

THE PRIVATE HEALTH UNITS (REGULATION) BILL, 2007

MEMORANDUM

The objective of this Bill is-

- a) to reform and update the law relating to private medical and dental practice;
- b) to regulate the management of private health units;
- c) to restrict the management of private health units to approved organisations;
- d) to control fees and other charges payable in respect of medical treatment and other services rendered by private health units; and
- e) to regulate scales of emoluments payable to medical Practitioners employed at private health units.

Part I of the Bill, incorporating clauses 1 to 3, provides for preliminary matters, including commencement and application of the Act and the interpretation of words and phrases used in the Bill.

Part II of the Bill, incorporating clauses 4 to 8 deals with, among other things, duties of a Registrar and Deputy Registrar of the Medical and Dental Practitioners Council for purposes of the Act, restriction on management of private health units, power of the Medical and Dental Practitioners Council to approve organizations, particulars of approved organizations to be registered and published and revocation of approval.

Part III of the Bill, incorporating clauses 9 to 11 provides for, among other things, the registration of private Health units, the duties of Registrar in relation to registered health units and the cancellation of registration of health units.

Part IV of the Bill, incorporating clauses 12 to 17 provides for the control of fees chargeable by private health units in respect of medical treatment, the power of the Minister to determine price structures, and the publication and display of maximum prices.

Part V of the Bill, incorporating clauses 18 to 21 provides for the regulation of scales of emoluments payable to medical practitioners employed at private health units and the enforcement of statutory minimum salaries.

Part IV of the Bill, incorporating clauses 22 to 26 provides for miscellaneous matters including; inspection and search, offences by organizations, the general powers of the Minister to make regulations under the Act and amendments to the Medical and Dental Practitioners Act, 1998 and provides for transitional matters.

Dr. Sam Lyomoki, MP

THE PRIVATE HEALTH UNITS (REGULATION) BILL, 2007

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Bill No... *Private Health units (Regulation) Bill*



A BILL for an Act

ENTITLED

THE PRIVATE HEALTH UNITS (REGULATION) ACT, 2007

An Act to make provision to regulate the management of private health units, to restrict the management of private health units to approved organisations, to control fees and other charges payable in respect of medical treatment and other services rendered by private health units, to regulate scales of emoluments payable to medical Practitioners employed at private health units, and for other connected purposes.

BE IT ENACTED by Parliament as follows:

PART I - PRELIMINARY

1. Short title and commencement

This Act may be cited as the Private Health Units (Regulation) Act, 2007 and shall, subject to the provisions of subsection (1) of section 2, come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

2. Application of this Act and exemptions

(1) Subject to the provisions of subsection (2) this Act shall apply to all private health units and also in relation to all persons concerned with the management of private health units, whether as owners or employees of the private health units: Provided that in the case of a private health unit which is in existence on the date of the enactment of this Act, the provisions of this Act shall not apply in relation to that health unit until the Minister has, by notice in the *Gazette*, specified the health unit and the date from which the provisions of this Act shall apply in relation to that health unit.

(2) The Minister may, if in his or her opinion it is in the public interest to do so, by notice published in the *Gazette*, exempt from all or any of the provisions of this Act either absolutely or subject to such conditions as he/ she may think fit any private health unit or any person.

(3) Notwithstanding any provision contained in this Act to the contrary, a medical practitioner shall not be deemed to be in contravention of any requirement prescribed by or under this Act in respect of any thing done by him or her anywhere for the purpose of rendering medical treatment, free of charge, to any person-

- (a) in an emergency situation; or
- (b) who is a member of his or her household or under his or her control.

