that the proposed institution will not be in the interest of the community.

(2) In determining whether a private health institution is in the public interest, the Minister shall take into consideration the need for an equitable distribution within The Gambia of the type of health institution proposed.

25. Cancellation of a licence

A licence granted under this Part of this Act shall be subject to any conditions specified by the Director of Health Services, and shall be liable to cancellation by him or her on contravention or non-fulfilment of any such conditions.

26. Offences

(1) A person who establishes or operates a private health institution without a valid licence issued under section 23 of this Act, commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis or to imprisonment for a term not exceeding five years or to both the fine and imprisonment, and the court shall, in addition, order the premises to be closed.

(2) A person who contravenes the provisions of subsection (3) of section 23 of this Act, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dalasis or to imprisonment for a term not exceeding six months.

27. Inspection of private health institutions

(1) The Director of Health Services may authorise a medical or other Government officer, on his or her behalf, to visit any private health institution, and to report to him or her on any matter or thing connected with the premises or their use.

(2) A person who knowingly obstructs an authorised person in a visit as is authorised by the Director of Health Services under subsection (1) of this section, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dalasis or to imprisonment for a term not exceeding two years.

28. Register of private health institutions

The Director of Health Services shall keep a register of all private health institutions licensed under section 23 of this Act.

PART VI

Miscellaneous

29. Health facilities

The Director of Health Services has the general control and supervision of, and is responsible for discipline in, all health facilities not under the control of any Board and may for the purposes make rules for their management and for the conduct of patients and visitors in them.

30. Inspection of all health facilities

(1) A person appointed in that behalf by the Minister in writing may at any time visit any Government hospital or health facility.

(2) A Government hospital or health facility shall at all times be liable to inspection by Inspectors of the Medical and Health Department appointed in writing by the Director of Health Services, all of whom are deemed to be Inspecting Officers for the purposes of this Act.

(3) An inspection book shall be kept in every Government hospital and health facility for the purposes of recording such remarks as shall seem proper to the Inspecting Officers.

31. Returns

All Government hospitals, health facilities and private health institutions shall make such periodic returns, containing such information and covering such periods as the Minister may prescribe.

32. Regulations

(1) The Minister may make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) of this section, the Minister may make regulations prescribing—

- (a) a scale of fees for medical services;
- (b) the terms and conditions on which a licence may be granted for the establishment of a private health institution, and the form of the licence;
- (c) rules for the proper control of private health facilities opened for the welfare and care of children, expectant or nursing mothers or other categories of persons; and
- (d) anything which may be prescribed under this Act.

33. Repeal and savings

- (1) The Hospitals and Dispensaries Act, 1939, is hereby repealed.
 - (2) Notwithstanding the repeal of the Hospitals and Dispensaries Act—
 - (a) all private health institutions registered under that Act are deemed to have been registered under this Act; and
 - (b) Regulations or Orders made under that Act are, until revoked, deemed to have been made under this Act.
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