

**A
BILL**

To improve quality of healthcare services and put complete ban on quackery in the Punjab.

Whereas it is expedient to provide for establishment of the Punjab Healthcare Commission and office of the Health Ombudsman; to make provisions for the improvement of quality of healthcare services and to put complete ban on the quackery.;

It is hereby enacted as follows:

**CHAPTER I
INTRODUCTORY**

1. Short title, extent and commencement – (1) This Act may be cited as the Punjab Healthcare Act 2009.

(2) It shall extend to the whole of the Punjab.

(3) It shall come into force at once.

(4) It shall be applicable both on public and private sector.

2. Definitions – In this Act:

(a) “Accreditation” means the process of accepting/declaring Healthcare Establishments as providing services exactly in accordance with the standards and accepted medical(allopathic, homeopathic and Tibb Unanini) protocols, guidelines and the Tools.

(b) “Board” means the Board of Commissioners constituted under Section 5;

(c) “Certificate of registration” means the certificate issued by the Commission evidencing registration of a Healthcare Service Provider;

(d) “Chairman” means the Chairman of the Board;

(e) “Chief Executive Officer” means the chief executive officer of the Commission;

(f) “Commission” means the Punjab Healthcare Commission;

(g) “Commissioner” means a member of the Board appointed under Section 5;

(h) “Convener” means the Convener of the Technical Advisory Committee;

(i) “Fund” means Fund established under the Act;

(j) “Government” means the Government of the Punjab;

(k) “Grading” means the ranking of the Healthcare Establishments done on the basis of the tools;

(l) “Healthcare Establishment” MEANS ANY HOSPITAL, DIAGNOSTIC CENTRE, MEDICAL CLINICS, NURSING HOME, MATERNITY HOME, DENTAL CLINIC, HOMEOPATHIC CLINIC, TIBB

CLINIC, ACUPUNCTURE,PHYSIOTHERAPY CLINIC OR ANY SYSTEM OF TREATMENT NOTIFIED BY THE GOVT:

- (i) wholly or partly used or intended to be used for providing Healthcare Services; and
- (ii) declared by the Government, by order published in the official Gazette, as a Healthcare Establishment;
- (m) “Healthcare Services” means services provided for diagnosis, treatment or care of persons suffering from any physical or mental disease, injury or disability including procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition and includes any other service notified by the Government;
- (n) “Healthcare Service Provider” includes a person registered by PMDC, National Council for Tibb and homeopathy, Nursing council or an owner, manager, or incharge of a Healthcare Establishment;
- (o) “Inspection/ investigation Team means a team comprising of more than two medical experts having postgraduate qualification and fifteen years experience in concerned field(comprising of one employee of the commission and others from Public or Private sector having equal representation) to visit any health establishment authorized by the Commission under the Act;
- (p) “License” means a License issued by the Commission under Section 13 for the use of any premises or conveyance as a Healthcare Establishment and “Licensed” and “licensing” shall be construed accordingly;
- (q) “Licensee” means health establishment to whom License has been issued under the Act;
- (r) “Health Ombudsman” means the Health Ombudsman for the Province of the Punjab appointed under Section 31 of this Act;
- (s) “Person” includes association, authority, body, company, corporation, individual, partnership, proprietorship or other entities;
- (t) “Quack” means a pretender providing health services without having registration of PMDC and NCT, NC for homeopathy and NC for nursing.
- (u) “Prescribed” means prescribed by Rules or Regulations made under the Act;
- (v) “Property” includes all kinds of property and assets, whether movable or immovable, tangible or intangible, deeds of title or any document evidencing right, title or interest of any kind in any property or assets;

- (w) Registration means registration certificate issued by the Commission under Section 11 of this Act to a Healthcare Service Establishment and health care providers.
- (x) "Regulations" means the Regulations made under the Act;
- (y) "Rules" means Rules made under the Act; and
- (z1) "Standards" include the Minimum Service Delivery Standards (MSDS) notified by the Government.
- (z2) "Staff" means any employee or commissioner of the Office and includes co-opted members of the Staff, consultants, advisors, liaison officers and experts.
- (aa) "Technical Advisory Committee" means the committee constituted under Section 8.
- (bb) "Tools" include the Third Party Performance Audit Tools already notified and any other parameters prescribed from time to time by the Government.
- (cc) Negligence means an act of omission and violation of positive duty performed inadvertently.
- (dd) Rash: a person who is rash knows the consequences but foolishly thinks that they will not occur as a result of his/her act.
- (ee) Medical Error:
- (ff) Recklessness: a reckless person knows the consequences but does not care whether or not they result from her/his act.
- (gg) Criminal Negligence/ Culpable: Any conduct falling short of recklessness and deliberate wrongdoing should not be the subject of criminal liability.