3. Interpretation

- (1) In this Act, unless the context otherwise requires-
- " approved organization" means an organization approved by the Medical and Dental Practitioners Council under section 6 to manage a private health unit in accordance with the provisions of this Act;
 - "Council" means the Medical and Dental Practitioners Council established by the Medical and Dental Practitioners Act, 1998;
 - "health unit" means any institution for the reception and medical treatment of persons who are injured, infirm or suffering from illness, and includes a hospital, health centre, dispensary, maternity centre, nursing home, clinic (whether mobile or not) or other specialized establishment and also any place or premises used for purposes of medical treatment, whether regularly or periodically;
 - "medical officer" means a medical practitioner in the employment of the Government;
 - "medical practitioner" means a person for the time being authorized to practice the medical profession by virtue of being registered or licensed under the provisions of the Medical and Dental Practitioners Act, 1998;
 - "Medical and Dental Practitioners Council" means the Medical and Dental Practitioners Council established by the Medical and Dental Practitioners Act, 1998;
 - "medical treatment" includes dentistry, surgery, obstetrics, nursing, the administration of medicine, health counseling and the provision of any other service or the supply of any goods in connection with any of the matters specified in this definition, but does not include veterinary surgery;
 - "Minister" means the Minister for the time being responsible for matters relating to medical and health services;
 - "organization" includes any society, association or other body of persons, whether or not incorporated under any written law, and also a person recognized as a corporation sole under the law for the time being in force relating to corporations;
 - "price" when used in relation to medical treatment, means any fee or other payment of any description charged or chargeable by any private health unit in respect of medical treatment rendered to any person;
 - " private health unit" means any health unit other than a public health unit and includes any such health facility of whatever description whether or not operated for profit;
 - "public health unit" means any health unit which is within any one of the following descriptions-
 - (a) a health unit owned by the Government;
 - (b) a health unit owned by any corporation or company which is owned by the Government, either alone or jointly with any person or organization, or which is owned by any subsidiary of any corporation or company of that description;
 - (c) a health unit owned by any organization, the management of which is wholly or partly financed or materially aided from the public revenue;

(d) a health unit owned by any corporation or institution within the East African Community or owned by any other international organization of which the Government is a member;

(e) any other health unit which the Minister may, by notice published in the Gazette, declare to be a public health unit for the purposes of this Act.

“registrar” means the registrar of the Medical and Dental Practitioners Council appointed under the Medical and Dental Practitioners Act, 1998;

(2) For the purpose of enabling members of the public to distinguish between private health units of approved organizations and public health units the Minister may give directions in writing requiring all private health units to be identified by such means as he or she may prescribe in the directions and every approved organization concerned shall comply with those directions.

(3) In the interpretation or application of the provisions of this Act the following rules shall apply:-

(a) a person shall be deemed to manage a private health unit if, for himself or on behalf of any other person, he actually renders or holds himself out as ready and willing to render medical treatment on payment to any person attending the health unit;

(b) medical treatment shall be deemed to have been rendered to a person at a private health unit irrespective of whether the treatment is rendered to him or her alone or jointly with other persons at a time and whether it is rendered to him or her on one or more occasions;

(c) where two, or more places or sets of premises, whether comprised in one or more rights of occupancies, are used collectively as a single unit for purposes of a private health unit, there shall be deemed to be one health unit and references to "health unit" shall be construed accordingly.

PART II – DUTIES OF OFFICERS AND RESTRICTION ON MANAGEMENT OF PRIVATE HEALTH UNITS

4. Duties of Registrar and Deputy Registrar

(1) The Registrar of the Medical and Dental Practitioners Council, appointed under the Medical and Dental Practitioners Act, 1998, shall perform the duties and exercise the functions prescribed in this Act in relation to the office of the Registrar and such other duties and functions as the Council may direct or prescribe by regulations made under this Act.

(2) The Deputy Registrar, appointed under the Medical and Dental Practitioners Act, 1998, shall assist the Registrar in the performance of his or her duties under this Act and may, under the direction of the Registrar, exercise any of the functions of the Registrar.

5. Restriction on management of private health units

(1) It shall be unlawful for any individual to, manage or cause to be managed any private health unit except on behalf of an approved organization.

