

**RESIDENTIAL CARE HOMES AND NURSING HOMES ACT
1999**



**BERMUDA
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**RESIDENTIAL CARE HOMES AND NURSING HOMES ACT
1999**

[Date of Assent 23 August 1999]

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CORONERS AMENDMENT ACT 1999

SCHEDULE

WHEREAS it is expedient to make provision for residential care homes and nursing homes and connected matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Citation

1 This Act may be cited as the Residential Care Homes and Nursing Homes Act 1999.

Interpretation

2 In this Act, unless the context otherwise requires:

"application" means an application for registration under section 7(1) and "applicant" shall be construed accordingly;

"certificate" means a registration certificate issued by the Chief Medical Officer under section 13;

"Chief Medical Officer" has the meaning assigned to that expression under section 2(1) of the Public Health Act 1949;

"disabled person" means a person who is substantially impaired in seeing, hearing, speaking, breathing, moving, learning or working;

(a) by reason of injury or disease, whether permanent or otherwise; or

(b) by reason of some congenital cause;

"home" means a residential care home or a nursing home other than a hospital maintained or controlled by any public authority;

"inspector" means an inspector appointed by the Minister pursuant to section 20;

"Minister" means the Minister responsible for health;

"nursing home" means a residential care home which provides nursing services;

"nursing services" include services provided by general nurses, nurse specialists and nursing associates within the meaning assigned to those expressions by section 2 of the Nursing Act 1997;

"owner" includes:

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(a) a person to whom a certificate has been issued under this Act; and

(b) the manager, nurse administrator or other person responsible for a home;

"prescribed" means prescribed by Regulations under this Act;

"Register" means the Register established and maintained under section 5;

"Regulations" means Regulations made under section 23;

"residential care home" means any establishment where board and personal care are provided for two or more unconnected persons who are:

(a) 65 years of age or older;

(b) disabled; or

(c) 65 years of age or older and disabled;

"unconnected person" means a person who is not connected, by blood or otherwise, with a person who operates a residential care home.

Registration of homes

3 (1) Subject to section 4, a person shall not operate a home without first registering that home under this Act.

(2) A person who operates a home in contravention of subsection (1) commits an offence and is liable on conviction by a court of summary jurisdiction to a fine not exceeding \$2,500.

(3) Where the offence is continued by that person after conviction that person commits a further offence and is liable to a fine not exceeding \$250 for each day during which the offence continues or a term of imprisonment not exceeding 6 months or both such fine and term of imprisonment.

Exemptions

4 (1) Where the Minister, in the special circumstances of a particular case, considers it appropriate so to do, he may authorise the Chief Medical Officer to exempt a home from all or any of the provisions of this Act.

(2) An authorisation under subsection (1) shall be in writing.

Register

5 (1) The Chief Medical Officer shall establish and maintain in such manner as he considers appropriate a register of homes and shall

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make the register available to the public for inspection during ordinary business hours.

(2) A list of the homes registered under this Act shall be gazetted annually by the Chief Medical Officer.

Removal from and restoration to Register

6 Subject to sections 15 and 16, the Chief Medical Officer may:

- (a) remove the name of a home from the Register; and
- (b) restore to the Register a name which has been removed.

Application for registration

7 (1) A person who wishes to operate a home may make an application to the Chief Medical Officer for the registration of that home under this Act.

(2) An application under subsection (1) shall be in the prescribed form and shall contain such additional information in relation to the operation of the home as the Chief Medical Officer may require.

Advertisement of application, objections

8 (1) Where the Chief Medical Officer receives an application for registration he shall publish in the Gazette a notice in accordance with subsection (2).

(2) A notice under subsection (1) shall specify:

- (a) the name of the applicant;
- (b) the proposed name of the home;
- (c) the address of the proposed home;
- (d) the proposed number of residents;
- (e) that a person who objects to the registration of that home may object in writing to the Chief Medical Officer within 7 days of the date of publication of the notice.

(3) An objection under subsection (2)(e) shall specify the grounds on which it is made.

(4) The Chief Medical Officer shall take any objections made under subsection (2)(e) into account in making a decision under section 9(1).

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Consideration of applications

9 (1) Subject to subsection (2), the Chief Medical Officer may approve, refuse to approve, or approve subject to conditions, an application.

(2) Where the Chief Medical Officer is satisfied that:

- (a) the applicant is a fit and proper person to operate a home;
- (b) the building proposed to be used is fit for use as such a home;
- (c) the applicant is able to provide the facilities, equipment and staff to operate such a home; and
- (d) either there are no objections to the proposed registration, or any objections have been dealt with in accordance with section 8(4),

he shall register the home.

Conditions

10 The Chief Medical Officer may attach such conditions as he considers appropriate to the registration of a home and such conditions, if any, shall be specified in the certificate.

Information to applicant

11 (1) A decision on an application shall be made not later than 28 days after receipt of an application.

(2) Not later than 7 days after making a decision on an application, the Chief Medical Officer shall inform the applicant, in writing, of the decision.