CHAPTER II HEALTHCARE COMMISSION AND GOVERNANCE

3. Establishment of the Commission – (1) The Government may, by notification, establish a commission to be called the Punjab Healthcare Commission for carrying out the purposes of this Act.

(2) The Commission shall be a body corporate having perpetual succession and a common seal, with powers to entering into contract, sue and be sued by its name.

(3) The Head Office of the Commission shall be at Lahore and it may have such other offices in the Punjab as the Board may determine.

4. Functions and Powers of the Commission – (1) The Commission shall perform such functions and exercise such powers as may be required to improve the quality of Healthcare Services.

(2) Without prejudice to the generality of the provisions of sub-Section (1), the Commission shall:

- (a) Maintain register of all Healthcare Service Providers;
- (b) Grant and renew Licenses to health establishments involved in the provision of the Healthcare Services and suspend/ revoke the licenses only on the recommendations of "Health Ombudsman"
- (c) Seal the health establishment being run by nonqualified persons as prescribed.
- (d) Monitor and regulate the quality and Standards of the Healthcare Services, developed by the government after dually sharing with stakeholders, in the prescribed manner;
- (e) Operate Accreditation programmes in respect of the Healthcare Services and to grant Accreditation to such Healthcare Service Providers who meet the prescribed Standards in a phased manner;
- (f) Enquire and investigate into maladministration, malpractice and failures in the provision of Healthcare Services and issue consequential advice and after repeated violations may refer the case to Health Ombudsman for prosecution;
- (g) Nominate the inspection team to inspect the premises of Healthcare establishment, records and other materials of persons involved in, or concerned with, the provision of Healthcare Services and to regulate the conduct of such inspections.
- (h) Impose and collect fees and charges on registration, licensing, renewal and Accreditation under this Act;
- (i) Collect penalties imposed by " Health Ombudsman" on violation, breach or non-compliance of the provisions of the Rules, Regulations, standing Orders and Instructions issued under this Act;
- (j) Advocate rights and responsibilities of recipients and providers of the Healthcare Services;
- (k) Hold seminars, conferences and meetings on developing awareness about provision of high quality Healthcare Services;
- (l) Enter into agreement or arrangement with the Federal Government or a Provincial Government, any authority, board, council or entity, non-Governmental Organization, domestic or International Institution or Agency for the purposes of this Act;
- (m) Coordinate, liaise and network with any person, agency or institution;
- (n) Take on lease land and buildings for the purpose of offices or premises of the Commission at such price and on such term as may be necessary;
- (o) Open and maintain bank accounts;

- (p) appoint, engage, authorize and terminate employees, consultants, advisers, attorneys, contractors, agents and experts on such terms and conditions as deemed fit and assign, delegate or entrust them with such functions and powers as are expedient for the performance of functions of the Commission;
 - (q) Take measures for the welfare of the present and past employees of the Commission; and
 - (r) Issue Regulations, guidelines, instructions and directives to persons involved in the provision of Healthcare Services and pharmacies/ medical stores,
 - (s) Ban on over the counter sale of drugs without prescription and shall have the power to seal it.
 - (t) Gradation of Healthcare Establishments.
 - (u) Commission shall frame the guidelines to save health service provider from harassment and undue pressure in performing their professional duties. The violator shall be fined up to five lakh or one year jail. Health establishment will provide the legal aid to health care provider.
- (3) The Commission may assign any of its functions to a person on such terms and conditions as may be agreed between the Commission and the person.
- (4) In the performance of its functions, the Commission shall:
- (a) Take the policy advice of the Technical Advisory Committee; and
 - (b) Co-ordinate with the Government.
- 5. Constitution of the Board –** (1) The Government shall, by notification, constitute commission as by prescribed procedure, Board consisting of eight Commissioners. This shall include Chair and seven members.
- (2) The Government shall appoint or notify two Commissioners out of eight.
 - (3) The other six commissioners shall be elected as per prescribed manner.
 - (4) The Commissioners shall hold a secret ballot to elect a Chairman.
 - (5) The Government shall not appoint a person as Commissioner unless he has a minimum of fifteen years experience in public or private organization and having qualification not less than postgraduate.
 - (6) The Board shall regulate the conduct of its meetings, quorum and minutes of the meetings.
- (6) The Government shall prescribe the remuneration payable to a Commissioner for attending a meeting of the Board.

(7) The proceedings of the Board shall not carry any legal value decided in a meeting where quorum requirement is not observed.

(8) The Chairman or a Commissioner shall not, for two years after the expiry of their term of office, enter into the employment of or accept any advisory or consultancy relationship with any Healthcare Service Provider in the Punjab.

(9) No person shall be, or shall continue to be, the Chairman or a Commissioner who:

- (a) has tendered resignation and not withdrawn it for a period of thirty days;
- (b) is or at any time has been adjudicated as insolvent;
- (c) is found to be of unsound mind by a court of competent jurisdiction;
- (d) is or has at any time been convicted of any offence which, in the opinion of the Government, is an offence involving moral turpitude;
- (e) absents himself from three consecutive meetings of the Board, without leave of absence from the Board; and
- (f) is a salaried official of the Commission.

