CAYMAN ISLANDS

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A BILL FOR A LAW TO AMEND THE HEALTH SERVICES AUTHORITY LAW (2005 REVISION) TO CHANGE THE COMPOSITION OF THE BOARD OF DIRECTORS OF THE CAYMAN ISLANDS HEALTH SERVICES AUTHORITY; TO ESTABLISH A FUND-RAISING AGENCY FOR THE AUTHORITY; AND FOR INCIDENTAL AND CONNECTED PURPOSES

THE HEALTH SERVICES AUTHORITY (AMENDMENT) BILL, 2009

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Health Services Authority Law (2005 Revision) among other things, to establish a fund-raising agency for the Health Services Authority.

Clause 1 provides the short title of the legislation.

Clause 2 inserts new definitions into the principal Law.

Clause 3 inserts into the principal Law a new section 6A thereby establishing the Cayman Islands Health Foundation as an agency to provide -

(a) funds for health care facilities and programmes; and
(b) funds for the continuing operational funding requirements of the Authority.

The Foundation will be managed and administered by the Cayman Islands Health Foundation Committee which is also established by clause 3.

Clause 4 of the Bill amends section 8 of the principal Law to vary the composition of the Board of directors of the Authority.

Clause 5 amends section 9 of the principal Law to vary the quorum of the Board.

Clauses 6 and 7 contain immunity and indemnity provisions, in relation to Health Foundation Committee members.

Clause 8 amends section 17 of the principal Law so that, in cases where an increase of fees is disallowed by the Governor in Cabinet, an amount equal to the disallowed increase may be a charge on the revenue of the Islands, subject to the appropriation by the Legislative Assembly of the requisite funds.

Clauses 9 and 10 of the Bill amend sections 24 and 25 of the principal Law to require the written permission of the Chief Executive Officer before the medical records of a patient are accessed in an audit.

Clause 11 amends section 35 to empower the Foundation to make rules to regulate its internal management.

Clause 12 inserts into the principal Law a new Seventh Schedule which contains provisions relating to -

(a) the Health Foundation (for example, providing that the Foundation shall be a body corporate capable of suing in its name); and

(b) the Health Foundation Committee (for example, providing that Committee members shall be paid such reasonable expenses as the Foundation may approve).

Clause 13 contains savings and transitional provisions.

THE HEALTH SERVICES AUTHORITY (AMENDMENT) BILL, 2009

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Health Services Authority Law (2005 Revision) - definitions
3. Insertion of section 6A - establishment of the Cayman Islands Health Foundation and the Cayman Islands Health Foundation Committee
4. Amendment of section 8 - constitution of Board of Authority
5. Amendment of section 9 - meetings of Board
6. Amendment of section 12 - immunity
7. Amendment of section 13 – indemnity
8. Amendment of section 17 – fees
9. Amendment of section 24 - audit of accounts
10. Amendment of section 25 - powers of Director of Internal Audit Department
11. Amendment of section 35 – rules
12. Insertion of Seventh Schedule - the Cayman Islands Health Foundation and the Cayman Islands Health Foundation Committee
13. Savings and transitional provisions

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A BILL FOR A LAW TO AMEND THE HEALTH SERVICES AUTHORITY LAW (2005 REVISION) TO CHANGE THE COMPOSITION OF THE BOARD OF DIRECTORS OF THE CAYMAN ISLANDS HEALTH SERVICES AUTHORITY; TO ESTABLISH A FUND-RAISING AGENCY FOR THE AUTHORITY; AND FOR INCIDENTAL AND CONNECTED PURPOSES

Enacted by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Health Services Authority (Amendment) Law, 2009.

Amendment of section 2 of the Health Services Authority Law (2005 Revision) - definitions

2. The Health Services Authority Law (2005 Revision), in this Law referred to as the "principal Law", is amended in section 2 by inserting, in the appropriate alphabetical sequence, the following definitions -

" "Committee" means the Cayman Islands Health Foundation Committee established under section 6A(2);

"Committee member" means a member of the Committee appointed under section 6A(3); and

"Foundation" means the Cayman Islands Health Foundation established under section 6A(1);".

Insertion of section 6A - establishment of the Cayman Islands Health Foundation and the Cayman Islands Health Foundation Committee

3. The principal Law is amended by inserting after section 6 the following section -

"Establishment of the Cayman Islands Health Foundation and the Cayman Islands Health Foundation Committee

6A. (1) Without prejudice to section 6, there is established the Cayman Islands Health Foundation for the purpose of providing -

(a) funds for health care facilities and programmes; and
(b) funds for the continuing operational funding requirements of the Authority.

(2) There is established the Cayman Islands Health Foundation Committee which shall -

(a) be responsible for the day to day management and administration of the Foundation;
(b) regularly review the functioning of the Foundation and be accountable for same to the Ministry responsible for health; and
(c) file with the Ministry responsible for health, not later than 30th September in each year, a report of the Foundation's activities, including financial statements and an auditor's report.

