

SAMOA

Arrangement of Provisions

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Schedule

2014, No. 16

AN ACT to continue the National Health Service established under the repealed National Health Service Act 2006, and to provide for its functions, duties, powers, management and finances and for related purposes. *[1st May 2014]*

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

PART I
PRELIMINARY

1. Short title and commencement-(1) This Act may be cited as the National Health Service Act 2014.

(2) This Act commences on a date nominated by the Minister.

2. Interpretation - In this Act, unless the context otherwise requires:

“allied health professional” means any allied health professional regulated and registered under any Act;

“Board” means the Board of Directors of the Service established by section 6;

“Chairperson” means the Chairperson of the Board;

“director” means a director of the Board appointed under section 6(2);

“Director-General of Health” means the Chief Executive Officer of the Ministry;

“General Manager” means the person appointed as such under section 12;

“Government” means the Government of Samoa;

“Minister” means the Minister responsible for Health;

“Minister’s direction” means a direction issued under section 11(1);

“Ministry” means the Ministry of Health established under the Ministry of Health Act 2006 and the Ministerial and Departmental Arrangements Act 2003;

“Service” means the National Health Service continued under section 4;

“staff” means officers and employees of the Service, and includes persons engaged under section 12(5).

3. Application and purpose-(1) This Act binds the Government.

(2) The purpose of this Act is to ensure that the Government meets the healthcare needs of Samoa through the development, provision and management of the healthcare services, institutions and bodies listed in the Schedule.

PART II

NATIONAL HEALTH SERVICE AND ITS BOARD

4. Continuation of the Service-(1) The National Health Service established under the repealed National Health Service Act 2006 continues and is established under this Act as a body corporate with perpetual succession and a common seal, and with the following powers:

- (a) to sue and be sued;
- (b) to enter into contracts;
- (c) to acquire, hold and dispose of property both real and personal;
- (d) to carry out any other matter that a legal person may do in law.

(2) The powers of the Service or decisions of the Board are not affected by any vacancy in the Board or any irregularity in the appointment of a director.

(3) The common seal of the Service must:

- (a) be affixed, by resolution of the Board, in the presence of the Chairperson or the General Manager and one (1) other director, and signed by them; and
- (b) be judicially noticed; and
- (c) be presumed that the seal was properly affixed, unless the contrary is proved.

(4) A document to which the Service is a party (other than a document required by law to be under common seal) may be signed by:

- (a) the Chairperson; or
- (b) the General Manager; or

- (c) an officer of the Service authorised by resolution of the Board.

5. Functions and powers-(1) The Service has the following functions:

- (a) to be responsible for policy and general governance of the Service;
- (b) to provide, maintain and manage all healthcare services, institutions and bodies listed in the Schedule;
- (c) to provide a report, information or advice relating this Act, Ministry of Health Act 2006 or any other Act whenever required by the Director General of Health, as specified by regulations or authorised by an enactment;
- (d) to provide a report, information or advice relating this Act, Ministry of Health Act 2006 or any other Act whenever required by the Minister;
- (e) to cooperate with, assist and support the Government, Minister, Ministry, other ministries, statutory bodies, government agencies and other persons in understanding their functions and duties under this Act, the Ministry of Health Act 2006 and any other Act;
- (f) to comply with Minister's directions;
- (g) to carry out any other functions or duties of the Service under this Act, the Ministry of Health Act 2006 or any other Act.

(2) Subject to this Act, the Service, the Board and the General Manager have powers necessary for or incidental to carrying out the purpose and functions of the Service, 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 Service.

(3) The Service may, with the approval of the Board, carry out any activity under this section either alone or through or in association with any other person.

6. Board of Directors of the Service-(1) Subject to this section, the Board consists of the following directors:

- (a) one (1) registered medical practitioner and is a registered member of the Samoa Medical Association;

- (b) one (1) registered dental practitioner;
- (c) one (1) registered pharmacist;
- (d) one (1) registered nurse and is a registered member of the Samoa Nurses Association;
- (e) one (1) registered allied health professional;
- (f) two (2) persons with experience in management and finance;
- (g) two (2) community representatives.

(2) The Head of State may appoint directors, acting on the advice of Cabinet.

(3) Before advising the Head of State to appoint directors under subsection (1)(a) to (e), the Cabinet may invite:

- (a) any eligible person to apply to Cabinet for appointment; or
- (b) any professional association relating to those professions to nominate in writing to Cabinet any of its members qualified for appointment as a director.