(2) No organization shall manage any private health unit unless it is an approved organization and there is subsisting, in respect of the health unit, valid registration made in accordance with the provisions of this Act.

(3) Any person who contravenes the provisions of subsection (1) or of subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to, imprisonment for a term not exceeding five years or to both that fine and imprisonment.

6. Power of the Medical and Dental Practitioners Council to approve organizations

(1) Subject to the provisions of this Act and such terms established by regulations made under this Act, the Medical and Dental Practitioners Council established by the Medical and Dental Practitioners Act, 1998, may, on receipt of an application, approve or renew the approval of any organization which is eligible for approval for the purpose of the management by that organization of a private health unit.

(2) The Council may refuse to approve or renew the approval of any organization under this section and shall specify reasons for such refusal.

(3) An application for approval or renewal of approval under this section shall be made to the Council in writing specifying the name, objectives and address of the organization, the name and purposes of the private health unit in respect of which the application is made and setting out such other information as may be prescribed by any regulations made under this Act.

(4) Approval of an organization under this section-

(a) shall be in writing under the hand of the Registrar and shall be given free of charge;

(b) subject to section 7, shall be valid for such period as, may be specified by the Council and may be renewed from time to time.

(c) shall not be transferable.

(d) shall be processed within a reasonable period.

7. Particular of approved organizations to be registered and published

(1) The Registrar shall keep a register in the prescribed form in which, he or she shall enter the name of every approved organization and of such other particulars relating to the organization as he or she may consider to be relevant, and shall delete or amend any of those particulars as circumstances may require.

(2) At least, once each year the Registrar shall publish in the *Gazette* or in any national newspaper a list of approved organizations whose approval is still in force.

8. Revocation of approval

The Council may at any time revoke any approval, or its renewal given under section 6 if it is satisfied-

- (a) that the approved organization has ceased to be eligible for approval in the terms of section 6; or
- (b) that the approved organization is managing a private health unit in contravention of one or more of the purposes specified in the application made under section 6; or,
- (c) that the approved organization is no longer able to manage a private health unit; or
- (d) that the approved organization is managing the private health unit for certain unacceptable purpose specified by regulations made under this Act.

PART III - REGISTRATION OF PRIVATE HEALTH UNITS

9. Registration of private health units

- (1) No approved organization shall manage any private health unit unless the health unit is registered under this section.
- (2) An application for registration of a private health unit shall be made to the Council in writing specifying the health unit in respect of which the application is made and setting out such other matters relating to the approved organization or to the health unit as shall be prescribed by regulations made under this Act.
- (3) There shall be separate, registration, in respect of every private health unit managed by an approved organization.
- (4) The registration of a private health unit under this section shall become void, upon the expiration of thirty days from the date of any change in the ownership or management of the health unit.
- (5) On receipt of an application together with the prescribed fees for the registration of a private health unit under this section, the Council may approve or refuse, to approve the application.
- (6) Where the Council approves the application it shall direct the Registrar to register the private health unit specified in the application and issue to the applicant a certificate of registration in the prescribed form either without conditions or upon such conditions as the Council may prescribe.
- (7) Every certificate of registration issued under this section in respect of a private health unit shall be displayed in a conspicuous position within the premises of the health unit.
- (8) Without prejudice to the general power conferred upon the Council by subsection (5) to refuse to approve an application under this section, the Council may refuse to register a private health unit if it is satisfied-
 - (a) that the applicant is not an approved organization or is not an organization which is eligible for approval in the terms of section 6; or
 - (b) that the private health unit specified in the application is not under the charge of a medical practitioner or other person who is fit to manage a health unit or a health unit of the description given in the application; or

(c) that for reasons connected with the situation, construction, accommodation, staffing or equipment of the private health unit or of any premises used in connection with the health unit, it is not in the public interest to register the health unit.

(9) Any person who manages any private health unit which is not registered under this Act or any private health unit the registration of which has been cancelled or has ceased to have effect for any other reason shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three years or to both that fine and imprisonment.