Reasons for refusal

12 The Chief Medical Officer shall, in writing, give to an applicant reasons for a refusal of registration.

Registration certificate

13 Where, pursuant to section 7(1), the Chief Medical Officer registers a home, he shall issue to the applicant a certificate which shall be in such form as the Chief Medical Officer may from time to time determine.

Duration and fees

14 (1) A certificate shall be issued for a period of one year and may be renewed.

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(2) An applicant shall, for the period beginning on the day on which his certificate is issued or renewed and ending on 31 March next following, pay such fee as may from time to time be prescribed under the Government Fees Act 1965.

Cancellation of registration or variation of conditions

15 (1) Subject to subsections (2), (3) and (4), and section 16 the Chief Medical Officer may:

- (a) cancel the registration of a home; or
- (b) vary any conditions attached to the registration of a home.

(2) Where the Chief Medical Officer proposes to exercise a power under subsection (1) he shall:

- (a) in writing, inform the owner of the home of the proposal and the reasons for it;
- (b) give the owner an opportunity to make representations, whether orally or in writing; and
- (c) take into account any representations made under paragraph (b) before a decision is made.

(3) Where the Chief Medical Officer decides to cancel the registration of a home or vary a condition attached to the registration, he shall:

- (a) set out the decision in writing and state the reasons for the decision;
- (b) serve a copy of the decision on the owner.

(4) Subject to section 18, the cancellation of registration or the variation of conditions attached thereto has effect on the expiration of 3 months beginning on the date of service of the decision on the owner.

Cancellation in urgent circumstances

16 (1) Notwithstanding section 15, the Chief Medical Officer may, where it appears to him that there is a serious risk to the life, health or well-being of the residents in a home, make an application to a Magistrate for an order:

- (a) cancelling the registration of the home;
- (b) varying any condition for the time being in force in respect of the home; or

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(c) imposing conditions, or additional conditions, as the case may be.

(2) On an application under subsection (1), the Magistrate may, where he is satisfied that there is a risk referred to in subsection (1), make the order and the order takes effect from the date on which it is made.

(3) An application under subsection (1) may be made *ex parte* and shall be supported by a written statement of the reasons for making the application.

(4) The Chief Medical Officer shall, as soon as is practicable after the making of the order:

- (a) serve notice of the making of the order and its terms on the owner of the home; and
- (b) serve on him a copy of the reasons which supported the application for the order.

Surrender of certificate

17 Where the Chief Medical Officer cancels the registration of a home under section 15 or a Magistrate makes an order cancelling the registration of a home under section 16, the owner of the home shall surrender his certificate to the Chief Medical Officer:

- (a) where section 15 applies, immediately on the expiration of the three-month period referred to in section 15(4); or
- (b) where section 16 applies, on the date on which an order is made under that section.

Appeals

18 (1) A person aggrieved by a decision of the Chief Medical Officer or a Magistrate under this Act may, within 28 days after the date on which notice of the decision is given or within such longer period as the Court may allow, appeal to the Supreme Court against that decision.

(2) On an appeal under this section the Supreme Court may make such order as it considers appropriate.

(3) An order under subsection (2) is final.

(4) The practice and procedure to be followed in relation to an appeal under this section are as prescribed by rules of court.

Administration

19 (1) An owner shall keep proper records relating to the operation of his home, in respect of such matters as may be prescribed by the Minister.

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(2) Subject to section 20(3), an owner shall make such records available to an inspector.

Inspectors

20 (1) The Minister may, in writing, authorise persons to act as inspectors of homes.

(2) Subject to subsections (3), (4), (5) and (6):

(a) an inspector may enter and inspect a home which is registered under this Act; and

(b) where an inspector has reasonable cause to believe that any premises are being used as a home in contravention of section 3(1), he may enter and inspect that home.

(3) On an inspection under subsection (2), an inspector may inspect records, other than medical records, relating to a patient in a home.

(4) An inspector shall:

(a) give an owner not less than 24 hours notice in writing of his intention to carry out an inspection;

(b) where he is asked to do so, produce the document authorising him to inspect the home.

(5) Notwithstanding subsections (3) and (4), where the Chief Medical Officer is satisfied that it is appropriate so to do—

(a) the Chief Medical officer or an inspector authorised by the Chief Medical Officer for the purpose may inspect medical records relating to a patient in a home; and

(b) an inspector may carry out an inspection of a home without giving the notice required by subsection (4)(a).

(6) Not later than 48 hours after an inspection the inspector shall make a report in writing to the Chief Medical Officer.

Obstruction an offence

21 A person who obstructs an inspector in the performance of his duties commits an offence and is liable, on conviction by a court of summary jurisdiction, to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or both such fine and term of imprisonment.

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Protection from liability

22 An inspector is not liable for any act done or omitted in good faith and in pursuance of the functions assigned to him under this Act or regulations made under this Act.

Regulations

23 (1) The Minister may make such regulations as are necessary to give effect to the provisions of this Act including regulations:

- (a) prescribing the qualification which must be attained by specified members of the staff of homes prior to being assigned to specified duties;
- (b) prescribing the form of any application, certificate, notice, record, report or other document required under this Act or the regulations; and
- (c) in relation to the establishment and maintenance of the Register.

