

MINISTRY OF HEALTH AMENDMENT BILL 2019

SAMOA

Explanatory Memorandum

1.0 Object and reasons:

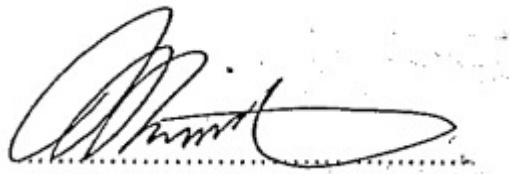
- 1.1 The Bill seeks to amend the Ministry of Health Act 2006 (“Principal Act”) and repeal the National Health Services Act 2014 (“Repealed Act”).
- 1.2 The object of the Bill is to:
 - (a) regulate the additional functions, roles and responsibilities of the Ministry of Health; and
 - (b) provide for the functions, roles and responsibilities of the Director General and Deputy Director General of Health; and
 - (c) transfer the role of the National Health Service to be undertaken by the Ministry of Health.

Clauses:

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - amends section 2 of the principal Act by inserting new definitions.
- Clause 3:** - substitutes section 5 of the principal Act with new proposed section to provide for the functions and powers of the Ministry in regulating health services.

- Clause 4:** - amends section 8(2) of the principal Act by inserting after paragraph (c) a new proposed paragraph (ca) which provides for the additional Ministerial power of the Minister to consult with the Director General before issuing general directions on government policies, objectives, priorities and requirements for the development, provision and management of the healthcare services.
- Clause 5:** - substitutes Part 4 of the principal Act by inserting a new proposed Part 4 to provide for the administration of the appointment, roles, functions and powers of the Director General and the Deputy Director General of Health.
- Clause 6:** - amends section 19 of the principal Act to repeal subsection (4).
- Clause 7:** - inserts new proposed section 21A to the principal Act which provides for confidentiality and the protection of any information held by the Ministry in providing healthcare services and administration of the health services.
- Clause 8:** - amends section 24 of the principal Act to substitute subsection (2) to provide for circumstance where Regulations can be made under the principal Act.
- Clause 9:** - inserts new proposed section 28 to the principal Act to provide for the transitional arrangements of matters saved and transferred under the principal Act.
- Clause 10:** - provides for the consequential amendments required as a result of the repeal of the National Health Service Act 2014.
- Clause 11:** - provides for the repeal of the National Health Services Act 2014.

- Clause 12:** - substitutes Schedule 2 of the principal Act by inserting new proposed Schedule 2 to provide for the Ministry's new responsibilities, functions and duties due to the merger of the healthcare services and the administration of the health service.

A handwritten signature in black ink, appearing to read 'Leao Tuitama', written over a horizontal dotted line.

(Hon TUITAMA Dr. Leao Talalelei Tuitama)

MINISTER FOR HEALTH

MINISTRY OF HEALTH AMENDMENT BILL 2019

SAMOA

Arrangement of Provisions

1. Short title and commencement
 2. Section 2 amended
 3. Section 5 substituted
 4. Section 8 amended
 5. Part 4 substituted
 6. Section 19 amended
 7. Insertion of new section 21A
 8. Section 24 amended
 9. Insertion of new section 28
 10. Consequential amendments
 11. Repeal
 12. Schedule 2 substituted
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2019, No.

A BILL INTITULED

AN ACT to:

- (a) **amend the Ministry of Health Act 2006 (principal Act);**
- (b) **repeal the National Health Service Act 2014; and**
- (c) **transfer the role of the National Health Service to be undertaken by the Ministry of Health; and**
- (d) **provide for related purposes.**

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement:

This Act may be cited as the Ministry of Health Amendment Act 2019 and commences on a date nominated by the Minister.

2. Section 2 amended:

In section 2 of the principal Act:

- (a) insert in its alphabetical order the following new definitions:

““allied health professional” has the same meaning under section 2 of the Allied Health Professions Act 2014;

“Deputy Directors General of Health” or “Deputy Director General” means a person appointed under section 10;

“Director General of Health” or “Director General” means a person appointed as such under section 9;

“healthcare professional” has the same meaning under section 2 of the Healthcare Professions Registration and Standards Act 2007;

“repealed Act” means the National Health Services Act 2014;” and

- (b) from the definition of “provider” repeal paragraph (b); and
- (c) in the definition of “provider”, for paragraph (c), insert “, Non-government body” after “Body”; and
- (d) omit the definition of “National Health Service”.