6. Term of the Commissioners – (1) The term of the commissioners shall be for three years.

(2) In case of a casual vacancy of a Commissioner, the Government shall appoint a qualified person as Commissioner for the remainder of the term of the Commissioner who has died, resigned or disqualified to be the Commissioner under this Act.

7. Functions and Powers of the Board – (1) The general superintendence, direction and management of the affairs of the Commission and overall policy making in respect of its operations shall vest in the Board which may exercise all such powers and do all such acts, deeds and things that may be exercised or done by the Commission under this Act.

(2) Without prejudice to the generality of the provisions of sub-Section (1), the Board may:

- (a) determine the character, value and mission of the Commission;
- (b) provide leadership and oversight of activities of the Commission;
- (c) ensure the effective and efficient use of resources, solvency and safeguarding of the assets of the Commission;
- (d) establish and maintain strategic direction of the Commission;
- (e) oversee implementation of strategic objectives of the Commission;
- (f) monitor performance and review achievements of the Commission;

- (g) ensure adequate and effective governance and risk management systems in the Commission;
- (h) promote and develop partnerships with other organizations;
- (i) approve the standing orders of the Commission;
- (j) approve annual plans and reports;
- (k) approve annual accounts, budget and estimates of income and expenditure;
- (l) appoint bankers and auditors;
- (m) handle and redress any complaint about the Commission;
- (n) appoint, oversee, authorize the Chief Executive Officer, determine his terms and conditions of service and take any disciplinary action against him; and
- (o) regulate Pay scales, performance appraisal, dismissal and terms and conditions of service of the employees of the Commission

(3) Recruitment of the officers/officials (except for the executive posts) shall be recruited through the Punjab Public Services Commission or the Selection Board or Selection Committee constituted by the Commission or the Government from time to time.

(4) The Board may establish committees for assistance and advice to the Board in relation to the performance of its functions and determine the membership, remuneration of members and terms of reference of each committee.

8. Technical Advisory Committee – (1) The Board shall constitute a Technical Advisory Committee, consisting of the following members:

- (a) one representative each to be nominated by:
 - (i) the Pakistan Medical and Dental Council established under the Pakistan Medical and Dental Council Ordinance, 1962;
 - (ii) the College of Physicians and Surgeons of Pakistan established under the Pakistan College of Physicians and Surgeons Ordinance, 1962;
 - (iii) the Pakistan Nursing Council established under the Pakistan Nursing Council Act, 1973;
 - (iv) the Pharmacy Council of Pakistan established under the Pharmacy Act, 1967;
 - (v) The Pakistan Medical Association (Punjab Chapter);
 - (vi) the Mental Health Authority established under the Mental Health Ordinance, 2001;
 - (vii) the National Council for Homeopathy;
 - (viii) the National Council for *Tibb*;
 - (ix) the Auditor General of Pakistan established under Article 168 of the Constitution;
 - (x) the University of Health Sciences established under the University of Health Sciences, Lahore Ordinance, 2002; and

- (xi) the Punjab Medical Faculty;
- (b) one representative of the Government to be nominated by the Secretary to the Government, Health Department;
- (c) one member of the Provincial Assembly of the Punjab to be nominated by the Speaker of the Assembly;
- (d) one representative each of the six District Governments selected by the Government for one year on non-recurring basis;
- (e) one person each to be nominated by the Government from the Private Hospitals, Medical Clinics, Diagnostic Centres and medical colleges in the private sector and who shall have a minimum of fifteen years of experience in the respective field;
- (f) five experts in Healthcare Services to be nominated by the Convener of the Technical Advisory Committee in consultation with the Chief Executive Officer; and representative of PMA Punjab
- (g) two international health experts to be nominated by the Government.

(2) All members of the Technical Advisory Committee, except the permanent members of the Committee i.e. from Health Department, Provincial Assembly, Local Governments, University of Health Sciences, Pakistan Medical Dental Council, College of Physicians and Surgeons of Pakistan, Pakistan Nursing Council, Pharmacy Council of Pakistan, Mental Health Authority, Auditor General of Pakistan, Punjab Medical Faculty, shall hold office for a period of three years and can be re-appointed for an additional term of three years.

(3) The Technical Advisory Committee shall elect one of its members as the convener.

(4) The convener of the Technical Advisory Committee shall chair meetings of the committee and the Chief Executive Officer may attend any meeting of the committee.

(5) The Board may determine the remunerations payable to the members of the Technical Advisory Committee for attending a meeting.

