

H.B. 1, 2022.]

MEDICAL SERVICES AMENDMENT BILL, 2022

MEMORANDUM

The Medical Services Amendment Bill, 2022, is designed to align the Medical Services Act [*Chapter 15:13*] with the Constitution. The following are the main constitutional precepts which the Amendment takes into account—

- the right of every citizen and permanent resident to access basic health care services including reproductive health care services (section 76(1));
- the right of persons with chronic illnesses to basic health care for the illness (section 76(2));
- every person’s right to emergency medical treatment in any health institution (section 76(3));
- every child’s right to health care services (section 81(1));
- the paramountcy of the rights of children to health over parents’ and guardians’ right to determine the moral and religious upbringing of their minor children (section 60(3));
- the right of persons over the age of 70 years to receive health care and medical assistance from the State (section 82(b));
- the obligation of the State to take appropriate measures, within the limits of available resources, to ensure that persons with disabilities are given access to medical, psychological and functional treatment (section 83(b));
- the right of veterans of the liberation struggle to basic health care (section 84(1)(d)).

In brief therefore, the Bill amends various provisions of the Act so as to comply with these various provisions of the Constitution. It is essential to note that, because some of the rights are subject to the availability to the State, of resources necessary to enable the enjoyment of the rights, the amendments have been couched so as to take this into account.

In more detail, the Bill provides as follows:

Clause 1 sets out the short title of the Bill.

Clause 2 amends the definition section by introducing and defining a number of terms aligned to the terms used in the Constitution. Notable are the following terms—

“basic health care” which explains the kind of health care services are classified as basic;

“emergency medical treatment” whose definition is necessary because it is now a basic human right;

“health institution”, The term is used in the constitution.

“reproductive health care” a term which is also used in the Constitution.

Clause 3 inserts a new section dealing with treatment and care for persons under arrest, detention or imprisonment.

Clause 4 enjoins the Minister to consult with health care providers when fixing the maximum fees and charges for Government and State-aided health institutions.

Clause 5 inserts a new Part dealing with General Standards and Practices Applicable in Health Care Delivery. The part spells out—

- (a) in 8A information that health institutions must give to patients;
- (b) in 8B circumstances where a health service may be provided to a patient without the patient's informed consent;
- (c) in 8D criminal sanction for the prevention of a child from receiving any health service which is in the best interests of the child and withholding consent for any health service by a parent or guardian;
- (d) in 8E obligation of health institutions to provide a patient with a discharge report at the time of the discharge of the patient from health institution;
- (e) in 8F rights of patients in relation to health services for experimental or research purposes;
- (f) in 8I obligations of health care providers to set up control measures, a storage facility and system to prevent unauthorised access to patients' records;
- (g) in 8J mandates every health institution to establish a complaints procedure;
- (h) in 8K spells out duties of patients;
- (i) in 8L spells out rights of health care personnel.

Clause 6 empowers the Minister, in consultation with the Minister responsible for finance, to provide incentives to persons who intend to establish health institutions in marginalised areas.

Clause 7 amends section 12 of the Act to extend the grounds of non-discrimination.

Clause 8 inserts after section 12, a new section dealing prohibition against refusal of emergency medical treatment.

Clause 9 makes some minor amendments to section 13 of the Act, including the repeal of the proviso to subsection (1).

Clause 10 empowers the Minister to make regulations in respect of—

- (a) the health care to be afforded to persons with chronic illnesses, persons over the age of seventy years and veterans of the War of Liberation and persons with disabilities;
- (b) the health care packages which shall be available at government primary health care centres, district health institutions, general health institutions, provincial health institutions, and central health institutions for specialist services;
- (c) for the purposes of any consultation with the public, the establishment and composition of a national consultative health forum.

BILL

To amend the Medical Services Act [*Chapter 15:13*] and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

5 **1 Short title**

This Act may be cited as the Medical Services Amendment Bill, 2022.

