



GUYANA

ACT No. 26 of 2007

HEALTH FACILITIES LICENSING ACT 2007

I assent.

Bharrat Jagdeo,
President.
31st December, 2007.

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AN ACT to provide for the licensing of Health Facilities and for related matters.

A.D. 2007

Enacted by the Parliament of Guyana:-

Short title and commencement.

1. This Act may be cited as the Health Facilities Licensing Act 2007 and shall come into operation on the date the Minister may by order appoint.

Interpretation.

2. In this Act -

“assessor” means an assessor appointed under section 21;

“health facility” means a place in which one or more members of the public receive health services or treatment and includes, but is not limited to, a hospital, a health centre, a health post, a training institution for health professionals, a laboratory, a diagnostic or therapeutic clinic, a nursing home, a place where chronic or extended care services are offered, a hospice, a place where rehabilitation health services are provided, a medical or surgical clinic, an emergency care centre, or any other place that may be prescribed;

“inspector” means an inspector appointed under section 18;

“licence” means a licence issued by the Minister under this Act;

“Minister” means the Minister responsible for Health and includes any person designated by the Minister to act on the Minister’s behalf;

“Ministry” means the Ministry of Health;

“National Health Plan” means the National Health Plan 2003-2007, dated March, 2003, as it may be amended from time to time;

“patient” means a person who receives health services in a health facility;

“prescribed” means prescribed by the regulations;

“regulations” means the regulations made under this Act, unless the context otherwise requires.

Application of Act.

3. “This Act applies to a health facility or class of health facilities that is prescribed”.

Licence required.

4. (1) No health facility shall be operated except under the authority of a licence issued by the Minister.

(2) No person shall use, in the title of a place, the term “hospital”, “health clinic”, “health centre”, “health post” or other term that is prescribed unless the person is licensed under this Act.

Transitional.

5. (1) A person who operates a health facility on the date that this Act comes into force may, within one year after the date on which this Act comes into force, submit a proposal for a licence to continue to operate the facility.

(2) Sections 6 (2), (3) and (4) and sections 7, 8 and 9 apply with necessary modifications to a proposal referred to in subsection (1).

(3) Notwithstanding subsection 2, a person who operates a health facility on the date that this Act comes into force may continue to operate the facility without a licence –

- (a) where the person does not submit a proposal under subsection (1), for one year after the date on which this Act comes into force; and
- (b) where the person submits a proposal and is served with a notice that the Minister proposes to issue a licence to the person, until the person is issued the licence.

(4) Any regulation that applies to health facilities operated by persons under this Act or to licensees may be made applicable to health facilities under subsection (3) and to the persons who operate the facilities.

(5) Where the Minister has reasonable and probable grounds to believe that a health facility referred to in subsection (3) is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person, the Minister shall so inform the person who operates the health facility.

(6) The Minister shall give notice to the person who operates the facility of the grounds on which he believes under subsection (5) that the facility is being operated in a manner that is prejudicial to the health, safety or welfare of any person.

(7) The Minister shall afford the person who operates the health facility an opportunity of making representations on his behalf and of advancing reasons or producing evidence to show that the health facility is being operated in a manner conducive to the health, safety and welfare of persons.

(8) The Minister shall, in consultation with the Central Board of Health (the views of which body he is not obliged to accept), consider the representation, reasons and evidence advanced under subsection (7) in deciding whether he shall permit the health facility to continue to operate under this section or by notice direct that subsection (3) does not apply to the health facility effective on the date specified in the notice and accordingly communicate his decision to the person who operated the health facility.”

(9) A direction under subsection (5) is final.

(10) A person who is notified that subsection (3) does not apply to the health facility shall forthwith cease to operate the facility that is the subject of the notice.

Request for proposals.

6. (1) The Minister may request proposals for the establishment and operation of a health facility.

(2) Persons interested in establishing and operating a health facility may submit proposals to the Minister.

(3) A proposal shall set out –

(a) the business and professional experience of the person submitting the proposal;

(b) details, nature and cost of the service or services to be provided in the health facility;

(c) details of the physical requirements of the proposed health facility;

(d) the projected planning, capital and operating costs of the health facility;

(e) the revenue source or sources for the costs referred to in paragraph (d) and the financial viability of the proposed health facility;

(f) the role of the proposed health facility and service or services proposed to be offered in it, in the context of the National Health Plan and other action plans of the Ministry;

(g) details of the system that will be established to ensure the monitoring of the results of the service or services to be provided in the health facility;

(h) details of the nature, source and training of the professional staff proposed for the health facility;

(i) any other information relevant to the requirements and limitations specified in the request for proposals as determined by the Minister.