(6) The Technical Advisory Committee may organize itself into sub-committees and shall provide advice on any matter referred to it by the Commission, including the matters relating to:

- (a) policy and strategic framework of the Commission;
- (b) healthcare standards, Accreditation and quality assurance;
- (c) governance process of the Commission;
- (d) advocacy, promotion and contribution towards development and sustainability of the work of the Commission; and
- (e) stakeholder consultation for the promotion of quality and standards of the Healthcare Services.

9. Chief Executive Officer – (1) The Board shall appoint **medical graduate** having a minimum of fifteen years of experience in Hospital or public health administration ,in addition to that **preferably** having experience

in accounting, finance, Regulation or other related field to be the Chief Executive Officer of the Commission.

(2) The Chief Executive Officer shall, subject to the supervision and control of the Board, administer the affairs of the Commission, and may exercise such powers as are delegated to him by the Board.

(3) In particular, the Chief Executive Officer may:

- (a) manage the administration, operations and functions of the Commission;
- (b) act as the principal accounting officer responsible and accountable for the management of the Commission's funds and assets;
- (c) prepare and present the Board with strategic and operational plans for its review and appraisal;
- (d) assist the Board in strategic thinking, planning and leadership and implement its policies;
- (e) protect the financial health of the Commission;
- (f) act as spokesperson and advocate of the Commission;
- (g) appoint officers and authorize other persons to carry out inspections under this Act, including for issuance of Licenses and Accreditation under this Act; and
- (h) provide leadership to the senior management and direction to all Staff.

(4) The Chief Executive Officer shall act as Secretary to the Board.

(5) The Chief Executive Officer shall devote his whole time and attention to the affairs of the Commission.

10. Disqualifications of Chief Executive Officer – A person shall not be appointed or hold office as Chief Executive Officer who:

- (a) is a member of the Federal or Provincial legislature, local council or local body constituted under any law and recently participated in election as candidate for PA/NA/ Local Council;
- (b) is employed in any capacity in the service relating to the affairs of the Federation or Province or holds any office for which salary or other remuneration is payable out of public funds;
- (c) is a director, officer or employee of any Healthcare Service Provider or has an interest or share in any Healthcare Establishment;
- (d) has been convicted of tax evasion or for an offence involving moral turpitude; or
- (e) is in default of payments due from him to any bank, financial institution, cooperative society, governmental agency, department or corporation.

CHAPTER III

REGISTRATION AND LICENSING

11. Registration – (1) A Healthcare Service Provider shall not provide Healthcare Services without being registered under this Section and the Regulations. In case of shifting of Healthcare Establishment to new premises, Healthcare Service Provider will inform the Commission and does not furnish the application for new license. Health care commission is bound to register a person within one month after receiving the application from eligible applicant otherwise he/she is considered registered.

(2) An existing Healthcare Service Provider shall, within a period of ninety days of the coming into force of this Act, apply for registration in accordance with this Section and the Regulations.

(3) A person seeking to be registered as a Healthcare Service Provider shall make an application to the Commission in the prescribed form and accompanied by such particulars, documents and fees as the Commission may prescribe.

(4) If a person fulfills the requirements of this Section, the Commission shall issue a certificate of registration to the person.

(5) The Health Ombudsman may impose a fine which may extend to one hundred thousand rupees upon a Healthcare Service Provider or any other person who violates the requirements of this Section.

12. Licensing – (1) A Healthcare Establishment shall not be used except in accordance with the terms and conditions of a License issued under this Act.

(2) The Commission may, by order in writing and after receiving decision from health ombudsman, require a Healthcare Service Provider to close the Healthcare Establishment either forthwith or within such time as the HO may specify in the order

(3) If a Healthcare Establishment is not Licensed under this Act or is used otherwise than in accordance with the terms and conditions and purpose of the License or is not closed as required by the Commission under sub-Section (2), the Commission may impose a fine which may extend to one million rupees upon the Healthcare Service Provider.

13. Application for issue and renewal of Licenses – (1) The health establishment shall make an application for a License to the Commission in the prescribed form which shall be accompanied by such particulars, documents and fees as the Commission may prescribe.

(2) On receipt of an application under sub-Section (1), the Commission shall:

- (a) Issue the License applied for subject to such general or special conditions as the Commission deems fit to impose. For opening of new health establishment, on receiving duly filled application on prescribed format for license of a health establishment HCC is bound to provide provisional license within seven days and regular license will be issued after inspection.

- (b) Health establishment shall provide legal aid to health care provider in case of any harassment and manhandling while performing his lawful duty and matters pertaining to health care bill.

(3) In determining whether to issue or refuse to issue a License, the Commission shall have regard to:

- (a) The fitness of the Healthcare Service establishment to be issued with a License.

- (c) The adequacy of the Staff that is employed at the Healthcare Establishment.

(4) For the purpose of sub-Section (3), the Commission may, before issuing the License:

- (a) inspect the premises or conveyance to be Licensed, or cause such premises or conveyance to be inspected by team of medical experts; and

- (b) require the Healthcare Service Provider at his own expense:

- (i) to make such alteration or improvement to the Healthcare Establishment; or
- (ii) to provide, fix or install such facilities and equipment therein, as the Commission may specify.