2 Amendment of section 2 of Cap. 15:13

Section 2 (“Interpretation”) of the Medical Services Act [*Chapter 15:13*] is amended—

10 (a) by the insertion of the following definitions—

 “basic health care” means emergency medical treatment, inpatient hospital care, outpatient medical services, laboratory and radiological services, rehabilitative services, preventive and palliative healthcare service;

15 “chronic illness” means a long term illness that is generally progressive;

 “emergency medical treatment” means treatment which is necessary to treat or reduce a life-threatening but reversible deterioration in a person’s health status that causes an immediate risk to a person’s life or long term health and it continues to be emergency treatment until the condition of the person has stabilised or has been reversed to a particular extent;

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“health care provider” means any health practitioner or health institution and includes any person employed by any health practitioner or health institution;

“health institution” means the whole or any part of a public or private institution, facility, building or place, including a health institution, whether for profit or not, that is operated or designed to provide inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventive or other health service;

“health service” means any service provided by a health care provider and “health care” or “health care service” shall be construed accordingly;

“reproductive health care” means health care necessary for the treatment or prevention of diseases, disorders or conditions that affect the reproductive system of any person;

(b) in the definition of “dental practitioner”, by the deletion of “Medical, Dental and Allied Professions Act [Chapter 27:08]” and the substitution of “Health Professions Act [Chapter 27:19]”;

(c) in the definition of “medical practitioner”, by the deletion of “Medical, Dental and Allied Professions Act [Chapter 27:08]” and the substitution of “Health Professions Act [Chapter 27:19]”.

3 New section inserted in Cap. 15:13

The principal Act is amended by the insertion after section 7 of the following section—

“7A Treatment and care for persons under arrest, detention or imprisonment

Every health institution shall, at the expense of the State or, if the person so elects, at his or her own expense, give persons under arrest, detention or imprisonment treatment, on the same terms and conditions as other persons admitted to the health institution.”.

4 Amendment of section 8 of Cap. 15:13

Section 8 (“Fees and charges at and admission to Government and State-aided health institutions”) is amended in subsection (1) by the deletion of “fix” and the substitution of, “ after consultation with health care providers, fix the maximum”.

5 New Part inserted in Cap. 15:13

The principal Act is amended by the insertion after Part II of the following Part—

“PART IIA

GENERAL STANDARDS AND PRACTICES APPLICABLE IN HEALTH CARE DELIVERY

8A Information to patients

(1) Every health care provider must inform a patient of—

(a) the patient’s health status except in circumstances where there is substantial evidence that the disclosure of the patient’s health status would be contrary to the best interests of the patient;

(b) the range of diagnostic procedures and treatment options generally available to the patient;

(c) the benefits, risks, costs and consequences generally associated with each option; and

(d) the patient's right to refuse health services and explain the implications, risks and obligations of such refusal.

5 (2) A health care provider must, where possible, inform the patient as provided in subsection (1) in a language that the patient understands and in a manner that takes into account the patient's level of literacy.

8B Consent of patient

10 (1) Subject to section 8D, a health service may not be provided to a patient without the patient's informed consent unless—

(a) the patient is unable to give informed consent and such consent is given by a person—

15 (i) mandated by the patient in writing to grant consent on his or her behalf; or

(ii) authorised to give such consent in terms of the law or a court order;

20 (b) the patient is unable to give informed consent and no person is mandated or authorised to give such consent, and the consent is given by the spouse or partner of the patient or, in the absence of such spouse or partner, a parent, guardian, an adult child of the patient, grandparent, an adult brother or a sister of the patient, in the specific order as listed;

(c) the provision of a health service without informed consent is authorised in terms of any law or court order;

25 (d) failure to treat the patient may result in a serious risk to public health; or

(e) any delay in the provision of the health service to the patient might result in his or her death or irreversible damage to his or her health.

30 (2) A health care provider must take all reasonable steps to obtain a patient's informed consent.

35 (3) For the purposes of this section "informed consent" means consent for the provision of a specified health service given by a person with legal capacity to do so and who has been informed in terms of section 8B.

8C Participation in decisions

(1) A patient has the right to participate in any decision affecting his or her health and treatment.

40 (2) If the informed consent required by section 8D is given by a person other than the patient, such person must, if possible, consult the patient before giving the required consent.

