

Assam Health Establishments Act, 1993

18 of 1993

[24 December 1993]

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PREAMBLE

AN

ACT

to regulate the health establishment to provide better provision with respect to medical-health care of the people through these establishments and for matters connected therewith or incidental thereto.

Whereas it is expedient to regulate the health establishments to provide better provision with respect to medical-health care of the people through these establishments and for matters connected therewith or incidental thereto.

It is hereby enacted in the Forty-fourth Year of the Republic of India as follows:-

1. Short title, extent and commencement :-

(1) This Act may be called the Assam Health Establishments Act, 1993.

(2) It shall extend to the whole of the State of Assam.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires-

(a) "Clinical Laboratory" means an establishment where tests are carried out for biological, pathological, microbiological, biochemical, radiological or any other method analogous to any tests carried out for diagnosis of disease and health condition.

(b) "nursing home" or "hospital" or "Research Institute" means any premises or establishment used or intended to be used for the reception and admission of persons suffering from illness, injury or infirmity of body and providing of treatment and nursing for them and includes a maternity home or psychiatric care;

(c) "health establishment" means a nursing home a research-institute, a hospital, a maternity home, a physical therapy establishment, a clinical Laboratory, or an establishment analogous to any of them;

- (d) "Health Authority" means State Health Authority constituted under section 4;
- (c) "Licensing Authority" means State Health Authority or other Authority authorised by the State Government for issue of licence;
- (f) "Maternity Home" means an establishment or premises where women are usually received or accommodated or both for providing ante-natal or postnatal medical or health care services in connection with pregnancy and child birth;
- (g) "Physical therapy Establishment" means an establishment where physical therapy electro therapy, hydro therapy, remedial gymnastic, or similar work is usually carried on for the purpose of treatment of disease or infirmity for improvement of health or for the purpose of relaxation or for any other purpose whatsoever, whether or not analogous to the purpose here-in-before mentioned in this clause;
- (h) "Medical practitioner" means a person who possesses Medical Qualifications as prescribed in the Indian Medical Council Act, 1956 (Central Act 102 of 1956), Indian Medicine and Central Council Act, 1970 (Central Act, 48 of 1970) and the Homoeopathic Central Council Act, 1973 (Central Act, 59 of 1973) and who has been Registered as a medical practitioner in the Register as provided in the aforementioned Acts;
- (i) "midwife " means a midwife registered under the law for the time being in force, for the registration of midwife;
- (j) "nurse" means a nurse registered under any law for the time being in force, for the registration of nurse;
- (k) "rules" means rules made under this Act;
- (l) "prescribed" means prescribed by rules made under this Act;
- (m) "Government" means the Government of Assam.

3. Health establishment not to be established or maintained without registration and licence :-

No person shall establish or maintain a health establishment without being registered in respect thereof and except under and in accordance with the terms of a licence granted therefor.

4. Constitution of State Health Authority and its term :-

(1) The Government may, by notification, constitute an authority to be called the State Health Authority. The Health Authority shall be a body corporate having perpetual succession and common seal and may sue and be sued.

(2) The Health Authority shall consist of seven members including the Chairman and shall be constituted in the following manner: -

1. Secretary, Health and Family Welfare/Commissioner, Health and Family Welfare/Special Commissioner and Special Secretary, Health and Family Welfare- (whoever is senior most)- Chairman.

2. Director of Health Services- (DHS)- Member.

3. Director of Health Services, (DHS) (FW),-Member.

4. Director of Medical Education-Member.

5. Principal-Cum-Chief Superintendent of one of the Medical Colleges of Assam (by rotation) - Member.

6 . Two eminent medical professionals to be nominated by the Government-Members.

(3) The first Health Authority shall be constituted within six months from the date of this Act comes into force, and the names of the members shall be published in the Official Gazette and such Authority shall function for a period of three years.

(4) Term of subsequent Health Authority shall be three years from the date of its first meeting:

Provided that such subsequent Health Authority shall sit within forty-five days from the date of its constitution.

(5) The Government may, by notification, for sufficient reasons to be stated therein from time to time, extend the term of the Health Authority by such period not exceeding one year at a time, as may be specified in the notification:

Provided that the total period of such extension shall not exceed two years.

5. Maintenance of Register of health establishment :-

(1) The first Health Authority shall, as soon as may be after its constitution and not later than six months from the coming into force of this Act, make orders for maintenance of a Register for the health establishment.

(2) The Register referred to in sub-section (1) shall contain the names of all the health establishments and shall be published in the Official Gazette.

(3) The Register shall be maintained in such form as may be prescribed.

6. Appointment of Registrar and staff :-

The Government shall appoint a Registrar who shall be the Secretary to the Health Authority and also appoint the staff

necessary for carrying out the purposes of this Act.