(5) The Commission may vary or revoke any of the existing conditions imposed under clause (a) of sub-Section (2) or impose new conditions.

(6) A License issued by the Commission under this Section:

(a) shall be in such form as may be prescribed by the Commission;

- (b) shall be valid for a period of five years, unless it is sooner revoked by health ombudsman.

- (c) may be renewed upon its expiry.

(7) The provisions of sub-Sections (1) to (6) shall apply, with necessary modifications, to an application for the renewal of a License, except that the period of thirty days for filing the application, as provided under sub-Section (1), shall commence from the expiry of a License.

14. Kinds of Licenses – (1) Every License of a Healthcare Establishment shall specify the kind of Healthcare Establishment for which it is issued and the purposes thereof.

(2) A Licensed Healthcare Establishment shall not be used for any purpose other than the purposes in respect of which the License is issued and purposes reasonably incidental thereto.

(3) The Commission may, on an application in writing by a Licensed Healthcare Establishment, vary the terms or conditions of the License, by

altering, in such manner as deemed proper, the kind of Healthcare Establishment for which the License is in force, or the purpose or purposes for which the Licensed Healthcare Establishment may be maintained.

(4) The Commission shall maintain a register of all Licensed Healthcare Establishments and may enter in the register any necessary details or other particulars of the Healthcare Establishment.

15. Suspension and Revocation of Licenses – (1) The Commission may suspend or **revoke a License only on the recommendation of HO if:**

- (a) the License has been obtained by fraud or misrepresentation;
- (b) the Healthcare Service Provider to whom the License has been issued is contravening or has contravened or failed to comply with:

- (i) any of the provisions of this Act, Rules or Regulations;
- (ii) any term or condition of the License; or
- (iii) any direction given to him by the Commission under this Act, Rules or Regulations;

- (c) the Healthcare Establishment in respect of which the License was issued has ceased to operate as such; or

i(2) Before suspending or revoking the License under sub-Section (1), the **Health Ombudsman** shall:

- (a) serve, upon the Healthcare Service Provider, notice in writing of its intention to do so; and
 - (b) call upon the Healthcare Service Provider to show cause within such time as may be specified in the notice as to why his License should not be suspended or revoked.
- (3) If the Healthcare Service Provider:
- (a) fails to show cause within the period of time originally allowed or such extended period of time as the HO may allow; or
 - (b) fails to show sufficient cause as to why his License should not be suspended or revoked,

the HO shall, by notice in writing, suspend or revoke the License of the Healthcare Service Provider with effect from the date specified in the notice.

CHAPTER IV STANDARDS OF HEALTHCARE SERVICES

16. Standards of Healthcare Services – (1) The Commission shall implement the Standards developed after **consultation with stake holders** and approved by the Government. The Commission, with the approval of the Government, shall,-

- (a) publish statements of Standards in relation to the provision of Healthcare Services; and
- (b) keep the Standards under review and publish amended statements whenever deemed appropriate either by the

Government or the Commission with the concurrence of the Government.

(2) The Government may, after considering any representations made in relation to the Standards published by the Commission, make such revision with respect thereto as deemed necessary and the Commission may publish the revised Standards.

17. Accreditation – (1) The Commission shall develop framework and procedures for the Accreditation of the Healthcare Establishments and issue necessary guidelines and instructions in this behalf. The commission shall propose the incentives for accreditation.

(2) The Commission shall, among others, employ the Tools to conduct Accreditation.

(3) The Commission shall also review best national and international practices in Accreditation and build supportive links and enter into collaborations and agreements with national and international organizations in relation to Accreditation of the Healthcare Establishments.

CHAPTER V INSPECTION AND ENFORCEMENT

18. Inspection – (1) The Commission may, by order in writing, appoint inspection team to perform the functions and exercise the powers of the Commission in relation to inspections under this Act, Rules or Regulations subject to such conditions and limitations as the Commission may specify in this behalf.

(2) An inspection team may visit:

- at the time of issuance and renewal of license.
- On receipt of a complaint.
- Once in a year can inspect any premises which are being used, or which he has reasonable cause to believe is being used, as a Healthcare Establishment in order to:
 - (a) Investigate whether this Act, rule or Regulation has been or is being contravened;
 - (b) Assess the quality and appropriateness of the facilities and services provided and the practices and procedures being carried out at the Healthcare Establishment; or
 - (c) Enquire if there has been any instance of maladministration, malpractice or failure in the provision of Healthcare Services.