(4) A person employed or engaged by the Service is not eligible for appointment as a director.

(5) When providing advice under subsection (2), Cabinet must take the following matters into account:

- (a) the need of the Service and the Board to have directors with qualifications, experience and expertise in the areas of healthcare, management, financial management and any other qualifications, experience and expertise appropriate to the Service's purpose and functions;
- (b) the desirability of gender equality.

(6) The appointment under subsection (1)(e) is to be rotated between different categories of allied health professionals.

(7) A director whose appointment under subsection (1)(e) has expired must not be re-appointed on that occasion to continue as a director.

(8) In this section, "registered" means registered under an enactment.

7. Terms, vacancies and removal-(1) Subject to this section, a director may be appointed for three (3) years and, subject to section 6(7), is eligible for re-appointment.

(2) A director shall not be re-appointed after having served for two (2) consecutive terms.

(3) The Cabinet may remove a director on any of the following grounds:

- (a) inability to perform the director's functions and duties due to a physical or mental incapacity;
- (b) inefficiency;
- (c) bankruptcy;
- (d) neglect of duty;
- (e) misconduct in office or elsewhere affecting or likely to affect the operations or reputation of the Service or the Board;
- (f) failure to attend three (3) consecutive meetings of the Board without an apology being received and accepted by the Chairperson of the Board, and in the case of the Chairperson an apology being received and accepted by the Board;
- (g) failure, without reasonable excuse and within a reasonable time, to comply with Minister's direction;
- (h) failure to disclose or to take all reasonable steps to avoid any real or apparent conflict of interest in relation to his or her membership of the Board;
- (i) use of information belonging to or under the control of the Service or Board other than for the Service's purpose or functions;
- (j) failure to act with integrity as a director;
- (k) misuse of status or authority as a director to seek or obtain a benefit for him or her or any other person;
- (l) conviction in Samoa or elsewhere of an offence punishable by death or imprisonment for a term of two (2) years or more;
- (m) conviction of an offence relating to director's duties;
- (n) departure from Samoa permanently.

(4) The office of a director becomes vacant on the resignation, removal or death of the director.

(5) A director whose appointment has expired continues in office until re-appointed (subject to section 6(7)) or a successor is appointed.

8. Chairperson and meetings of the Board-(1) The Cabinet must appoint from amongst the directors a Chairperson and a Deputy Chairperson of the Board.

(2) The Chairperson must:

- (a) convene meetings of the Board; and
- (b) convene a meeting if at least two (2) directors have made a written request to the General Manager.

(3) The Board must meet at least 10 times in a financial year.

(4) At a meeting of the Board:

- (a) the Chairperson, or if absent, the Deputy Chairperson, or if both are absent, a director elected by the directors present, is to preside (“chair”); and
- (b) the quorum is five (5) directors; and
- (c) a question is to be determined by a majority of directors present; and
- (d) the chair has a deliberative vote and a casting vote.

(5) The Board may invite any person (including a member of an allied health profession which is not represented on the Board) to attend and participate in the Board’s deliberations, but the person has no right to vote on any matter before it.

(6) The General Manager must attend and participate in the deliberations of any Board meeting (but has no voting rights) unless the Board requires the General Manager to be absent from a meeting:

- (a) to perform a designated task on behalf of the Service; or
- (b) whilst the Board considers any matter concerning the General Manager’s performance in office.

(7) The General Manager must appoint an officer of the Service (other than a director) to act as secretary of the Board, but the secretary:

- (a) may participate in a matter before the Board if authorised by the Board; and
- (b) has no right to vote on any deliberation of the Board.

(8) The Board may regulate its own procedures, subject to this Act.

9. Minutes and remuneration-(1) The Secretary must keep minutes of all resolutions passed at any meeting of the Board.

(2) The minutes of a meeting must be approved by the Board at its next meeting and signed by the chair of that next meeting.

(3) A copy of the minutes of each meeting must be provided to all directors.

(4) The directors are entitled to fees and allowances determined by Cabinet.

10. Disclosure of conflict of interest-(1) A director who has any direct or indirect interests in any matter relating to the Service or before the Board must disclose the interest to the Board.

(2) The Secretary must record any interest disclosed in the minutes of the meeting, and the director must not take part after the disclosure in any deliberations or decisions relating to such matter, without affecting the quorum for that meeting.