(4) The Minister shall consider the proposals and may request additional information in respect of any proposal.

Issuance of licence.

7. (1) The Minister may issue a licence to a person who has submitted a proposal for the establishment and operation of a health facility where the Minister is of the opinion that –

(a) the proposal meets the criteria specified in the request for proposals;

(b) the quality and the standards of the health facility or of the service or services to be provided in the facility will comply with regulations, or in the absence of regulations, will conform to the generally accepted quality and standards for the facility and the service or services to be provided in the facility;

(c) the person will operate the health facility competently and with honesty and integrity;

- (d) the person will establish and maintain a system to ensure the monitoring of the results of the service or services provided in the health facility;
- (e) the person will operate the health facility in compliance with the contents of the proposal, including staffing.

(2) The Minister may issue a licence subject to the limitations and conditions as he considers necessary in the circumstances, including the payment of fees prescribed.

(3) The licensee shall notify the Minister immediately where there is -

- (a) a change in the service or services provided in the health facility;
- (b) a proposed change in the location of the health facility; or
- (c) a change to any other thing that relates to a term or conditions of the licence.

Notice of proposal to refuse licence.

8. (1) Where the Minister proposes to refuse to issue a licence to any person, the Minister shall serve notice of the proposed action on the person who submitted the proposal for a licence.

(2) A notice under subsection (1) shall inform the person on whom it is served that the person is entitled to written reasons for the refusal, if a request is received by the Minister from the person, within seven days of the receipt by the person of the notice of refusal.

(3) Upon receipt and examination of the written reasons for the refusal the person on whom it is served may ask the Minister to review his decision.

Minister may withdraw request.

9. At any time after the Minister requests a proposal for the establishment and operation of a health facility and before a licence is issued, the Minister may withdraw his request.

Transfer of a licence.

10. (1) A licence is not transferable without the consent of the Minister.

(2) In deciding whether to consent to the transfer of a licence, the Minister shall treat the proposed transferee of the licence as if the proposed transferee were an applicant for a licence and, for the purpose of the transfer, section 7 (1) applies with necessary modifications.

(3) In consenting to the transfer of a licence, the Minister may attach to the licence such limitations and conditions as the Minister considers necessary in the circumstances.

Expiry of licence.

11. Every licence expires annually on the anniversary of its issuance or renewal, unless it is revoked by or is surrendered to the

Minister before that date.

Licence not to be used as security.

12. A licence shall not be used as security for the payment or performance of an obligation, and there shall be no transaction purporting to use a licence as security for the payment or performance of an obligation.

Contracts.

13. (1) A licensee shall not enter into a contract that may result in –

- (a) a change in the beneficial ownership of the licence without a corresponding transfer of the licence; or
- (b) a person acquiring or increasing an interest affecting the control of a corporation while it is a licensee.

(2) Subsection (1) does not apply if the licence includes a condition as to the ownership or control of the licence and the contract would not result in a breach of a condition.

Order by Minister to take control.

14. (1) Where the Minister is of the opinion that a health facility should continue to operate after the expiry, surrender, suspension or revocation of the licence, after the death of the licensee or after the licensee ceases to operate the facility, the Minister may by order direct that control and operation of the facility be vested in the Minister for a period not exceeding one year.

(2) Where the Minister takes control of and operates a health facility under subsection (1), the Minister has all the powers of the licensee and the Minister may appoint one or more persons to operate the facility and each person so appointed is a representative of the Minister.

(3) Where the Minister takes control of a health facility, the licensee, former licensee or estate of the licensee, as the case may be –

- (a) is not entitled to payment for any service that is provided by the facility while the facility is under the control of the Minister;
- (b) is entitled to reasonable compensation for the use of the property of the licensee, former licensee or estate of the licensee while the facility is under the control of the Minister.

Revocation and refusal to renew licence.

15. (1) The Minister may revoke, suspend or refuse to renew a licence where –

- (a) the licensee or an employee of the licensee is in contravention of this Act, the regulations or any other Act or regulation that applies to the health facility or to the licensee or an employee of the licensee, or condition of the licence;

- (b) there is a breach of a limitation or condition of the licence;
- (c) any person has made a false statement in the proposal submitted to the Minister in respect of the health facility;
- (d) any person has made a false statement in the application for renewal of the licence;
- (e) any person has made a false statement in any report, document or other information required to be furnished by this Act, the regulations or any other Act or regulations that apply to the health facility;
- (f) there is reasonable ground for belief that the health facility is not being or will not be operated in accordance with the law and with honesty and integrity;
- (g) there is reasonable ground for belief that the health facility is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person;
- (h) the licensee has ceased operating the health facility for a period of at least six months and is not taking reasonable steps to prepare the facility to re-open; or
- (i) the licensee has entered into a contract mentioned in section 13 contrary to that section.