(3) The Inspection team may:

- (a) inspect any apparatus, appliance, equipment, instrument, product, goods or item used or found in the Healthcare

- Establishment;
- (b) inspect, examine, take, remove and detain samples of blood, blood products, human tissue or fluid or any product of the human body, dialysate, chemicals, pharmaceuticals or any other substance found in the Healthcare Establishment;
 - (c) inspect any test or procedure performed or carried out at the Healthcare Establishment;
 - (d) inspect and make copies of and take extracts from, or require the Licensee or Healthcare Service Provider to provide copies of or extracts from, the medical record of any person who has been or who is being treated or examined at the Healthcare Establishment, notwithstanding that the prior consent of such person has not been obtained; and

After completion of the task, assigned to Inspection Team by the Commission, submit his findings/recommendations without delay to the Commission.

(4) **The Commission may issue advice or refer the case to Health Ombudsman for trial.**

- (a) If HCP refuses or fails, without reasonable excuse, to furnish any information to Inspection Team or
- (b) gives any false or misleading information. The commission may impose **fine up to one hundred thousand**.

(6) Except in the case of a prosecution for an offence under this Act before the HO, the Inspection Team shall not give evidence in any proceedings in respect of, or to produce any document containing, any information which has been obtained from any Healthcare Establishment in the course of carrying out any investigation or performing any duty or function under this Act.

(7) The Inspection Team shall not disclose any information which is contained in the medical record, or which relates to the condition, treatment or diagnosis, of any person, as may have come to his knowledge in the course of carrying out any investigation or performing any duty or function under this Act, thus maintaining patient's right to privacy.

19. Directions as to apparatus, appliance, equipment, products, etc. –

- (1) Where, in the opinion of **the Inspection Team**
 - (a) the use of any apparatus, appliance, equipment, instrument, product, goods or item; or
 - (b) the carrying out of any practice or procedure in a Healthcare Establishment, is dangerous or detrimental to any person therein or otherwise unsuitable for the purpose for which it is used or carried out, he shall immediately report the matter in writing to the

Commission along with the necessary details.

(2) The Commission may, by notice, direct the Licensee or a Healthcare Service Provider to:

- (a) stop using or dealing in such apparatus, appliance, equipment or instrument, product, goods or item;
- (b) stop carrying out such practice or procedure; or
- (c) install or replace such apparatus, appliance, equipment or instrument therein, as may be specified in the notice.

(3) The Commission may impose a fine which may extend to one hundred thousand rupees on a Licensee or a Healthcare Service Provider who fails to comply with any direction given to him under sub-Sections (1) or (2) and the Commission may impose a further fine not exceeding one thousand rupees for every day during which the violation continued after imposition of fine under this Section.

20. Directions of Closure, etc – (1) Where, in the opinion of the Inspection Team, the use of any premises as a Healthcare Establishment:

- (a) is dangerous or detrimental to any person therein;
- (b) is otherwise unsuitable for the purpose for which it is used or carried out; or
- (c) shows any other instance of maladministration, malpractice or failure in the provision of Healthcare Services,

it shall immediately report the matter to the Commission and the Commission may, refer the case to Health Ombudsman for regular trial. After due process the HO may issue the order for closure on temporarily or permanent basis.

(2) The Commission may additionally require such Licensee or Healthcare Service Provider to take such remedial or consequential actions as may be deemed appropriate in the circumstances.

21. Obstructing Healthcare Inspection Team in execution of their duties – The Commission may impose a fine which may extend to Fifty thousand rupees on a person who obstructs, hinders or impedes a Healthcare Supervisor in the performance or execution of his duty or anything which he is authorized, empowered or required to do under this Act, Rules or Regulations.

22. Violations by Bodies Corporate – Where any contravention of this Act is committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any director, manager, secretary or other officer or employee of the body corporate, or any person who purported to act in any such capacity, he as well as the body corporate shall be liable to pay fine up to one hundred thousand according to severity of violation and the category of health establishment.

23. Restriction on disclosure of information – (1) Except in the case of a prosecution for any violation of this Act, Rules or Regulations, the Commission or its officers shall not disclose any information which is

contained in the medical record, which relates to the outcome of the inspection, or which relates to the condition, treatment or diagnosis, of any person, as may come to their knowledge in the course of performing any duty or function under this Act.

(2) If any person discloses to any other person any information obtained by or given to him in pursuance of this Act, he shall, unless the disclosure was made in the performance of his duty, be liable to pay fine which may extend to five million rupees and the Commission may impose such fine on such person.

24. Protection from liability – No suit or other legal proceedings shall lie against the Commission, Board, Technical Advisory Committee, Chief Executive Officer, Officers, Healthcare Supervisors, advisers, consultants or agents of the Commission for anything done in good faith in the execution or purported execution of this Act, Rules or Regulations.

25. Jurisdiction of Commission for adjudication of fine – (1) **Notwithstanding** anything contained in any other law, the HO may impose fine which may extend to one million rupees in accordance with the provisions of this Act.

(2) The HO shall afford adequate opportunity of hearing to a person before imposing fine on the person under this Act.