10. Duties of Registrar in relation to registered health units

(1) The Registrar shall keep a register in the prescribed form in which he or she shall enter the name of every private health unit approved by the Council for registration under section 9 and such other particulars relating to the health unit as he or she may consider relevant, and shall delete or amend any of those particulars as circumstances may require.

(2) At least once each year the Registrar shall publish in the *Gazette* or any national newspaper a list of all private health units the registration of which is still in force.

11. Cancellation of registration of health units

(1) Where, in respect of any registered private health unit, the Council is satisfied-

(a) that the premises of the health unit are no longer fit to be used as a health unit by reason of their being kept in an unclean or unsanitary condition; or

(b) that provision made for the medical treatment of persons attending the health unit is inadequate; or

(c) that the approved organization responsible for the management of the health unit has failed to comply with the provisions of this Act or any regulations made under this Act relating to the staff, scales of emoluments, price structures, accommodation or equipment to be provided at a private health unit or prescribing minimum standards of diet to be provided to persons admitted to the health unit as in-patients, the council may, by notice in writing, require the approved organization to remedy to the satisfaction of the council defects specified in the notice within such period as it may specify in the notice.

(2) If the approved organization fails to comply with the requirements of a notice under subsection (1) within the specified period, the Council may, after calling upon the approved organization to show cause why the registration of the health unit should not be cancelled, cancel the registration.

**PART IV - CONTROL OF FEES CHARGEABLE BY PRIVATE HEALTH UNITS
IN RESPECT OF MEDICAL TREATMENT****12. Power of Minister to determine price structures**

(1) The Minister may, from time to time, determine and review, in accordance with the provisions of this Act, the price structures of medical treatment rendered by private health units either on a national basis or in relation to any particular area or areas.

(2) In the exercise of the power conferred upon him or her by subsection (1) to determine price structures in relation to medical treatment, the Minister shall have power to fix maximum prices of any type of medical treatment rendered by private health units and to prescribe the manner in which the maximum prices shall be ascertained.

(3) In determining the price structures of any type of medical treatment the Minister shall have regard to-

(a) the types of medical treatment essential to the community available at private health units and at public health units;

(b) the need to prevent unduly rapid or frequent variations in prices;

(c) the need to maintain reasonable standards of services rendered by private health units;

(d) the need to promote the continued ability of private health units to maintain efficiency and expand their services to supplement services rendered by public health units;

(e) the need to ensure the availability of adequate medical and health services in rural as well as urban areas.

(4) In addition to the factors specified in subsection (3), in determining the maximum price of medical treatment the Minister shall take into account the cost of material (if any) used, the direct and overhead costs of providing the service and the level of any duties or taxes collected from private health units and such other factors as the Minister may consider relevant.

(5) In the exercise of his powers under this section the Minister shall have power-

(a) to receive and review applications for determination or variation of maximum prices from approved organizations;

(b) to receive and review applications or representations in respect of prices from any person or organization or from any public authority;

(c) to refer to any public authority any matter relating to prices of medical treatment for the purpose of obtaining advice on the matter;

(d) notwithstanding any written law to the contrary, to secure access to relevant data concerning the provision of medical treatment from any person or organization or from any public authority.

(6) The Minister may, by notice in writing, require any approved organization responsible for the management of any private health unit to produce to him, within such period as he or she may specify in the notice-

(a) books of accounts or other records relating to the management of the health unit;

(b) a return of income made by the approved organization in respect of any year for the purposes of assessment of income tax or other similar taxes;

(c) such other information as the Minister may consider relevant.



13. Decisions of Minister not subject to review by courts

No decision of the Minister made in accordance with the provisions of this Act relating to prices shall be subject to review by any court on any ground.

14. Publication of maximum prices

(1) Where the Minister has fixed the maximum price of any type of medical treatment, he or she shall issue a notice setting out a description of the type of medical treatment and the maximum price fixed in relation to it.