(3) A patient who is capable of understanding must be informed as provided in section 8B even if he or she lacks the legal capacity to give the informed consent required by section 8C.

45 (4) If a patient is unable to participate in a decision affecting his or her health and treatment, he or she must be informed as provided in section 8B after the provision of the health service in question unless the

disclosure of such information would be contrary to the patient's best interest.

8D Health services to children

(1) It shall be unlawful for any parent or guardian of a child to prevent a child from receiving any health service which is in the best interests of the child concerned, or to withhold consent for any health service in contravention of section 60(3) of the Constitution. 5

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment. 10

8E Discharge reports

(1) A health care provider must provide a patient with a discharge report at the time of the discharge of the patient from health institution and the report shall contain such information as may be prescribed. 15

(2) In prescribing the information in terms of subsection (1), the Minister must have regard to—

- (a) the nature of the health service rendered; and
- (b) the prognosis for the patient; and
- (c) the need for follow-up treatment. 20

8F Health services for experimental or research purposes

(1) Before a health care provider provides a health service for experimental or research purposes to any patient and subject to subsection (2), the health care provider must inform the patient in the prescribed manner that the health service is for experimental or research purposes or part of an experimental or research project. 25

(2) A health care provider may not provide any health service to a patient for purposes of subsection (1) unless the patient, the health care provider primarily responsible for the patient's treatment, the head of any health institution concerned and any relevant health research ethics authority or any other person to whom that authority has been granted in respect of a health institution, has given prior written authorisation for the provision of the health service in question. 30

(3) No extraction of bodily tissue from any patient for the purposes of this section may be done without the prior written consent of the patient concerned. 35

(4) Subject to the Anatomical Donations and Post Mortem Examinations Act [*Chapter 15:01*], any consent or authorisation required in terms of this section shall be in the form prescribed.

8G Confidentiality 40

(1) All information concerning a patient, including information relating to his or her health status, treatment or stay in a health institution is confidential.

(2) Subject to subsection (3), no person may disclose any information referred to in subsection (1) unless— 45

- (a) the patient consents to that disclosure in writing;

- (b) a court order or any law requires the disclosure; or
- (c) non-disclosure of the information represents a serious threat to public health.

5 (3) A health care provider that has access to the health records of a patient may disclose such information to any other health care provider as is necessary for any legitimate purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interests of the patient.

10 (4) A health care provider may examine a patient's health records for the purposes of—

- (a) treatment with the consent of the patient; and
- (b) study, teaching or research subject to the consent or authority granted in terms of section 8G.

15 (5) If the study, teaching or research referred to in subsection (4) (b) discloses no information as to the identity of the patient concerned, it shall not be necessary to obtain the consent or authorisation referred to in that subsection.

8H Protection of health records

20 (1) A health care provider must set up control measures, a storage facility and system to prevent unauthorised access to patients' records.

(2) Any person who does any or all of the following—

- (a) fails to perform a duty imposed on them for the purposes of subsection (1);
- 25 (b) falsifies any record by adding to or deleting or changing any information contained in that record;
- (c) creates, changes or destroys a record without authority to do so;
- (d) fails to create or change a record when properly required to do so;
- 30 (e) provides false information with the intent that it be included in a record;
- (f) without authority, copies any part of a record;
- (g) without authority connects the personal identification elements of a patient's record with any element of that record that concerns the patient's condition, treatment or history;
- 35 (h) gains unauthorised access to a record or record-keeping system, including intercepting information being transmitted from one person, or one part of a record-keeping system, to another;
- 40 (i) without authority, connects any part of a computer or other electronic system on which records are kept to—
 - (i) any other computer or other electronic system; or
 - (ii) any terminal or other installation connected to or forming part of any other computer or other electronic system;
- 45 (j) without authority, modifies or impairs the operation of—

- (i) any part of the operating system of a computer or other electronic system on which a patient's records are kept; or
 - (ii) any part of the programme used to record, store, retrieve or display information on a computer or other electronic system on which a patient's records are kept; 5
- shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

8I Complaints

(1) The Minister shall ensure that every health institution 10 establishes a complaints procedure which must—

- (a) be displayed in a manner that is visible for any person entering the establishment and the procedure must be communicated to patients on a regular basis; and
- (b) in the case of a private health institution, allow for the 15 complaints to be made to the head of the institution; and
- (c) include provision for the acceptance and acknowledgment of every complaint; and
- (d) allow for the referral of any complaint that is not within 20 the jurisdiction or authority of the health institution to the appropriate body or authority.