(3) The Committee shall consist of seven members appointed by the Governor in Cabinet, but no person shall be a member of the Committee if he is -

(a) a director;
(b) the holder of an office in the Ministry responsible for health; or
(b) an employee of the Authority.

(4) A report filed under subsection (2)(c) shall be tabled in the Legislative Assembly at its next meeting after the filing of the report.

Seventh Schedule

(5) The Foundation and the Committee have the powers and duties respectively conferred or imposed upon them by this Law and any other law and, without prejudice to the generality of the foregoing, the Seventh Schedule has effect with respect to the Foundation and the Committee.".

Amendment of section 8 - constitution of Board of Authority

4. The principal Law is amended in section 8 as follows -

(a) by repealing subsections (4) and (5) and substituting the following subsections -

" (4) The Board shall consist of seven directors appointed by the Governor in Cabinet, and -

(a) all of the directors shall be persons of honesty, integrity and good reputation, who have skills in management, motivation, organisation or negotiation; and
(b) six of the directors shall have demonstrated to the satisfaction of the Governor in Cabinet substantial knowledge and experience in one or more of the following areas -
(i) finance;
(ii) human resources;
(iii) law;
(iv) information technology; and
(v) other related fields.

(5) A person appointed under subsection (4) shall hold office for a term of not more than three years and shall be eligible for re-appointment; but a person shall not be a director if he is -

(a) the holder of an office in the Ministry responsible for health; or
(b) an employee of the Authority.";

(b) in subsection (10), by inserting after paragraph (e) the following paragraph -

"(ea) receives remuneration -

(i) in respect of his employment in a health care facility or any other area in the field of health care; or
(ii) as a consequence of his direct or indirect pecuniary interest in a health care facility or any other area in the field of health care,

if the remuneration exceeds ten per centum of his annual income;"; and

(c) by inserting after subsection (11) the following subsection -

" (12) For the purposes of subsection (10)(ea)(ii), a director shall be treated as having an indirect pecuniary interest in a matter if -

(a) he, or any nominee of his, is a member of a company or other body which has a direct or indirect pecuniary interest in the matter;
(b) he is a partner, or in the employment, of a person who has a direct or indirect pecuniary interest in the matter; or
(c) he, or any partner of his, is a professional adviser to a person who has a direct or indirect pecuniary interest in the matter;

but the foregoing provisions of this subsection do not apply to membership of, or employment by, any public body.".

Amendment of section 9 - meetings of Board

5. The principal Law is amended in section 9 by repealing subsection (5) and substituting the following subsection -

" (5) The quorum of the Board shall be four directors including the director presiding at the relevant meeting.".

Amendment of section 12 - immunity

6. The principal Law is amended in section 12 by inserting after the words "of the Authority," the words "nor any Committee member,".

Amendment of section 13 - indemnity

7. The principal Law is amended in section 13 -

(a) by inserting after the words "a director" the words "or a Committee member"; and
(b) by inserting after the words "that director" wherever they appear the words "or Committee member".

Amendment of section 17 - fees

8. The principal Law is amended in section 17 by repealing subsection (1) and substituting the following subsection -

" (1) The Board shall from time to time, after consultation with the Authority, determine the fees to be charged for the services provided by the Authority and submit the fees so determined to the Minister who shall, not more than sixty days after the submission -

(a) require the Authority to verify the validity and reliability of the calculations that are the basis of the Board's determination; and
(b) submit the fees so determined to the Governor in Cabinet;

and the fees so determined shall become effective thirty days after their submission to the Governor in Cabinet unless disallowed by the Governor in Cabinet and, where an increase of fees is disallowed, an amount equivalent to the disallowed increase may be defrayed out of the general revenue of the Islands, subject to the appropriation by the Legislative Assembly of the requisite funds.".

Amendment of section 24 - audit of accounts

9. The principal Law is amended in section 24 by inserting after subsection (2) the following subsection -

" (3) Notwithstanding subsections (1) and (2), the Auditor General shall not access or copy the medical records of a patient of a health care facility (whether an in-patient or an out-patient) without the written permission of the Chief Executive Officer.".

Amendment of section 25 - powers of Director of Internal Audit Department

10. The principal Law is amended in section 25 as follows -

(a) by deleting the word "Department" wherever it appears in the marginal note and in the section and substituting the word "Unit"; and

(b) by inserting after subsection (2) the following subsection -

" (3) Notwithstanding subsections (1) and (2), the Director of the Internal Audit Unit shall not access or copy the medical records of a patient of a health care facility (whether an in-patient or an out-patient) without the written permission of the Chief Executive Officer.".