(2) If the Minister is of the opinion upon reasonable grounds that the health facility is being operated in a manner that poses an immediate threat to the health or safety of any person, the Minister, by a written order, may suspend the licence of the facility.

(3) An order under subsection (2) takes effect immediately upon its issuance or on the date set out in the order.

(4) An order under this section may direct a health facility to do any of the following on or before the date set out in the direction of the order where the Minister considers it in the public interest to do so -

- (a) to provide specified services to a specified extent or of a specified volume;
- (b) to cease to provide specified services;
- (c) to increase or decrease the extent or volume of specified services.

(5) The Minister may give directions in an order to a health facility under this section that the Minister considers in the public interest.

(6) The Minister may amend or revoke the direction in an order made under this section where the Minister considers it in the public interest to do so.

(7) A person whose licence is suspended under this section shall carry out any directions set out in the order and shall cease to operate the facility upon the issuance of the order or on the date set out in the order.

(8) Before the Minister gives a direction in an order made under this section, he shall afford the licensee an opportunity to make representations.

Notice to revoke, suspend or refuse to renew licence.

16. (1) Where the Minister proposes to revoke, suspend or refuse to renew a licence under section 15 (1), the Minister shall serve notice of the proposed action, together with written reasons for the action, on the licensee.

(2) A notice under subsection (1) shall inform the licensee that he is entitled to a hearing by a judge if he delivers to the Minister and the Attorney General, within fifteen days after the notice under subsection (1) is served on him, notice in writing requiring a hearing.

(3) Where, before the expiry of a licence, a licensee has applied for renewal of the licence and paid the prescribed fee, the licence shall be deemed to continue -

- (a) until the renewal is granted; or
- (b) where the licensee is served with notice under subsection (1) that the Minister proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, where a hearing is required, until the matter has been decided by the court.

(4) The decision of the Court is final.

(5) Except where otherwise provided, any notice by this Act to be served may be served personally.

Appointment of supervisor.

17. (1) Where it is essential in the public interest, the Minister may appoint a person as a supervisor of a health facility.

(2) Unless the appointment provides otherwise, a supervisor has the exclusive right to exercise all of the powers -

- (a) of the board of the corporation, where the health facility is owned or operated by a corporation; and
- (b) of the individual, where the health facility is owned or operated by an individual.

(3) The Minister may specify the powers and duties of a supervisor appointed under this section and the terms and conditions governing those powers and duties and the supervisor shall carry out every direction of the Minister.

(4) If, after the appointment under subsection (1), the corporation or individual continues to have the right to act with regard to any matters, any such act of the corporation or individual is valid only if approved in writing by the supervisor.

(5) A supervisor has the same rights as the board, corporation or individual in respect of the documents, records and information of the health facility.

(6) A supervisor shall report to the Minister as required by the Minister.

(7) In making a decision in the public interest under this section, the Minister may consider any matter he regards as relevant including, without limiting the generality of the foregoing, -

- (a) the quality of the management and administration of the health facility;
- (b) the proper management of the health care system in general;
- (c) the availability of financial resources for the management of the health care system and for the delivery of health care services;
- (d) the accessibility to health services in the community where the health facility is located; and
- (e) the quality of the care and treatment of patients.

Appointment of
inspectors by
Minister.

18. (1) The Minister may appoint in writing one or more persons as inspectors,

(2) In an appointment under subsection (1), the Minister may limit the duties or authority, or both, of an inspector in the manner the Minister considers necessary or advisable.

(3) Where the Minister is of the opinion that it is necessary or advisable that an inspection be made of a health facility licensed under this Act to ensure that this Act, the regulations and the limitations and conditions of the licence are being complied with, the Minister may direct one or more inspectors to make the investigation and to report to the Minister.

(4) An inspector shall make the inspections the Minister requires under subsection (3) and shall submit reports and interim reports in respect of the inspections as are required by the Minister.

Inspection of
health facilities.

19. (1) An inspector may, at any reasonable time, without warrant, enter any premises of a health facility to make an inspection -

- (a) in respect of a health facility operated by a person not licensed under this Act by reason of Section 5, to ensure that the quality and standards of service provided in the facility comply with the regulations or, in the absence of regulations, conform to generally accepted quality and standards for the health facility and the service or services provided in the facility; and
- (b) in respect of a health facility operated by a person licensed under this Act, to ensure that the Act, the

regulations and the limitations and conditions, if any, have been complied with.