(2) A notice issued under subsection (1) may be published in any manner as will, in the opinion of the Minister, ensure that its contents come to the notice of members of the public who will or are likely to be affected by the contents of the notice.

(3) With effect from the date of the publication of any notice under this section or any subsequent date specified in the notice the maximum price of the type of medical treatment described in the notice shall be the price described in relation to it.

(4) Any person, who renders medical treatment at any private health unit, at a price in excess of the maximum price fixed in relation to that type of medical treatment shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding three years or to both that fine and, imprisonment.

15. Display of maximum prices

(1) The Minister may, by order published in the *Gazette*, require any approved organization responsible for the management of any private health unit to, display in a prominent manner and in a conspicuous position so that it, may be easily read and, is clearly legible to patients in those parts of the premises of the health unit, where medical treatment is rendered, a list of the current maximum prices of such types of medical treatment as are mentioned in the order which the approved organization may render.

(2) An order under this section may provide for the form in which the list of maximum prices which it requires to be displayed shall be arranged.

(3), Any person responsible for the, management of any private health unit who fails to display at the health unit a list of current maximum prices fixed in relation to medical treatment shall be guilty of an offence and shall, be liable on conviction to a fine not exceeding five thousand shillings or imprisonment for a term not exceeding twelve months or to both that fine and imprisonment.

16. Book of account and other records

(1) Every approved organization responsible for the management of a private health unit rendering medical treatment in respect of which maximum prices have been fixed under this Act shall keep books of account or other records in respect of the medical treatment

(d) the need to maintain a fair relation between the incomes of different sectors of the community; and

(e) the cost of delivery of services.

(4) In the exercise of his or her powers under this section the Minister shall have power-

(a) to receive and review applications for the determination and, subject to section 19 (3), variation of minimum salaries;

(b) to receive and review applications or representations in respect of salaries of medical practitioners from any organization or from any public authority;

(c) to refer to any public authority any matter relating to salaries of medical practitioners for the purpose of obtaining advice on the matter;

(d) notwithstanding any written law to the contrary, secure access to relevant data concerning the payment of salaries of medical practitioners from any person or organization or from any public authority.

(5) The Minister may, by notice in writing, require any approved organization responsible for the management of any private health unit to submit to him, within such period as he or she may specify in the notice :-

(a) particulars relating to scales of salaries applicable to medical practitioners employed at any private health unit managed by the organization;

(b) particulars of sums of money which it is expected the organization will receive during the current financial year of the organization and the sources from which the sums of money are expected;

(c) particulars of the estimated expenditures of the organization during the current financial year of the organization.

(6) On receipt of the particulars specified in subsection (5) the Minister may approve without amendment the scales of salaries submitted by the organization or he or she may, if in or her opinion it is in the public interest to do so, by order in writing under his or her hand require the organization to vary its scales of salaries to conform to, minimum limits prescribed in the order within such period as the Minister may specify in the order (and the organization shall comply with the requirement).

(7) Every scale of salary the minimum of which has been fixed by the Minister under subsection (2) or the minimum of which has been approved or determined in accordance with an order of the Minister pursuant to subsection (6) shall be known as the "statutory minimum salary" and shall be enforced in accordance with the provisions of this Act.

19. Enforcement of statutory minimum salaries

(1) The Minister shall publish in the *Gazette* a notice setting out particulars relating to every statutory minimum salary fixed or approved or determined by him or her under section 18 and shall include in those particulars a description of the category of medical practitioners to whom the statutory minimum salary is applicable.

(2) Every statutory minimum salary published in the *Gazette*-

(a) shall not be liable to be challenged, reviewed or questioned in any court on any ground;

(b) shall be binding on the employers or approved organizations and medical practitioners to whom it relates; notwithstanding any provision to the contrary in any written law, contract, agreement or any other arrangement;

(c) shall be an implied term of the contract, agreement or other arrangement between the employers or approved organizations and medical practitioners to whom it relates, and the conditions of service to be observed under the contract, agreement or arrangement shall be in accordance with the statutory minimum salary so published until varied by a subsequent notice published in the *Gazette*.