7. Qualification, function, salary, duties and allowances of the Registrar and staff :-

The qualification, function, duties, salary and allowances and such other matters relating to the Registrar and the staff shall be such as may be prescribed from time to time.

8. Establishment and maintenance of health establishment :-

The Health Authority may, in any part of Assam within its jurisdiction, allow to establish or maintain health establishment for reception, admission, treatment and care of physically ill persons, pregnant woman and carry-out laboratory procedure for diagnosis of health and disease at such places as it thinks fit.

9. Application for registration and licence :-

(1) Every application for registration in respect of any health establishment and for the grant of a licence, therefor shall be made to Health Authority. The application shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(2) The Health Authority, if satisfied that the applicant and the health establishment fulfil conditions specified under Section 10 shall register the applicant in respect of such health establishment and shall grant him a licence therefor and the registration and the licence shall be valid for a period of:-

(a) 5 years in case of nursing home, Hospital, maternity home and Research Institute;

(b) 3 years in case of clinical laboratory, physiotherapy establishment.

(3) The Health Authority shall reject an application if it is satisfied that-

(a) the applicant or the health establishment does not fulfil the conditions specified under section 10;

(b) the real object of the applicant is to use or allow the health establishment to be used for immoral purposes;

(c) there is no adequate provisions for maintaining hygienic/sanitary condition to the detriment of the locality in which the health establishment is proposed to be established;

(d) in the case of a nursing home other than a maternity home that

such nursing home is not or will not be under the charge of a medical practitioner resident therein round the clock and that the nursing of persons received, admitted and accommodated therein is not or will not be under the superintendence of a nurse resident therein round the clock; or

(e) in the case of a maternity home that such maternity home is not or will not be under the charge of a medical practitioner resident therein round the clock and that the attendance on every woman before at, or after child-birth or on any child born is not or will not be under the superintendence of a midwife resident therein round the clock.

(4) Where the application is rejected under sub-section (3) the Health Authority shall record the reason for such rejection and no application shall be rejected unless the applicant has been given an opportunity of showing cause in support of his application.

10. Terms and conditions for granting licences :-

Every licence granted under sub-section(2) of section-9 shall be subject to the following terms and conditions, namely:-

(a) that the health establishment shall not be used for immoral purposes;

(b) that adequate measures shall be taken to keep the health establishment in perfectly hygienic and sanitary condition;

(c) that adequate measures shall be taken to dispose of the garbages including disposable syringes, needles, etc.

(d) that every person keeping or carrying on a health establishment shall submit an immediate report to the Health Authority as soon as it comes to his notice that any person who has been admitted as an outdoor or indoor patient in the health establishment is suffering from or has been attacked with tetanus, gas gangrene, small pox, cholera, encephalities, acquired immune deficiency syndrome (AIDS) or any other infectious or dangerous disease specified by the Government in this behalf by notification published in the Official Gazette;

(e) that for every health establishment records shall be kept in such form and report submitted to the Health Authority in such form, in such manner and at such intervals, as may be prescribed, containing-

(i) the name and other particulars of each person who is received, admitted or accommodated at the health establishment as an outdoor or indoor patient;

- (ii) the name of any of the prescribed diseases for which such person is treated;
- (iii) the name and other particulars of the medical practitioner who attends him;
- (iv) the amount paid by each person admitted and treated towards costs of-
 - (a) boarding and lodging, if any, and
 - (b) treatment;
- (v) birth, death and miscarriage, if any, that takes place in the health-establishment during the period to which the report relates; and
- (f) any other terms and conditions which may be prescribed.

11. Renewal :-

A licence may be renewed from time to time on an application made to the Health Authority in such form and accompanied by such fees as may be prescribed and every such application be made-- (a) in case of nursing home, maternity home or Hospital not less than, ninety days in advance; (b) in case of clinical laboratory, physiotherapy establishment, thirty days in advance; (c) in case of any other health establishment, not less than sixty days in advance: Provided that the renewal of a licence may be refused if the Health Authority is satisfied that- (i) the licensee is not in a position to provide the minimum facilities prescribed for the admission, treatment or care and diagnostic services therein of patients, pregnant women; or (ii) the licensee is not in a position to provide a medical practitioner who is qualified to take charge of the nursing home or Hospital, maternity home, clinical laboratory and physiotherapy establishment; or (iii) the licensee has contravened any of the provisions of this Act or any rules made thereunder.

12. Cancellation of registration and licence :-

If at any time after any health establishment is granted a licence therefor, the Health Authority is satisfied that the terms of the licence are not complied with, it may cancel such registration and licence:

Provided that no cancellation of any registration and licence shall be made unless such health establishment has been given an opportunity of showing cause as to why such registration and licence should not be cancelled.