26. Appeal – (1) Any person who is aggrieved by:

- (a) the refusal of the Commission to issue or renew a License;
- (b) the order relating to equipments, apparatus, appliances, or other things at a Healthcare Establishment;

may, within thirty days from the date of communication of the order of the Commission, prefer an appeal in writing to Health Ombudsman or Lahore High Court.

CHAPTER VI FUND, BUDGET AND ACCOUNTS

27. The Fund – (1) There shall be established a Fund for the purposes of this Act which shall vest in, and be administered and controlled by the Commission.

(2) The Fund shall consist of:

- (a) such sums as the Government may grant by way of seed money or otherwise;
- (b) donations from domestic and international donor agencies and other institutions;

- (c) grants of money and sums borrowed or raised by the Commission for the purposes of meeting any of its obligations or discharging any of its duties;
 - (d) fees, penalties or other charges imposed under this Act; and
 - (e) all other sums which may in any manner become payable to or vested in the Commission in respect of any matter incidental to the exercise of its functions and powers.
- (3) The Fund shall be expended for the purpose of:
- (a) paying any expenditure lawfully incurred by the Commission, including the remuneration of employees appointed by the Commission, their provident fund contributions, superannuating allowances or gratuities
 - (b) meeting the costs and charges of the contractors, Healthcare Supervisors, advisors, consultants and agents hired by the Commission;
 - (c) paying any other expenses, costs or expenditure properly incurred or accepted by the Commission in the performance of its functions or the exercise of its powers under this Act, including legal fees and costs;
 - (d) purchasing or hiring equipment, machinery and any other materials, acquiring land and erecting buildings, and carrying out any other work and undertakings in the performance of its functions or the exercise of its powers under this Act;
 - (e) repaying any financial accommodation received or moneys borrowed under this Act and the profit, return, mark-up or interest due thereon; and
 - (f) generally paying any expenses for carrying into effect the provisions of this Act.

28. Annual Budget – (1) The Commission shall prepare and approve annual budget for a financial year in the prescribed manner.

(2) No expenditure shall be made for which provision has not been made in any approved budget except if made from any previously approved contingency funds, unless further approval is sought and obtained from the Board.

29. Annual Report and Accounts – (1) Within ninety days from the end of each financial year, the Commission shall prepare a report on the activities and performance of the Commission, including inspections carried out under this Act during the financial year and submit a copy of the report to the Government.

(2) The Commission shall keep proper accounts and shall, as soon as practicable, after the end of each financial year, prepare a statement of accounts of the Commission for the financial year which shall include a balance sheet and an account of income and expenditure.

(3) The Commission shall appoint a firm of chartered accountants for audit of the statement of accounts of the Commission.

(4) The Board shall, within one hundred and twenty days of the end of each financial year, together with the annual report of the Commission under sub-Section (2), send a copy of the statement of accounts of the Commission certified by the auditors and a copy of the auditors' report to the Government.

30. Investments – (1) Subject to sub-Section (2), the Commission may, in so far as its moneys are not required to be expended under this Act, invest the surplus moneys in such manner as may be prescribed.

(2) The Commission shall not invest its money in listed securities or any derivative thereof whether listed or not.

CHAPTER VII HEALTH OMBUDSMAN

31. Appointment and Removal of Health Ombudsman – (1) The Government shall, by notification in the official gazette, appoint the Health Ombudsman.

(2) The Health Ombudsman shall be a person at least of the rank of judge of high court, retired or serving.

(3) Shall be appointed by the government.

(4) The Health Ombudsman shall, in all matters, perform his functions and exercise his powers fairly, honestly, diligently and independently.

(5) The Health Ombudsman shall be entitled to such salary, allowances and privileges and other terms and conditions of service as the Government may determine and these terms shall not be varied during the term of office of the Health Ombudsman.

(6) The Health Ombudsman may be removed from the office by the Government on the ground of misconduct or of being incapable of properly performing the duties of his office by reason of physical or mental incapacity.

(7) The Health Ombudsman may, if aggrieved by the decision of removal, may prefer an appeal before the Lahore High Court against such decision within thirty days from the date of his removal.

(8) Ombudsman which will be constituted under the health bill shall have the exclusive jurisdiction to try and adjudicate all the matters pertaining to health bill and no other court, tribunal or authority shall have the jurisdiction to determine any issue with regard to matter pertaining to health bill.

(9) Ombudsman constituted herein shall all the powers for the purposes of adjudication as of criminal and civil procedure court.

32. Tenure and Office – (1) The Health Ombudsman shall hold office for a period of four years and shall not be eligible for any extension of tenure or for re-appointment as Health Ombudsman under any circumstances.

{Provided that a sitting district Judge working as Health Ombudsman may be called back by the competent authority before expiry of his tenure.}

(2) The Health Ombudsman may resign his office by writing under his hand addressed to the Governor.