Amendment of section 35 - rules

11. The principal Law is amended in section 35 as follows -

(a) by re-numbering the section as section 35(1); and

(b) by inserting after section 35(1) as re-numbered, the following subsection -

" (2) The Foundation may, subject to this Law, make such rules as it thinks fit to regulate its own internal management.".

Insertion of Seventh Schedule - the Cayman Islands Health Foundation and the Cayman Islands Health Foundation Committee

12. The principal Law is amended by inserting after the Sixth Schedule the following schedule -

"**SEVENTH SCHEDULE**

section 6A(4)

THE CAYMAN ISLANDS HEALTH FOUNDATION AND THE CAYMAN ISLANDS HEALTH FOUNDATION COMMITTEE

1. (1) The Foundation shall be a body corporate having perpetual succession and a common seal and, subject to this Law, shall have power to receive gifts and to buy, sell, hold, deal and otherwise acquire and dispose of land and other property of any kind and to enter into contracts and to do all things necessary or desirable for the purposes of its duties and functions.

(2) The Foundation may sue and be sued in its corporate name and it shall have exclusive right to use the name "the Cayman Islands Health Foundation".

(3) The Foundation shall establish and maintain its head office and principal place of business within the Islands, and shall cause details thereof to be gazetted, and service of all documents on the Foundation shall be deemed to be effective if delivered at the head office.

2. (1) The seal of the Foundation shall be authenticated by the chairman and one other Committee member authorised to act in that behalf and shall be judicially noticed.

(2) The Committee may, by resolution, appoint a Committee member or any other agent either generally or in a particular case to execute or sign on behalf of the Foundation any agreement or other instrument not under seal in relation to any matter coming within the powers of the Foundation or the Committee.

3. (1) A person appointed as a Committee member shall hold office for a term of not more than three years and shall be eligible for re-appointment.

(2) There shall be a chairman and a deputy chairman of the Committee, each of whom shall be appointed by the Governor in Cabinet from among the members of the Committee.

(3) The Committee shall appoint a person, not being a Committee member, to be the secretary of the Committee, who shall be present at all meetings and shall take minutes of the business transacted.

(4) The Committee shall be deemed to be properly constituted notwithstanding that there is a vacancy in the office of chairman, deputy chairman or any other Committee member.

(5) Committee members shall serve without remuneration and no Committee member shall directly or indirectly receive any profit from his position as such, but a Committee member may be paid reasonable expenses incurred by him in the performance of his duties, subject to the approval of the Foundation.

(6) The chairman of the Committee, in consultation with the Minister, shall terminate the appointment of any Committee member who -

(a) resigns his office;
(b) becomes of unsound mind or incapable of carrying out his duties;
(c) becomes bankrupt or suspends payment to or compounds with his creditors;
(d) is convicted in the Islands or elsewhere of any offence involving dishonesty or fraud;
(e) is guilty of serious misconduct in relation to his duties; or
(f) is absent without leave of the chairman of the Committee from three consecutive Committee meetings.

(7) Where the appointment of a Committee member is terminated under subparagraph (6), the Minister shall, as soon as practicable, notify the Governor in Cabinet of the termination and the reasons for the termination.

(8) If any Committee member dies, resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person may be appointed by the Governor in Cabinet for the unexpired period of the term of office of the member in whose place he is appointed.

4. (1) The chairman of the Committee shall -

(a) preside at all meetings of the Committee;
(b) be an ex officio member of all committees of the Authority;
(c) report to the Ministry responsible for health on the activities of the Foundation;
(d) represent the Foundation at public or official functions, and

(e) perform such other duties as may from time to time be determined by the Board.

(2) The deputy chairman of the Committee shall have all the powers and perform all the duties of the chairman in the absence or disability of the chairman, together with such other duties which may be assigned by the Board.

5. Section 9 of this Law shall, with all necessary changes, apply to meetings of the Committee as if -

(a) references to the Board were references to the Committee;
(b) references to the chairman of the Board were references to the chairman of the Committee;
(c) references to the deputy chairman of the Board were references to the deputy chairman of the Committee; and
(d) references to a director were references to a Committee member.".

Savings and transitional provisions

13. (1) Every matter commenced under the former Law and partly dealt with by the Board when the new Law comes into force, is to be continued and dealt with in all respects as if the new Law had not come into force.

(2) Every matter commenced under the former Law and not wholly or partly dealt with by the Board when the new Law comes into force, is to be taken to be a matter commenced under the new Law and the provisions of the new Law are to apply accordingly.

(3) In this section -

"Board" means the Board of directors of the Authority established under section 8 of the former Law;

"former Law" means the principal Law in force immediately before the date of commencement of this Law; and

"new Law" means the principal Law as amended by this Law.

Passed by the Legislative Assembly the day of , 2009.

Speaker.

Clerk of the Legislative Assembly.