(2) The negative resolution procedure applies to Regulations made under this Act.

Offences

24 The Minister may create offences in relation to the contravention of Regulations and prescribe penalties therefor.

Proceedings

25 (1) A proceeding for an offence in contravention of this Act or regulations made under this Act may be instituted by an inspector.

(2) The consent, in writing, of the Director of Public Prosecutions is required for prosecutions.

Act binds Crown

26 This Act binds the Crown.

Consequential amendments

27 The enactments set out in column 1 of the Schedule are amended in the manner specified in column 2 of that Schedule.

Savings and transitional

28 (1) Subject to subsection (2), any licence, certificate or permission, by whatever name called, which, in relation to any residential home is in force immediately before the date of coming into operation of this Act ("commencement date") has effect from the commencement date as if granted under this Act.

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(2) A person who, immediately before the commencement date, was operating a residential home or other such establishment to which this Act applies may continue to operate that home or establishment under this Act:

- (a) during the period of 6 months beginning next after the commencement date; and
- (b) if within that period application is made under section 7(1) for registration, until that application is finally disposed of or withdrawn.

Commencement

29 This Act comes into operation on a day appointed by the Minister by notice published in the Gazette.

SCHEDULE

(section 27)

Column 1

Column 2

Section 2 of the Bermuda Nursing Association Act 1957:

delete subsection (1)(b) and substitute:

"(b) establish and operate nursing homes under the Residential Care Homes and Nursing Homes Act 1999".

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- Section 1 of the Registration (Births and Deaths) Act 1949:
- (a) delete from the definition of "nursing home" the words "under the Public Health Act 1949;" and substitute the words "registered under the Residential Care Homes and Nursing Homes Act 1999;"
 - (b) insert next after the definition of "register" the following definition:
 - " "residential care home" means a residential care home registered under the Residential Care Homes and Nursing Homes Act 1999;"
- Section 6(2) of the Registration (Births and Deaths) Act 1949:
- insert next after the word "hospital" wherever they appear the words ", residential care home".
- Section 2 of the Immature Spirits Restriction Act 1921:
- insert next after the word "hospital" the words ", residential care home".
- Section 14 of the Spirits Act 1890:
- insert next after the word "hospital" the words ", residential care home".
- Section 103(1)(b) of the Public Health Act 1949:
- delete the words "nursing home".
- Section 161 of the Public Health Act 1949:
- (a) delete the definition of "nursing home"; and
 - (b) in the definition of "maternity home", insert next after the word "children" the words ", but does not include any hospital or other premises maintained or controlled by any authority or other body constituted by any Act".

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Section 162 of the Public Health Act 1949: (a) in the heading to the section, delete the words "nursing home" and substitute the words "maternity home"; and

(b) in subsection (1), delete the words "nursing home" wherever they appear and substitute therefor the words "maternity home".

Section 163 of the Public Health Act 1949: (a) in the heading to the section, delete the words "nursing homes" and substitute the words "maternity homes";

(b) in subsection (1), delete the words "nursing homes" and substitute the words "maternity homes";

(c) in subsection (2)(a):

(i) delete the words "nursing homes" and substitute the words "maternity homes";

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(ii) in subparagraph (i), delete the words "nursing home" and substitute the words "maternity home";

(iii) in subparagraph (ii), delete the words "nursing home" and substitute the words "maternity home";

(d) in subparagraph (2)(e), delete the words "nursing homes" and substitute the words "maternity homes"; and

(e) in subsections (3) and (4), delete the words "nursing home" wherever they appear and substitute the words "maternity home".

Section 164 of the Public Health Act 1949:

(a) in the heading to the section, delete the words "nursing homes" and substitute the words "maternity homes";

(b) delete the words "nursing home" wherever they appear in the section and substitute the words "maternity home".

Regulation 2 of the Census Regulations 1991:

delete from the definition of "institution" the words "home for the aged, the sick or destitute" and substitute the words "residential care home, a nursing home or a home for the destitute,".

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Regulation 1 of the Misuse of Drugs Regulations 1973:	(a) delete from the definition of "nursing home" the words "under the Public Health Act 1949 [<i>title 11 item 1</i>]" and substitute the words "under the Residential Care Homes and Nursing Homes Act 1999;" (b) insert next after the definition of "register" the following definition: " "residential care home" means a residential care home registered under the Residential Care Homes and Nursing Homes Act 1999;"
Regulation 7(3)(c) of the Misuse of Drugs Regulations 1973:	insert next after the word "hospital" the words ", residential care home".
Regulation 9(4)(b) of the Misuse of Drugs Regulations 1973:	insert next after the word "hospital" the words ", residential care home".
Regulation 10(2) of the Misuse of Drugs Regulations 1973:	insert next after the word "hospital" the words ", residential care home".
Regulation 13(4)(b) of the Misuse of Drugs Regulations 1973:	insert next after the word "hospital" the words ", residential care home".
The Schedule to the Government Fees Regulations 1976:	insert next after Head 49 the following new Head:

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"Head 49A

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Nursing Homes Act 1999

Issuing a registration
certificate under
section 13: \$75".