3. Section 5 substituted:

Section 5 of the principal Act is substituted as follows:

“5. Functions and powers:

- (1) The Ministry shall have the following functions:
 - (a) to administer the legislation set out in Schedule 1; and
 - (b) to administer any other enactment, subject or matter as determined by Cabinet; and
 - (c) to fulfil the functions and duties set out in Schedule 2; and
 - (d) to provide, maintain and manage -
 - (i) all National Hospitals, District Hospitals and Community Health Centres as prescribed by the Minister by Notice;

- (ii) healthcare services prescribed by the Minister by Notice; and
 - (e) to be responsible for policy and general governance and regulation of health services; and
 - (f) to report to the Minister for matters it is responsible for under this Act.
- (2) The Ministry and the Director General have the powers necessary for or incidental to carry out the purpose and functions of the Ministry and may do all acts as are necessary, advantageous and convenient for or in connection with the carrying out of the purpose and functions of the Ministry.”.

4. Section 8 amended:

Section 8(2) of the principal Act is amended by inserting after paragraph (c) the following new paragraph:

- “(ca) after consulting with the Director General, issue written general directions on government -
- (i) policy;
 - (ii) objectives;
 - (iii) priorities; and
 - (iv) requirements,
- as to the development, provision and management of the healthcare services; and”.

5. Part 4 substituted:

Part 4 of the principal Act is substituted as follows:

**“PART 4
ADMINISTRATION**

Division 1 - Director General of Health

9. Appointment of the Director General of Health:

- (1) A Director General is to be appointed in accordance with section 12 of the Public Service Act 2004.
- (2) A person appointed as the Director General may be re-appointed and may continue to hold office after the expiry of his or her term of appointment or until an appointment has been made.
- (3) The qualifications and eligibility of the Director General is to be determined by the Public Service Commission pursuant to public sector law and take into account the following:
 - (a) a registered healthcare professional; and
 - (b) has proven experience and knowledge of the health service; and
 - (c) any other qualification and eligibility as approved by the Minister.
- (4) The Director General is the Chief Executive Officer of the Ministry.

9A. Functions and powers:

- (1) The functions of the Director General are as follows:
 - (a) to advise the Minister on the administration of the Ministry; and
 - (b) to direct Ministry operations in compliance with the law; and
 - (c) to ensure that the Ministry applies its resources effectively, efficiently and economically to fulfil the functions set out in section 5 in accordance with any applicable law; and

- (d) to work in collaboration where needed with relevant Government and non-government organisations; and
 - (e) to represent the Ministry in a national or international forum as required by the Minister or by law.
- (2) The Director General has the power to:
- (a) appoint, promote, suspend, demote, transfer, discipline or dismiss the Ministry personnel in accordance with public sector law;
 - (b) engage and manage contractors, consultants and suppliers in accordance with public sector law to fulfil the functions of the Ministry;
 - (c) acquire on behalf of the Ministry goods, services and works in accordance with public sector law as required to fulfil the functions of the Ministry.

Division 2 - Deputy Directors General of Health

10. Appointment of Deputy Directors General:

- (1) Deputy Directors General are to be appointed in accordance with the process of appointment of Assistant Chief Executive Officers under section 31A of the Public Service Act 2004.
- (2) A person appointed as the Deputy Director General may be re-appointed and may continue to hold office after the expiry of his or her term of appointment or until an appointment has been made.

- (3) The qualifications and eligibility of a Deputy Director General is to be determined by the Public Service Commission pursuant to public sector law.
- (4) This section shall not be construed or applied to imply or deem that a Deputy Director General is an Assistant Chief Executive Officer;
- (5) In this section, Assistant Chief Executive Officer has the same meaning as provided for under the Public Service Act 2004.

11. Functions and powers:

- (1) A Deputy Director General may carry out the functions and powers as delegated by the Director General.
- (2) A Deputy Director General must assist the Director General in the exercise of the Director General's functions and powers relating to the effective and efficient management of the Ministry.
- (3) Any function and power perform by the Deputy Director General is to be performed in accordance with any condition, limitation or requirement imposed or required by the Director General."

