

HOSPITALS

Hospitals and Health Facilities Act 36 of 1994

Summary: This Act ([GG 996](#)) consolidates and amends the laws relating to state and private hospitals and health facilities (which are broadly defined to include clinics, pharmacies, laboratories etc). It was brought into force on 15 February 1995 by GN 25/1995 ([GG 1028](#)). Most of this Act is repealed by the National Health Act 2 of 2015 ([GG 5742](#)), which is not yet in force. Once it does come into force, the only remaining provisions of this Act will be:

- section 1 (definitions)
- Part VI (private hospitals)
- Part VII (private health facilities)
- section 33(1)(c)-(d)
- section 38(1)(b), (k) and (l)
- section 39(2)(b).

Act 2 of 2015 ([GG 5742](#)) repeals section 40, which contains the short title of this Act; it is not clear what the title of this Act should now be.

Repeals: The Act repeals the Hospitals Ordinance 14 of 1972 ([OG 3265](#)), which repealed the State Hospitals Ordinance 17 of 1966 ([OG 2727](#)), which in turn repealed the State Hospitals Ordinance 49 of 1957 ([OG 2094](#)).

The State Hospitals Ordinance 49 of 1957 ([OG 2094](#)) contains no repeals. It makes reference to the Hospitals and Charitable Institutions Ordinance 16 of 1930. The 1930 Ordinance was repealed by the Repeal of Obsolete Laws Act 21 of 2018 ([GG 6812](#)), which contains no savings clause.

Amendments: Act 1/1998 ([GG 1804](#)) amends sections 1, 2, 4, 5, 18, 19, 23, 24, 27, 31, 38 and 39 of the Act. Portions of this amending Act – sections 1, 2, 3, 4, 5, 6, 11, 12 and 13 – are repealed by the National Health Act 2 of 2015 ([GG 5742](#)), which is not yet in force.

The National Health Act 2 of 2015 ([GG 5742](#)), which is not yet in force, repeals Part II, Part III, Part IV, Part V and sections 33(1)(a)-(b) and (2), 34, 35, 36, 37, 38(1)(a), (c), (d), (e), (f), (g), (h), (i), (j), (m), (n) and (2), 39(1) and (2)(a) and (c) and 40 of the Act.

Savings: Subsidiary enactments under the Hospitals and Health Facilities Act 36 of 1994 ([GG 996](#)), which was substantially repealed by this Act ([GG 5742](#)), survive in terms of section 67(2)(b) of this Act:

Despite subsection (1) [which contains repeals] ... any regulation, notice, approval, appointment, authority, certificate or document made, issued, given or granted, or any other thing done under any law repealed by subsection (1) is, except in so far as may be otherwise required by this Act, is considered to have been made, given, issued, granted or done under the corresponding or allied provision of this Act and continues to have force and effect -

- (i) except if it is inconsistent with this Act; or
- (ii) until it is set aside, cancelled or repealed.

Subsidiary enactments under the Hospitals Ordinance 14 of 1972 ([OG 3265](#)), which was repealed by the Hospitals and Health Facilities Act 36 of 1994, survived in terms of section 39(2)(c) of that Act:

Notwithstanding the provisions of subsection (1) [which contains repeals]... any regulation, notice, approval, authority, certificate or document made, issued, given or granted, or any other act done under any law repealed by subsection (1) and not inconsistent with this Act, shall continue in force and shall be deemed to have been made, issued, given, granted or done under the corresponding provisions of this Act, until expressly revoked.

Subsidiary enactments under the State Hospitals Ordinance 17 of 1966 ([OG 2727](#)), which was repealed

by the Hospitals Ordinance 14 of 1972 – and again by the Repeal of Obsolete Laws Act 21 of 2018 ([GG 6812](#)), which was brought into force by GN 32/2019 ([GG 6851](#)) – survived in terms of section 43(3) of Ordinance 14 of 1972:

Any regulation, notice, approval, authority, certificate or document issued, made, published, given or granted, and any other steps taken in terms of a provision of an ordinance repealed by subsection (1) shall be deemed to have been issued, made, published, given or granted in terms of the corresponding provisions of this Ordinance.

Regulations made under the State Hospitals Ordinance 49 of 1957 ([OG 2094](#)), which was repealed by the State Hospitals Ordinance 17 of 1966, survived in terms of section 41(4) of that Ordinance.