(2) Upon an inspection under this section, the inspector -

(a) has the right to inspect the premises and the operations carried out on the premises;

(b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment, patient and drug records and any other records that are relevant for the purposes of the inspection, regardless of the form or medium in which the records are kept, but if the books, documents, correspondence or records are kept in a form or medium that is not legible, the inspector is entitled to require the person in charge of them to produce a legible copy for examination by the inspector.

(c) has the right to remove, upon giving a receipt for it and showing his certificate of appointment issued by the Minister, any material referred to in paragraph (b) that relates to the purpose of the inspection for the purpose of making a copy, provided that the material is promptly returned to the person in charge of the premises from which the material was removed;

(d) has the right, at any reasonable time, to make and take or require to be made or taken, any samples of any substance on the premises;

(e) has the right to remove, upon giving a receipt for it and showing his certificate of appointment issued by the Minister, any sample referred to in paragraph (d) that relates to the purpose of the inspection for the purpose of making an analysis; and

(f) may question a person on matters that are or may be relevant to an inspection under this Act.

(3) It is a condition of every licence that the licensee and employees of the licensee shall co-operate fully with an inspector carrying out inspection of a health facility operated by a licensee.

Obstruction of
inspector.

20. No person shall obstruct an inspector or withhold or conceal from an inspector any book, document, correspondence, record or thing relevant to the subject matter of an inspection.

Appointment of
assessors.

21. (1) The Minister may appoint persons in writing as assessors.

(2) Where the Minister considers it necessary or advisable that assessments be carried out of the quality and the standards of services provided in a health facility, the Minister may give notice in writing to the licensee or operator of the health facility.

(3) An assessor shall report to the Minister in the determined form and in detail, with supporting material and at the times the Minister requires.

Powers of assessors.

22. (1) An assessor, after giving written notice to the licensee or operator of a health facility, for the purposes of assessing the care provided to one or more persons in the health facility, may -

- (a) inspect and receive information from records or from notes, charts and other material relating to patient care and reproduce and retain copies; and
- (b) interview the licensee or operator and the employees of the licensee of the health facility on matters that relate to the quality and standards of service provided in the health facility.

(2) A notice under subsection (1) shall, where practicable, state the subject matter of the interview and the identity, if known, of the person or persons to be interviewed.

(3) A licensee or operator who receives written notice under subsection (1) shall forthwith give written notice to each person who may be interviewed of the subject matter of the interview.

Assessment.

23. (1) It is the function of an assessor to carry out assessments of the equality and standards of services provided in health facilities.

(2) It is a condition of every licence that the licensee and employees of the licensee shall co-operate fully with an assessor carrying out an assessment of a health facility operated by the licensee.

- (3) The co-operation required of a licensee includes -
- (a) permitting the assessor to enter and inspect the premises of the health facility;
 - (b) permitting the assessor to inspect records, including patient records;
 - (c) providing to the assessor information requested by the assessor in respect of records, including patient records on the care of patients in the health facility;
 - (d) providing the information mentioned in paragraph (c) in the form requested by the assessor;
 - (e) permitting the assessor to take and remove samples of any substance on the premises of the health facility;

- (f) providing samples mentioned in paragraph (e) as requested by the assessor; and
- (g) conferring with the assessor when requested to do so by the assessor.

Admissibility of
copies.

24. (1) Copies of material removed from premises under this Act and certified as being true copies of the originals by the person who made them are admissible in evidence to the same extent as and have the same evidentiary value as the material of which they are copies.

(2) A certificate or report of an analysis of a sample removed from premises under this Act that purports to be signed by the laboratory technician who carried out the analysis shall be received in evidence as proof, in the absence of evidence to the contrary of the facts stated in the certificate or report without proof of the signature or position of the person appearing to have signed the certificate or report.

Confidential
information.

25. (1) In this Act "confidential information" means information obtained by a person employed in the administration of this Act or making an assessment or inspection under this Act in the course of the person's employment, assessment or inspection and that relates to a patient or former patient of a health facility.

(2) No person shall communicate confidential information to any person except in accordance with subsection (4).

(3) Subsection (2) applies to any person whether or not that person is or was employed in the administration of this Act or is or was assessor or inspector under this Act.

(4) A person employed in the administration of this Act, an assessor or an inspector or any person who obtains confidential information pursuant to this subsection may communicate confidential information.