6. Section 19 amended:

Section 19(4) of the principal Act is repealed.

7. Insertion of new section 21A:

The principal Act is amended by inserting after section 21 the following new section 21A:

“21A. Confidentiality:

- (1) Any information of a person stored by the Ministry for the purpose of providing healthcare services of the Ministry is confidential and must not be released for any purpose.
- (2) Any information stored by the Ministry for the purpose of health service administration is confidential and must not be released for any purpose.
- (3) Any person who comes into contact with information under subsections (1) and (2) who releases such information in contravention of subsections (1) and (2) commits an offence and is liable upon conviction to an imprisonment term not exceeding 12 months or to a fine not exceeding 50 penalty units.
- (4) Despite subsections (1) and (2), information must be released upon the approval of the Director General for any of the following reasons:
 - (a) to an authorised staff member of the Ministry when providing health services to the person; or
 - (b) to a police officer approved by the Police Commissioner for the purpose of investigation of an offence or a criminal proceeding; or
 - (c) to the person who is the subject of the information and in accordance with requirements approved by the Director General; or
 - (d) to a person required by an Act;
 - (e) the person, who is the subject of the information, has consented for the information to be released; or
 - (f) where there is an order of the Court to disclose the information.

- (5) For the purpose of this section, information that is confidential includes:
- (a) personal health information, such as -
 - (i) physical or mental health of the person, including information about the medical history of the person's family; or
 - (ii) any health service provided to the person; or
 - (b) data obtained by the Ministry in the administration of its functions and duties; or
 - (c) any other information prescribed by regulations.”.

8. Section 24 amended:

Section 24(2) of the principal Act is substituted as follows:

- “(2) Without limiting subsection (1), regulations may be made to:
- (a) define who is taken to be an eligible person for the purposes of access to publicly funded health services, including medicines, and defining classes of persons who are non-residents and liable for the cost of publicly funded health services; and
 - (b) provide for the arrangement and management of health services and patients including the admission, discharge and treatment arrangements for patients, the admission of visitors and the powers and duties of staff and the provision of quality control and consumer complaints systems; and

- (c) prescribe international or global commitments for the Ministry to comply with and the method of such compliance; and
- (d) prescribe fees and charges for the purposes of this Act; and
- (e) provide for the creating of offences and to pre-scribe fines of up to 100 penalty units for such offences concerning this Act and any legislation listed in Schedule 1.

9. Insertion of new section 28:

The principal Act is amended by inserting after section 27 the following new section 28:

“28. Transitional arrangements:

At the commencement of the Ministry of Health Amendment Act 2019 (“Amendment Act”) the following transitional arrangements apply:

- (a) except for the position of the General Manager, all employees appointed and employed under the repealed Act continue as if they were appointed as employees under this Act, and if any employee is provided and accepts a redundancy offer, the provisions of the repealed Act shall apply to the redundancy offer made; and
- (b) all contracted employees to the National Health Service under the repealed Act continue as if they were contracted under this Act; and
- (c) the contract benefits and employment benefits of all employees are saved as follows -
 - (i) for contract benefits, until the contract term expires;

- (ii) for benefits of all other employees to continue in accordance with public sector law;
- (d) redundancy shall be determined by the Director General in consultation with the Public Service Commission in accordance with public sector law and subject to the following -
 - (i) where the employment position being made redundant is a position created under the repealed Act, the redundancy shall be determined in accordance with the prevailing redundancy policy in force under the repealed Act immediately prior to the commencement of the Ministry of Health Amendment Act 2019;
 - (ii) where the employment position being made redundant is a position created under the principal Act prior to the commencement of the Ministry of Health Amendment Act 2019, the redundancy shall be determined in accordance with the prevailing redundancy policy of the Public Service Commission;
- (e) all information, assets, certificates and liabilities of the National Health Service under the repealed Act are transferred and vested in the Ministry; and
- (f) the accounts and audit of the National Health Service are saved.”.

