



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 34 1998

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 1 of 1998: Hospitals and Health Facilities Amendment Act, 1998

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**EXPLANATORY NOTE:**

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.

[ ] Words in bold type in square brackets indicate omissions from existing provisions.

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**ACT**

To amend the Hospitals and Health Facilities Act, 1994, so as to further regulate the Minister's powers with respect to the classification of state hospitals and state health facilities; to authorise the letting out of available rooms or space in a state hospital or state health facility for use for certain private purposes; to require that patients admitted for treatment at a state hospital or state health facility must elect to be classified either as a state patient or as a private patient; to further regulate the powers of the Minister relating to the registration of private hospitals and licensing of private health facilities; to further regulate the powers of the Minister in respect of the withdrawal of the registration of a private hospital or the licence of a private health facility; and to provide for matters incidental thereto.

*(Signed by the President on 18 February 1998)*

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:-

**Amendment of section 1 of Act 36 of 1994**

1. Section 1 of the Hospitals and Health Facilities Act, 1994 (in this Act referred to as the principal Act), is hereby amended -

- (a) by the substitution for paragraph (a) of the definition of "practitioner" of the following paragraph:

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“(a) Allied Health Services Professions Act, 1993 (Act No. 20 of 1993);” and

(b) by the substitution for the definition of “state health facility” of the following definition:

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

**Amendment of section 2 of Act 36 of 1994**

**2.** Section 2 of the principal Act is hereby amended -

(a) by the substitution for subsection (2) of the following subsection:

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

(b) by the substitution for subsection (3) of the following subsection:

“(3) The Minister may -

- (a) establish state health facilities and related services in order to promote efficient health services;
- (b) prescribe the categories into which state health facilities shall be classified;
- (c) enter into an agreement with any Government or person for the supply of health services; and
- (d) determine the terms and conditions on which persons may make use of such state health facilities and related services.”.

**Amendment of section 4 of Act 36 of 1994**

3. Section 4 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

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

**Amendment of section 5 of Act 36 of 1994**

4. Section 5 of the principal Act is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

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

(b) by the substitution for subsection (3) of the following subsection:

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

**Substitution of section 18 of Act 36 of 1994**

5. The following section is hereby substituted for section 18 of the principal Act:

Act No. 1, 1998 **HOSPITALS AND HEALTH FACILITIES AMENDMENT ACT, 1998****“Classification of patients at state hospitals**

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

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

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

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

**Amendment of section 19 of Act 36 of 1994**

6. Section 19 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) the various categories of patients [**referred to in this Act**] as determined by the Minister;”.

**Amendment of section 23 of Act 36 of 1994**

7. Section 23 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

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

- (a) the premises upon which the applicant conducts or intends to establish or conduct a private hospital have been duly inspected under section 10 and have been certified as a fit and proper place for the conduct of such hospital;
- (b) the applicant undertakes to employ adequate, qualified staff in that hospital and to conduct the hospital in a manner conducive to the physical, mental and moral welfare of the patients and staff of that hospital; **[and]**
- (c) any other prescribed requirements or conditions relating to the maintenance of business or professional premises under this Act or any other law, have been complied with; and
- (d) it is in the public interest to do so,

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

**Substitution of section 24 of Act 36 of 1994**

8. The following section is hereby substituted for section 24 of the principal Act:

**“Cancellation of registration**

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

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

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- (b) such hospital or part thereof does not have adequate qualified staff;
- (c) the manner in which such hospital or part thereof is conducted is detrimental to the physical, mental or moral welfare of the patients or staff of such hospital;
- (d) the owner of such hospital has failed to comply with the conditions stipulated in the registration certificate issued under subsection (4) of section 23;
- (e) the owner of such hospital is convicted of an offence under this Act;
- (f) the registration of such private hospital was secured through false or incorrect information; or
- (g) in the Minister's opinion, it is in the public interest to do so.

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

**Amendment of section 27 of Act 36 of 1994**

9. Section 27 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections respectively:

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

- (a) subsidise, or financially assist a private hospital or private health facility [**established therein**]; and

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

subject to such conditions as the Minister may determine.

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

- (a) a report in the prescribed form of the hospital's or health facility's activities; and
- (b) a copy of the hospital's or health facility's audited accounts, in respect of that financial year."

**Amendment of section 31 of Act 36 of 1994**

10. Section 31 of the principal Act is hereby amended -

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) the Allied Health Services Professions Act, 1993 (Act No. 20 of 1993);";

- (b) by the substitution for subsection (3) of the following subsection:

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

- (a) the applicant, if a practitioner, is duly registered under a relevant Act referred to in subsection (1) or, if not a practitioner, the applicant undertakes to employ



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adequate qualified staff in the private health facility and to conduct it in a manner conducive to the physical, mental and moral welfare of the patients and staff therein;

- (b) the premises upon which the applicant conducts or intends to conduct the private health facility have been duly inspected under section 10 and have been certified as a fit and proper place for the conduct of such practice; **[and]**
- (c) any other prescribed requirements or conditions relating to the maintenance of business or professional premises under this Act or any other law, have been complied with; and
- (d) it is in the public interest to do so,

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

- (c) by the substitution for subsection (6) of the following subsection:

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

- (a) the building or premises of the private health facility have become unsuitable or inadequate for its purposes;
- (b) the manner in which such private health facility is conducted is detrimental to the physical, mental or moral welfare of patients or staff therein;
- (c) the owner of such private health facility has failed to

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comply with a condition stipulated in the licence issued under subsection (3);

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

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

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

(d) by the insertion of the following subsection after subsection (6):

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

**Amendment of section 38 of Act 36 of 1994**

11. Section 38 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

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

**Amendment of section 39 of Act 36 of 1994**

12. Section 39 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of [subsections (2) and (3)] subsection (2) the laws specified in the first and second columns of Schedule

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2 are hereby repealed to the extent correspondingly set out in the third column thereof.”.

**Short title**

**13.**    This Act shall be called the Hospitals and Health Facilities Amendment Act, 1998.

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