13. Appointment of inspecting officer and his power of entry, Inspection etc. :-

(1) Any person aggrieved by an order of the Health Authority refusing to grant or renew a licence or cancelling licence, may in such manner and within such period as may be prescribed prefer an appeal to the Government:

Provided that the Government may entertain an appeal after the expiry of the prescribed period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) Every appeal under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

(3) Any order passed on appeal shall be final and shall not be questioned in any Court.

14. Penalty for establishment or maintenance of health establishment in contravention of the provision of this Act and the rules made thereunder :-

The Government shall appoint Chief Medical and Health Officer (District concerned) as Inspecting Officer for the purpose of inspecting the Health Establishment,

15. shall on conviction be punishable with fine which may extend to one thousand rupees for every day for which the offence continues after conviction :-

(1) Any person who knowingly establish or maintains a health establishment which is not duly registered and licensed under this Act and is in contravention of the provisions of this Act or rules made thereunder shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in the case of a second or subsequent offences with imprisonment for one year or fine which may extend to ten thousand rupees or with both.

(2) Whoever after conviction under sub-section (1) continues to maintain a health establishment

16. General provision for punishment of other offences :-

Any person who contravene any of the provision of this Act or of any rule or regulation, made thereunder for the contravention of

which no penalty is expressly provided in this Act, shall on conviction, be punishable with imprisonment which may extend to six months and with fine which may extend to ten thousand rupees.

17. Penalty for serving in an unlicensed and unregistered health establishment :-

Any person who knowingly serves in a health establishment which is not duly registered and licensed under this Act or which is used for immoral purposes shall be guilty of an offence and shall be punishable with fine which may extend to five hundred rupees.

18. Offences by companies :-

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in-charge of, and was responsible to the company, for the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with consent or connivance of or is attributable to any neglect on the part of any Director, Manager, Secretary or other Officer of the Company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against accordingly.

Explanation-

(a) For the purpose of this section, company means a body corporate and includes a firm or other association of individuals; and

(b) Director in relation to a firm means partner in the firm.

19. Court competent to try offence under this Act and take cognizance of offences :-

No Court other than that of a Magistrate of the First Class shall take cognizance of or try an offence under this Act.

20. Offences under this Act except sections 16 and 17 to be

cognizable :-

All offences punishable under this Act except offences under sections 16 and 17 shall be cognizable.

21. Saving :-

(1) For a period of three months from the commencement of this Act, the provisions of sections 13, 14, 15, 16, 17, shall not apply to any health establishment in existence on the date of such commencement.

(2) (i) Nothing contained in sub-section (1) shall apply to health establishment, established, maintained by the State Government, Central Government, Defence, Railway, Public Sector Undertakings and local authority;

(ii) any Psychiatric Hospital, nursing home licenced under the Indian Mental Health Act, 1987(Central act 14 of 1987).

22. Indemnity :-

(1) No suit, presecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules, regulations or orders made thereunder.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of this Act or any rules, regulations or orders made thereunder.

23. Credit of fee and fines :-

Any fees received or fines paid under this Act and rules framed thereunder shall be credited to the Consolidated Fund of the State.

24. Expenses of the Health Authority :-

All expenses incurred by the Health Authority under this Act and rules made thereunder shall be met out of the Consolidated Fund of the State.

25. Submission of report to the Health Authority :-

(1) Any person in charge of the health establishment shall as soon

as may be, after any disease which is included under the notifiable disease of the Government, cases of burns, poisoning or any other cases suspected to be of medico-legal nature make a report in respect of the cases to the Health Authority.

(2) Any person in charge of the health establishment shall report all death and birth, still birth as per the rules laid down by the Assam Births and Death Registration Act, 1935, (Assam Act II of 1935).

26. Power to make rules :-

(1) The Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) The nature or type of patients or person to whom the health establishment shall render services;

(b) the form in which-

(i) an application may be made for grant or renewal of a licence and a fee payable in respect thereof under sections 9 and 11;

(ii) a licence may be granted for the health establishment under section 9;

(c) the manner in which an order refusing to grant or cancelling a licence shall be communicated under section 9 or, as the case may be under section 12;

(d) the manner in which a report may be made to the Health Authority under clause (e) of section 10;

(e) the minimum facilities required for treatment of patients in the health establishment including;

(i) Doctor-patient relation;

(ii) other medical and paramedical staff eligible for rendering services in the health establishment;

(iii) space requirement;

(iv) treatment facilities; and

(v) equipment;

(f) the manner in which and the condition subject to which nursing home and Hospital, clinical laboratory, physiotherapy centre shall be maintained;

(g) the form and manner in which and the period within which an aggrieved person can appeal against the refusal to grant licence or renewal of licence or the fee payable in respect of thereof under section 13;

- (h) the form and the manner in which records shall be maintained under clause (f) of section 10;
- (i) the qualification of person who may be appointed as Inspecting Officer and his function, salary, etc
- (j) any other matter which is required to be or may be prescribed.