(3) A director who, knowingly, makes or takes part or attempts to take part, in the making of a decision where the director has a direct or indirect interest which conflicts with the interests of the Service, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

(4) A director convicted under this section is taken from the date of conviction to have vacated his or her office as a director of the Board and of the Board of any other public body.

11. Ministerial directions-(1) Following consultation by the Minister with the Board and the Director-General of Health, the Minister may, with the approval of Cabinet, issue the following written general directions to the Service and the Board:

- (a) government policy, objectives, priorities and requirements as to the development, provision and management of the healthcare services, institutions and bodies listed in the Schedule;

- (b) requirements as to the Service, Board, General Manager and staff and contractors of the Service cooperating with, assisting and supporting the Government, Minister, the Ministry, other ministries, statutory bodies, government agencies and persons in undertaking their functions and duties under this Act, the Ministry of Health Act 2006 and any other law.
- (2) The Minister's direction does not include the following:
- (a) the appointment, promotion, suspension, demotion, transfer, discipline or dismissal of any staff of the Service;
 - (b) the engagement of or dealings with any contractor engaged by or on behalf of the Service.
- (3) The Service and the Board must comply with the Minister's direction.
- (4) If the Service and the Board, without reasonable excuse, fails or refuses within a reasonable time to comply with a Minister's direction, the Minister may, after advising the Board, give written directive to the General Manager to comply with the Minister's direction.
- (5) The General Manager must forthwith comply with the Minister's directions.
- (6) If the General Manager fails, without reasonable excuse, to comply within a reasonable time with the Minister's directions as directed under subsection (4), the failure is treated a serious misconduct by the General Manager under his or her contract of employment.

PART III **MANAGEMENT AND FINANCE**

- 12. General Manager and staff-**(1) The Service must have a General Manager who:
- (a) is to be the administrative head of the Service; and
 - (b) is responsible and accountable to the Board for the day-to-day management, control and direction of the Service and the staff and any consultant or person engaged under subsection (5); and

(c) is responsible for carrying out the functions, duties and powers of the Service, without affecting those given to the Board.

(2) The Head of State may, acting on the advice of Cabinet, appoint a suitably qualified person as General Manager, subject to terms and conditions approved by Cabinet.

(3) The General Manager:

(a) may be appointed for up to three (3) years; and

(b) is entitled to remuneration, other allowances and expenses approved by Cabinet, and payable out of the funds of the Service; and

(c) is eligible for reappointment.

(4) The Cabinet may suspend or remove the General Manager, if the General Manager fails to comply with any of the following:

(a) the terms and conditions of appointment or employment contract;

(b) his or her functions and duties under this Act;

(c) any Minister's or Board's direction given to the General Manager.

(5) The General Manager may:

(a) with the approval of the Board, appoint and employ officers, consultants and advisors of the Service; and

(b) appoint and employ other employees of the Service,

at such remuneration and on terms and conditions, as the General Manager determines are necessary for the purpose of this Act.

(6) In this section:

“appoint” includes to confirm, promote, demote, transfer, discipline, suspend, or dismiss an officer or employee or to vary terms of appointment or employment contract;

“officers” means contracted officers, and includes persons holding substantive senior positions other than those holding substantive positions as other employees.

13. Management of healthcare services-(1) Subject to this Act, the Board may determine:

- (a) the structure, management and operational arrangements of the healthcare services, institutions and bodies listed in the Schedule; and
- (b) the relationship between the healthcare services, institutions and bodies listed in the Schedule and any other ministry, statutory body, government agency, private sector body, community sector body, or organisation,

so as to perform the functions, duties and powers of the Service under this Act or any other Act.

(2) When exercising powers under this section, the Board must take into account any views provided by the Director-General of Health.

14. Delegations-(1) The Board or the General Manager may delegate (“delegation”) in writing to a person the Board’s or General Manager’s functions, duties or powers under this Act, other than the power under this section.

- (2) The Board or the General Manager may:
- (a) make the delegation subject to conditions; and
 - (b) vary, suspend or revoke the delegation; and
 - (c) carry out the functions, duties or powers despite the delegation.

15. Personal health information-(1) The Service shall ensure that any personal health information of a person in its possession or control is not used by or disclosed to another person except with the consent of the person.

(2) In this section, “personal health information” means confidential information identifying a person about any of the following:

- (a) physical or mental health of the person, including information about the medical history of the person’s family;
- (b) any health service provided to the person;
- (c) any other prescribed health or personal information about the person.