10. Consequential amendments:

- (1) The principal Act is amended by substituting all references to “Chief Executive Officer” with “Director General”.
- (2) Any reference:
 - (a) to the “General Manager of the National Health Service” in any other Act that is not listed in subsection (3), any contract or any other legal document is to be substituted with “Director General of Health”; and
 - (b) in any other Act that is not listed in subsection (3) to “National Health Service” is to be substituted with “Ministry of the Health”.
- (3) The Acts listed in column 1 in the table below are amended in accordance with column 2:

Column 1	Column 2
Dental Practitioners Act 2007	(a) omit the definition of “National Health Service” from section 2; (b) repeal section 5(3)(b); (c) substitute “National Health Service” with “Ministry” in sections 8(1)(c), 9(1)(b), 11(2)(c), 16(3), 17(2)(b) and 17(2)(c); (d) omit “and the National Health Service” from section 8(1)(h) and (i).
Healthcare Professions Registration and Standards Act 2007	(a) substitute “National Health Service” with “Ministry” in sections 7(2)(b)(i) and 20(1)(c); (b) repeal section 14(1)(f)

Medical Practitioners Act 2007	<ul style="list-style-type: none"> (a) omit the definition of “National Health Service” from section 2; (b) repeal section 4(3)(b); (c) substitute “National Health Service” with “Ministry” in sections 7(1)(c), 8(1)(b), 10(2)(c), 15(3) and 16(2)(b)(ii); (d) omit “, the National Health Service” from sections 7(1)(h) and 7(1)(i); (e) omit “and the National Health Service” from section 7(1)(i).
Nursing and Midwifery Act 2007	<ul style="list-style-type: none"> (a) omit “or National Health Service” from the definitions of “Chief Nurse”, “Director of Medical Services” and “Senior Pharmacist” in section 2; (b) omit the definition of “National Health Service” from section 2; (c) substitute “National Health Service” with “Ministry” in sections 8(1)(e), 9(1)(b), 11(2)(c), 17(3)(c) (d) omit “, the National Health Service” from sections 8(1)(k) and 29; (e) omit “and the National Health Service” from section 8(1)(l).

Pharmacy Act 2007	<ul style="list-style-type: none"> (a) omit the definition of “National Health Service” from section 2; (b) omit “or the National Health Service” from sections 3(2)(a), 3(2)(b) and 4(3)(c); (c) repeal section 4(3)(b); (d) omit “or National Health Service,” from section 4(3)(d); (e) substitute “National Health Service” with “Ministry” in sections 7(1)(c), 9(1)(b), 11(2)(c), 17(2)(b) and 17(2)(c); (f) omit “, the National Health Service” from section 7(1)(h); (g) omit “and the National Health Service” from section 7(1)(i).
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11. Repeal:

The National Health Services Act 2014 is repealed.

12. Schedule 2 substituted:

Schedule 2 is substituted as follows:

“SCHEDULE 2

(Section 5(1)(c))

1. In performing the functions set out in section 5, and subject to any applicable laws and available resources, the Ministry has the following functions and duties:
 - a. to provide the Government and the Minister with advice as to strategies, policies and planning concerning the development, resourcing, coordination, provision and management of health services; and
 - b. to establish, monitor, regulate and enforce standards concerning the training, qualifications and performance required for providers in accordance with any applicable laws; and
 - c. to monitor and regulate the performance of providers; and
 - d. to establish and provide for quality control and assurance; and
 - e. to establish a consumer complaints systems for the provision of health services in accordance with any applicable laws; and
 - f. to provide healthcare services in all Hospitals, District Hospitals, Community Health Centres; and
 - g. to engage with Village Committees approved by the Minister; and
 - h. to provide Health Promotion, Preventative and curative Services; and

- i. to provide Public Health services; and
 - j. to provide support services to assist with the implementation of the functions and duties of the Ministry.
2. In undertaking the above functions and duties the Ministry shall:
- a. Cooperate with, assist and support the Government, the Minister, other Ministries, Statutory Bodies, Government Agencies and Persons in undertaking their constitutional and statutory functions and duties under this Act or any other applicable Act; and
 - b. Assist the Government, and the Minister to arrange for and provide any health service by or through any provider where the Government determines that such provider can provide the health service most effectively and efficiently.”.
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