(2) In laying a complaint, the complainant must follow the procedure established by the institution concerned.

8J Duties of patients

A patient must— 25

- (a) adhere to the rules of a health institution when receiving treatment or health services at the institution; and
- (b) subject to section 8H, provide a health care provider with accurate information pertaining to his or her health status and-co-operate with health care providers at an health 30 institution; and
- (c) treat health care providers with dignity and respect; and
- (d) sign a discharge certificate or release from liability if he or she refuses to accept recommended treatment.

8K Rights of health care personnel 35

- (1) Every health institution must implement measures to prevent—
- (a) injury or damage to the person and property of health care personnel working at that institution; and
 - (b) disease transmission.

(2) A health care provider may refuse to treat a patient who is 40 physically or verbally abusive or who sexually harasses him or her.”.

6 New section in Cap. 15:13

The principal Act is amended by the insertion after section 11 of the following section—

“11A Provision of incentives

5 (1) The Minister may, in consultation with the Minister responsible for finance, offer such incentives as may be prescribed and upon such terms and conditions as may be prescribed, to private operators to establish health care facilities in marginalised areas or for the benefit of any marginalised communities.

(2) The purpose of the incentives is to facilitate the procurement of essential medical equipment and drugs.”.

7 Amendment of section 12 of Cap. 15:13

10 Section 12 (“Prohibition against discrimination in exercise of right to admit patients”) is amended in subsection (2) by the deletion of “no person of a particular description by race, tribe, place of origin, gender, political opinions, colour or creed shall be prejudiced” and the substitution of “no person shall be prejudiced by reason of discrimination in contravention of section of section 56(3) of the Constitution”.

15 **8 New section inserted in Cap. 15:13**

The principal Act is amended by the insertion after section 12 of the following section—

“12A Prohibition against refusal of emergency medical treatment

20 (1) A private health institution shall admit any patient who is suffering from a condition which causes an immediate danger to the life of the patient for a period of not less than 48 hours for the purpose of stabilising the patient before transferring him or her to a Government health institution which has the capacity to provide the required medical treatment or care, if he or she is unable to afford treatment on the same terms and conditions as other patients admitted in the private health institution.

25 (2) The Minister and the concerned private health institution may conclude or facilitate the conclusion of an agreement, for the recovery of all or portion of costs of the treatment of the patients concerned whether from the patients or state, after consultation with the private health institution concerned.

30 (3) For the purposes of this section the Minister may request a private health institution to make available to any patient who is suffering from a condition which causes an immediate danger to the life of the patient or is a victim of a public emergency who was originally admitted to Government health institutions such specialist medical facilities as may be unavailable at the Government health institutions concerned.

35 (4) Any person who contravenes subsection (1) and (3) shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment not exceeding one year or to both such fine and such imprisonment.”.

9 Amendment of section 13 of Cap. 15:13

Section 13 (“Fees and charges payable at private health institutions”) is amended in subsection (1) by the repeal of the proviso.

10 Amendment of section 16 of Cap. 15:13

Section 16 (“Regulations”) of the principal Act is amended by the insertion in subsection (2) of these paragraphs—

- “(e1) the health care to be afforded to children, persons with chronic illnesses, and veterans of the War of Liberation; 5
- (e2) the health care and medical assistance to be afforded to persons over the age of seventy years;
- (e3) the medical, psychological and functional treatment to be accessed by persons with disabilities;
- (e4) the health care packages which shall be available at government primary health care centres, district health institutions, general health institutions, provincial health institutions, and central health institutions for specialist services; 10
- (e5) for the purposes of any consultation with the public, the establishment and composition of a national consultative health forum.”. 15