(3) Subsection (1) does not apply to disclosure of personal health information to any of the following:

- (a) to a staff member of the Service when providing health services to the person;
- (b) a person under an order of a court;
- (c) to a police officer or other enforcement agency in relation to an offence;
- (d) to a person as required by an Act or other law.

(4) Regulations may be made under section 25 to provide for any other matter for the purposes of this section.

(5) A person who discloses personal health information without the consent of the person commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

16. Funds of the Service - The funds of the Service comprise:

- (a) any money for the purposes of the Service appropriated by Parliament; and
- (b) any money payable, donated, given or contributed to the Service; and
- (c) any money received by the Service by way of fees or charges for carrying out its functions; and
- (d) any other money belonging to the Service.

17. Accounts and audit-(1) In this Part:

“Auditor” means the Controller and Chief Auditor, and includes an auditor authorised under section 18(1);

“Auditor’s report” means a report prepared under subsection (3).

(2) The Service must:

- (a) keep full and proper accounts and other records of its operations at all times; and
- (b) prepare financial statements as are necessary to fully and accurately show the financial position of the Service and the financial results of its operations during that year, as soon as reasonably practicable after the end of each financial year; and
- (c) prepare reports on its operations in a financial year.

(3) The Auditor must audit the accounts of the Service each year and prepare an Auditor’s report on it.

(4) The Service must submit to the Minister, within four (4) months after the end of each financial year:

(a) its annual report, including a copy of its audited Accounts, for that year; and

(b) the Auditor's report.

(5) The Minister must deliver the reports received by him under subsection (4) to the Legislative Assembly forthwith if it is in sitting, and if not, at the commencement of the next ensuing sitting.

(6) Without limiting the Public Finance Management Act 2001, the General Manager and the chief financial officer of the Service must sign all accounts kept or prepared under this section, and must certify that:

(a) proper books of account have been maintained by the Service; and

(b) the accounts accurately reflect the financial affairs of the Service, and the accounts maintained by the Service; and

(c) adequate procedures of internal control have been applied by the management of the Service.

(7) The Chairperson and one other director must sign the annual reports prepared under this section.

18. Powers of the Auditor-(1) Without limiting the powers under the Audit Office Ordinance 1961, the Auditor has the following powers:

(a) to have full and free access to all accounts, papers, records and other documents relating to the activities of the Service;

(b) to take copies of such materials, or to require copies to be provided;

(c) to require and receive any information or materials from any person, for the purpose of carrying out the duties under section 17;

(d) to authorise in writing an auditor to carry out an audit for the purpose of this Act.

(2) A person commits an offence if the person hinders or obstructs the Auditor when carrying out any Auditor's duty or power under this Act, and on conviction is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding three (3) months, or both.

PART IV
MISCELLANEOUS

19. Fees and charges-(1) Subject to Part VI of the Public Finance Management Act 2001 and section 19 of the Ministry of Health Act 2006, the Minister may, acting on the advice of the Board and with the approval of Cabinet, by notice:

- (a) determine fees and charges for the purposes of this Act; and
- (b) provide for the time and manner of payment of any fee or charge.

(2) The notice of fees and charges is to be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

(3) The fees and charges are non-refundable unless approved by the Minister, acting on the advice of the Board and with the approval of Cabinet.

(4) A refund of fees or charges under this Act may be made without further appropriation than this section and is a statutory expenditure payable out of the Treasury Fund.

20. Evidence by certificate-(1) The General Manager or any officer of the Service authorised in writing by the General Manager, may provide a certificate (“certificate”) stating any matter known to the Service, or in any record or register of the Service.

(2) The certificate:

- (a) is admissible as evidence of the matters stated in the certificate unless the contrary is proved; and
- (b) may be produced to a court or other person by a staff on the Service.

(3) The court or other person may require the person who signs the certificate or a staff to appear in person for the purpose of examination.

(4) The Board may approve a fee to be paid on providing the certificate.

21. Validity of acts - An action or decision of the Minister, Board, General Manager, or a staff acting under the authority of the Minister, the Board, or the General Manager under this Act, is taken to be validly done or made

even if the appointment of the Minister, a director, the General Manager or a staff has a defect, irregularity or error or has expired.

22. Protection from liability-(1) This section applies to the following persons:

- (a) the Head of State;
- (b) the Minister;
- (c) a director;
- (e) the Director-General;
- (f) the General Manager;
- (g) the staff of the Service;
- (h) any other person authorised to carry out any function, duty or power under this Act.