(a) in connection with the administration or enforcement of any Act or any proceedings under any Act;

(b) in connection with matters relating to professional disciplinary proceedings, to a statutory body governing a health profession;

(c) to the person's counsel; or

(d) with the consent of the patient or former patient to whom the information relates.

(5) No person employed in the administration of this Act or who made an inspection or assessment under this Act shall be required to give testimony in a civil action or proceeding with respect to any information obtained in the course of the person's employment, assessment or inspection except in a proceeding under an Act.

(6) A court may exclude the public from proceedings to enforce any Act if the court is of the opinion that confidential information may be disclosed of such a nature, having regard to the circumstance, that the desirability of avoiding disclosure of that information in the interests of any patient or former patient to whom it relates outweighs the desirability or adhering to the principle that hearings be open to the public.

Immunity.

26. No action or other proceeding for damages shall be commenced against an inspector, or an assessor for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or the regulations, or for any neglect or default in the performance or exercise in good faith of such power or duty.

Offences.

27. (1) Every person who contravenes sections 4, 10, 12, 13, 20 or 25 commits an offence.

(2) Every person who contravenes a regulation under this Act commits an offence.

(3) Every person who is guilty of an offence under this Act is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for six months and in the case of a continuing offence, to an additional fine of fifty thousand dollars for every day during which the offence continues subsequent to the date to which the conviction relates.

(4) Where a corporation is convicted of an offence under this Act, the penalty shall be twice that prescribed under subsection (3).

(5) The Court that convicts a person of an offence under this Act may, in addition to any other penalty, order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence.

Annual report.

28. The Minister after the end of each year shall prepare an annual report on the administration of this Act and submit it to the National Assembly if the Assembly is sitting, if not, within fifteen days of the commencement of the next sitting.

Regulations.

29. (1) The Minister may make regulations –

- (a) governing the process for submitting proposals;
- (b) governing applications for renewals of licences;
- (c) prescribing forms and providing for their use;
- (d) prescribing fees for licences, for transfers of licences and for renewals of licences;
- (e) classifying health facilities;
- (f) respecting and governing the care, treatment and services provided in health facilities;

- (g) prescribing and governing the quality and the standards of services provided in health facilities and the method by which these standards will be made available;
- (h) prescribing and governing the quality and the standards of health facilities;
- (i) prescribing and governing all matters in relation to the employees of health facilities;
- (j) prescribing and governing the construction, establishment, location, equipment, maintenance and repair of, additions and alterations to, and operation of health facilities;
- (k) prescribing the books, records and accounts that shall be kept by health facilities, including their form and content and the place or places where they shall be kept;
- (l) requiring the accounts of health facilities to be audited and requiring health facilities to furnish information or accounts as may be required by the Minister;
- (m) prescribing and governing the records that shall be kept by health facilities with respect to the care and treatment of patients of the health facility;
- (n) governing the reports and returns that shall be made to the Minister by health facilities;
- (o) requiring and governing the system or systems that shall be kept by health facilities to monitor the results of the services provided in health facilities;
- (p) governing access to patient or drug records and specifying persons who may have access to such records;
- (q) establishing rules, regulating the ownership and use of health care information including the disclosure, access security and privacy of information;
- (r) governing the qualification of assessors and inspectors for the purpose of assessments and inspections;
- (s) providing for the establishment and use of trust accounts and other methods to safeguard the valuables and assets of patients;
- (t) establishing rules relating to admission, registration and discharge of patients, residents and out-patients;
- (u) regulating methods of recovering amounts owed to a health facility;

- (v) requiring written agreement between a health facility or class of health facilities and any person for the purpose of providing instruction in the health facility or class of health facilities and prescribing provisions that shall be included in any agreement;
- (w) prescribing other duties of assessors;
- (x) prescribing other duties of inspectors;
- (y) regulating the governance, control, management, conduct, operation and use of health facilities;
- (z) prescribing anything authorized or required to be prescribed by this Act.

(2) In a regulation under subsection (1), the Minister may delegate the determination of any matter to any person the Minister designates in writing.

(3) Any regulation made under subsection (1) may be made applicable to different classes of health facilities.

Resolution of
conflicting
provisions.

30. Where the provisions of any other law conflict with the provisions of this Act, the provisions of this Act shall prevail only to the extent of the inconsistency.

Repeal.

Cap. 139
No. 2 of 1972.

31. The Public Hospitals Ordinance and the Private Hospitals Act 1972 are repealed.

Passed by the National Assembly on the 6th December, 2007.

S.E. Isaacs,
Clerk of the National Assembly.

(Bill No. 29/2006)