(3) Except with the permission of the Minister, no application shall be made under section 18 (4) to vary any statutory minimum salary published in the *Gazette* within twelve months of the date of its coming into force.

20. Records of salaries to be kept

Every approved organization responsible for the management of any private health unit shall keep records relating to salaries paid to medical practitioners employed at the health unit and shall preserve all those records for a period of two years or such longer period as may be prescribed by regulations made under this Act.

21. Agreements designed to evade this Act

On or after the enactment of this Act it shall be unlawful for any employer or organization to alter, vary or amend (whether or not with the consent of the medical practitioner) any term, of any contract, agreement or arrangement with the medical practitioner which is designed to defeat or modify the provisions of this Act in relation to the salary payable to the medical practitioner.

PART VI - GENERAL PROVISIONS

22. Inspection and search

(1) The Registrar, a Deputy Registrar, a medical officer or any other public officer authorized by the Minister in writing for that purpose, may if he or she has reasonable cause to believe that medical treatment is being given on any premises used as a private health unit, demand that the person in charge of those premises shall allow him or her free entry to the premises and afford him or her all reasonable facilities to ascertain whether the medical treatment is being rendered in accordance with the provisions of this Act or of the regulations made under it.

(2) If the officer after producing proof of his or her authority to any person who may reasonably require that proof, is unable to gain entry to the premises without unreasonable delay or inconvenience, he or she may enter the premises without warrant and inspect them to ascertain the matters specified under subsection (1).

(3) Any person who prevents or obstructs any officer -acting under this section in the performance of his or her duties shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand shillings or to, imprisonment for a term not exceeding twelve months or to both that fine and imprisonment.

23. Offences by organizations

Where any offence under this Act or any regulations made under it is committed by an organization, every person charged with, or concerned, or acting in, the control or management of the affairs or activities of the organization shall also be guilty of the offence and shall be liable to be proceeded against and punished accordingly, unless the person proves to the satisfaction of the court that, through no act or omission on his or her part, he or she was not aware that the offence was being or was intended or about to be committed, or that he or she took all reasonable steps to prevent its commission.

24. Regulations

The Minister may make regulations generally for the better carrying out of the purposes and purpose of this Act, and, without prejudice to that generality, may make regulations-

- (a) prescribing forms to be used for the purposes of this Act;
- (b) prescribed fees which shall be payable in respect of any matters specified in this Act or in any regulations made under this Act;
- (c) providing for submission of audited balance sheets and other records, returns and particulars of approved organizations;
- (d) providing for the enforcement of scales of statutory minimum salaries;
- (e) prescribing minimum standards of diet to be provided to persons admitted to private health units as in-patients;
- (f) requiring approved organizations to provide facilities for the welfare of patients admitted to private health units;
- (g) regulating the staff, accommodation and equipment to be provided at private health units;
- (h) prescribing conditions for qualification of organisations for approval to manage private health units in accordance with the provisions of the Act;
- (i) relating to any matter which is required or permitted to be prescribed under this Act.

25. Transitional provisions

(1) The Minister may at any time after the enactment of this and before its commencement receive and consider any application required to be submitted to him or her under this Act and may determine the application in accordance with the provisions of this Act: Provided that no application approved under this section shall take effect until the date on or after which this Act shall come into operation.

(2) The Minister may within six months from the date of the coming into operation of this Act, by order published in the *Gazette*, make such transitional or supplementary

provisions as he or she may consider necessary or expedient to give effect or enable effect to be given to the purposes and provisions of this Act.

26. Amendment of the Medical and Dental Practitioners Act, Cap. 272

The Medical and Dental Practitioners Act is hereby amended by substituting subsection (1) of section 29 with the following-

“(1) An application for registration of a private health unit shall be made to the Council.”