(2) A person listed in subsection (1) is not personally liable for carrying out or failing to carry out in good faith a function, duty or power under this Act.

23. Guidelines - Subject to this Act and for the purposes of achieving the functions, duties and powers under this Act, the Ministry of Health Act 2006 or any other Act, the Board may, with the approval of the Minister, make guidelines providing for the management and operation of healthcare services and patients, including the following:

- (a) the admission, discharge and treatment arrangements for patients;
- (b) the admission of visitors;
- (c) the provision of quality control and consumer complaint systems.

24. Amendment of the Schedule - The Minister may, on the advice of the Board, and with the approval of Cabinet, amend the Schedule by notice in the Savali.

25. Regulations - The Head of State may, acting on the advice of Cabinet, make regulations to give effect to the provisions or for the purposes of this Act, in particular to make the following regulations:

- (a) to regulate persons eligible to access health services for the purposes of this Act;

- (b) to provide for persons including non-residents liable to or to be exempted from fees and charges for health services provided by the Service;
- (c) to provide for the functions, duties or powers of staff or persons contracted to carry out the functions, duties and powers of the Service under this Act or any other Act;
- (d) to provide for the contents, forms and other matters relating to any report, information or advice required under this Act;
- (e) any matters required to be prescribed under this Act.

26. Operational arrangements with the Ministry - If reference is made in this Act or other any Act to any of the following:

- (a) the former Department of Health;
- (b) the Ministry;
- (c) the Service;
- (d) any healthcare service, institution or body listed in the Schedule,

the Minister may, in consultation with the Board or the Director-General of Health, designate in writing the Ministry or the Service, or both, to exercise or not exercise any function, duty or power under this Act or any other Act or to provide or not to provide any service referred to in this Act or any other Act.

27. Repeal and transitional-(1) The National Health Service Act 2006 is repealed (“repealed Act”).

(2) At the commencement of this Act:

- (a) regulations made under the repealed Act continue until they are repealed or replaced by regulations made under this Act; and
- (b) the current members of the National Health Service Board of Management, (other than the Chief Executive Officer of the Ministry), appointed under the repealed Act continue as if they were appointed directors of the Board established under this Act until they are replaced or re-appointed under this Act; and

- (c) the current General Manager and staff of the Service appointed and any other person engaged under the repealed Act continue as if they were appointed as such under this Act; and
 - (d) all contracts or arrangements made by or on behalf of the Service under the repealed Act continue as if they were made under this Act; and
 - (e) all assets and liabilities of the National Health Service under the repealed Act are transferred to and vested in the Service continued under this Act as a body corporate;
 - (f) any regulation made under the Ministry of Health Act 2006 in relation to matters referred to in section 25(d) of this Act continues to apply to the Service until regulations are made under section 25(d) of this Act.
- (3) The Head of State may, acting on the advice of Cabinet, make regulations within two (2) years from the commencement of this Act to deal with any other transitional or saving matters.

28. Consequential amendment - For section 19 of the Ministry of Health Act 2006, after subsection (3) insert:

“(4) Fees and charges determined under this section do not apply to fees and charges for goods, services or other matters provided by the National Health Service under the National Health Service Act 2014.”.

SCHEDULE
(Sections 3, 5, 11, 13 and 24)

**LIST OF HEALTH SERVICES, INSTITUTIONS
AND BODIES FOR WHICH THE SERVICE
IS RESPONSIBLE**

1. Tupua Tamasese Meaole Hospital
2. Malietoa Tanumafili II Hospital
3. Lalomanu District Hospital
4. Poutasi District Hospital
5. Leulumoega District Hospital
6. Safotu District Hospital
7. Sataua District Hospital
8. Foailalo District Hospital
9. Lufilufi Community Health Centre
10. Saanapu Community Health Centre
11. Fusi Community Health Centre
12. Lefaga Community Health Centre
13. Afega Community Health Centre
14. Fagamalo Community Health Centre
15. Faleolo Community Health Centre
16. Laboratory Services
17. Oral Health Services
18. Pharmacy Services
19. Medical Imaging Services
20. Clinical Services
21. Nursing & Integrated Community Health Services
22. Clinical Audit

23. Overseas Treatment Programme

Corporate Support Services for the National Health Service: Human Resources, Finance, Audit, Administration, Programs Management, Information Systems

**The National Health Service Act 2014
is administered by the Ministry of Health.**

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