Any regulation, notice, approval, authority, certificate or document promulgated, published, given or issued, and any other steps taken under any provision of any law repealed by sub-section (1) shall be deemed to have been promulgated, published, given or issued under the corresponding provision of this ordinance.

As noted above, the State Hospitals Ordinance 49 of 1957 contains no repeals. It makes reference to the Hospitals and Charitable Institutions Ordinance 16 of 1930, which was repealed by the Repeal of Obsolete Laws Act 21 of 2018 ([GG 6812](#)) – which contains no savings clause.

Regulations: Pre-independence regulations have not yet been researched.

The following regulations were made in terms of the current Act:

Regulations concerning the classification of hospitals and health facilities are contained in GN 184/2001 ([GG 2609](#)).

Regulations relating to the classification of state hospitals, the admission of state patients and the fees payable by patients, contained in GN 73/2010 ([GG 4459](#)). (These regulations repeal previous regulations made under the Hospitals Ordinance 14 of 1972, contained in GN 43/1993 ([GG 621](#)),¹⁹⁵ as amended by GN 199/1995 ([GG 1183](#)) and GN 12/2001 ([GG 2468](#)).

Cases:

Lisse v The Minister of Health and Social Services 2004 NR 107 (HC), *Minister of Health and Social Services v Lisse* 2006 (2) NR 739 (SC)

Kaulinge v Minister of Health and Social Services 2006 (1) NR 377 (HC).

***National Health Act 2 of 2015 (only section 20(1) is in force)**  

Summary: This Act ([GG 5742](#)) consolidates the laws relating to state hospitals and state health services and regulates the conduct of such hospitals and services. It provides for state hospital committees by the health practitioners and staff at the hospital in question. It covers access to treatment and fees, and establishes a Special Fund for Treatment of State Patients to provide financial assistance for such special treatment. It also establishes regional and district health boards and offices, and provides for the authorisation of research at state hospitals and grants for such research. The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*. Section 20(1) was brought into force on 17 September 2020 by GN 231/2020 ([GG 7338](#)).

¹⁹⁵ These regulations repealed the regulations promulgated under Government Notices 215/1973 ([OG 3357](#)), 43/1974, 81/1974, 57/1976, 181/1977, 199/1977, 144/1988 and 4/1991 ([GG 142](#)). GN 215/1973 repeals the regulations in GN 6/1971. GN 4/1991 repeals “all and any regulations made under the said section [section 41 of the Hospitals Ordinance 14 of 1972], by, and for the purposes of, any former Representative Authority contemplated in the Representative Authorities Proclamation, 1980 (Proclamation AG 8 of 1980), which was repealed by Article 147 of the Namibian Constitution”.

Repeals: The Act repeals most of the Hospitals and Health Facilities Act 36 of 1994 ([GG 996](#)) (Part II, Part III, Part IV, Part V and sections 33(1)(a) and (b) and (2), 34, 35, 36, 37, 38(1)(a), (c), (d), (e), (f), (g), (h), (i), (j), (m) and (n) and (2), 39(1) and (2)(a) and (c) and 40) and most of its sole amending Act 1/1998 ([GG 1804](#)) (sections 1, 2, 3, 4, 5, 6, 11, 12 and 13).

The Hospitals and Health Facilities Act 36 of 1994 ([GG 996](#)) replaced the Hospitals Ordinance 14 of 1972 ([OG 3265](#)), which replaced the State Hospitals Ordinance 17 of 1966 ([OG 2727](#)), which in turn replaced the State Hospitals Ordinance 49 of 1957 ([OG 2094](#)).

The State Hospitals Ordinance 49 of 1957 ([OG 2094](#)) contains no repeals. It makes reference to the Hospitals and Charitable Institutions Ordinance 16 of 1930. The 1930 Ordinance was repealed by the Repeal of Obsolete Laws Act 21 of 2018 ([GG 6812](#)), which contains no savings clause.

Savings: Subsidiary enactments under the Hospitals and Health Facilities Act 36 of 1994 ([GG 996](#)), which was substantially repealed by this Act ([GG 5742](#)), survive in terms of section 67(2)(b) of this Act:

Despite subsection (1) [which contains repeals] ... any regulation, notice, approval, appointment, authority, certificate or document made, issued, given or granted, or any other thing done under any law repealed by subsection (1) is, except in so far as may be otherwise required by this Act, is considered to have been made, given, issued, granted or done under the corresponding or allied provision of this Act and continues to have force and effect -

- (i) except if it is inconsistent with this Act; or
- (ii) until it is set aside, cancelled or repealed.

Subsidiary enactments under the Hospitals Ordinance 14 of 1972 ([OG 3265](#)), which was repealed by the Hospitals and Health Facilities Act 36 of 1994, survived in terms of section 39(2)(c) of that Act:

Notwithstanding the provisions of subsection (1) [which contains repeals]... any regulation, notice, approval, authority, certificate or document made, issued, given or granted, or any other act done under any law repealed by subsection (1) and not inconsistent with this Act, shall continue in force and shall be deemed to have been made, issued, given, granted or done under the corresponding provisions of this Act, until expressly revoked.

Subsidiary enactments under the State Hospitals Ordinance 17 of 1966 ([OG 2727](#)), which was repealed by the Hospitals Ordinance 14 of 1972 – and again by the Repeal of Obsolete Laws Act 21 of 2018 ([GG 6812](#)), which was brought into force by GN 32/2019 ([GG 6851](#)) – survived in terms of section 43(3) of Ordinance 14 of 1972:

Any regulation, notice, approval, authority, certificate or document issued, made, published, given or granted, and any other steps taken in terms of a provision of an ordinance repealed by subsection (1) shall be deemed to have been issued, made, published, given or granted in terms of the corresponding provisions of this Ordinance.

Regulations made under the State Hospitals Ordinance 49 of 1957 ([OG 2094](#)), which was repealed by the State Hospitals Ordinance 17 of 1966, survived in terms of section 41(4) of that Ordinance.

Any regulation, notice, approval, authority, certificate or document promulgated, published, given or issued, and any other steps taken under any provision of any law repealed by sub-section (1) shall be deemed to have been promulgated, published, given or issued under the corresponding provision of this ordinance.

As noted above, the State Hospitals Ordinance 49 of 1957 contains no repeals. It makes reference to the Hospitals and Charitable Institutions Ordinance 16 of 1930, which was repealed by the Repeal of Obsolete Laws Act 21 of 2018 ([GG 6812](#)) – which contains no savings clause.

Regulations: Pre-independence regulations have yet not been researched.

Surviving regulations made after independence under the Hospitals and Health Facilities Act 36 of 1994 are as follows:

Regulations concerning the classification of hospitals and health facilities are contained in GN 184/2001 ([GG 2609](#)).

Regulations relating to the classification of state hospitals, the admission of state patients and the fees payable by patients are contained in GN 73/2010 ([GG 4459](#)). These regulations repeal previous regulations contained in GN 43/1993 ([GG 621](#)),¹⁹⁶ as amended by GN 199/1995 ([GG 1183](#)) and GN 12/2001 ([GG 2468](#)).

SELECTED CASES

Lady Pohamba Private Hospital Operations (Pty) Ltd v Municipal Council of the Municipality of Windhoek & Others 2022 (4) NR 1109 (HC) (treatment of medical waste by private hospital and Windhoek Municipality: Waste Management Regulations ([GG 4650](#))).

COMMENTARY

Michaela Figueira, “AIDS, the Namibian constitution and human rights: an overview”, 9 (1) *South African Journal on Human Rights* 30 (1993).

See also **HEALTH**.

See also **HEALTH PROFESSIONS**.

See also **MEDICAL AID**.

See also **MEDICINE**.

See also **MENTAL HEALTH AND MENTAL DISORDERS**.

¹⁹⁶ These regulations repealed the regulations promulgated under Government Notices 215 of 1973, 43 of 1974, 81 of 1974, 57 of 1976, 181 of 1977, 199 of 1977, 144 of 1988 and 4 of 1991 ([GG 142](#)). GN 4/1991 repealed “all and any regulations made under the said section [section 41 of the Hospitals Ordinance 14 of 1972], by, and for the purposes of, any former Representative Authority contemplated in the Representative Authorities Proclamation, 1980 (Proclamation AG 8 of 1980), which was repealed by Article 147 of the Namibian Constitution”.