(3) The Health Ombudsman shall not:

- (a) Hold any other office of profit in the service of Pakistan; or
- (b) Occupy any other position carrying the right to remuneration for the rendering of services.

(4) The Health Ombudsman {not being a district Judge} shall not hold any office of profit in the service of Pakistan before the expiration of two years after he has ceased to hold that office.

32(A) Acting Health Ombudsman – At any time when the office of Health Ombudsman is vacant or the Ombudsman is absent or is unable to perform his functions due to any cause, the Government shall appoint an acting Ombudsman.

33. Secretariat, Staff and Other Facilities – (1) The office of the Health Ombudsman shall be at Lahore.

(2) The Government shall be responsible for providing necessary office space, equipment, utilities and other resources required by the Health Ombudsman to carry out his functions independently under this Act.

(3) The members of the Staff of the Health Ombudsman shall be appointed by the Government in consultation with the Health Ombudsman.

(4) The members of the Staff of the Health Ombudsman shall be entitled to such salary, allowances and other terms and conditions of service as may be prescribed by the Government.

(5) Notwithstanding the foregoing sub-Sections, the Health Ombudsman may appoint competent persons as advisors, consultants, bailiffs, interns and experts with or without remuneration to assist him in the discharge of his duties under this Act.

34. Functions and Powers – (1) Notwithstanding anything contained in any other law, the Health Ombudsman may:

(a) on a complaint by any aggrieved person; or

(c) on a reference by the Government or the Provincial Assembly of the Punjab; or

(d) on a motion of the Supreme Court of Pakistan or the Lahore High Court made during the course of any proceedings before it, undertake investigation into allegations of maladministration, malpractice or failures on the part of a Healthcare Service Provider, or the Commission, or any officers or employees of the Healthcare Service Provider or the Commission.

(2) The Health Ombudsman may exercise the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (V of 1908), in respect of the following matters:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents;

- (c) receiving evidence on affidavits; and
 - (d) issuing commission for the examination of witnesses.
- (3) The Health Ombudsman shall not have any power to investigate or inquire into any matter:
- (a) subjudice before a Court of competent jurisdiction on the date of the receipt of a complaint, reference or motion by him;
 - (b) subjudice before the Commission or finally decided by the Commission against which appeal lies to the Lahore High Court;
 - (c) relating to service or employment of an employee of a Healthcare Service Provider or the Commission.
- (4) The Health Ombudsman may authorize members of the Staff to administer oaths and to attest various affidavits, affirmations or declarations which shall be admitted in evidence in all proceedings under this Act without proof of the signature or seal or official character of such person.
- (5) All executive authorities and law enforcement agencies of the Government shall act in aid and support of the Health Ombudsman.

35. Procedure of Investigation – (1) The Government shall, by Rules, prescribe the procedure to be carried out by the Health Ombudsman under this Act, and the manner, time and fees for submission of complaints and other documents.

(2) Ombudsman which will be constituted under the health bill shall have the exclusive jurisdiction to try and adjudicate all the matters pertaining to health bill and no other court, tribunal or authority shall have the jurisdiction to determine any issue with regard to matters pertaining to health bill.

(3) For the purpose of an investigation under this Act, the Health Ombudsman may require any person concerned with a complaint to furnish any information or to produce any document which in the opinion of the Health Ombudsman is relevant and helpful in the conduct of the investigation and there shall be no obligation to maintain secrecy in respect of disclosure of any information or document for the purposes of such investigation.

35A. Procedure and evidence – (1) A complaint shall be made on solemn affirmation or oath and in writing addressed to the Ombudsman by the person aggrieved or, in the case of his death, by the legal representative and may be lodged in person at the Office or handed over to the Health Ombudsman in person or sent by any other means of communication to the Office.

(2) No anonymous or pseudonymous complaints shall be entertained.

(3) A complaint shall be made not later than three months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint.

36. Recommendations for Implementation – (1) If the Health Ombudsman is of the opinion that any matter amounts to maladministration, malpractice or failures, he shall:

- (a) communicate his findings to the Government and/or the Commission, if deemed necessary:
 - (i) to consider the matter further;
 - (ii) to modify or cancel any decision, process, recommendation, act or omission;
 - (iii) to explain more fully the act or decision in question;
 - (iv) to take disciplinary action against any employee under the relevant laws applicable to him;
 - (v) to dispose of the matter or case within a specified time; or
 - (vi) to take any other steps specified by the Health Ombudsman, and
- (b) where the circumstances of the case so require, refer any matter to the law enforcement agencies for appropriate action.

(2) If, after conducting an investigation, it appears to the Health Ombudsman that an injustice has been caused to the person aggrieved in consequence of maladministration, malpractice or failures and that the injustice has not been or will not be remedied, he may, if he thinks fit, lay a special report on the case before the Government or any other governmental authority or agency for appropriate action.

(3) The Health Ombudsman may, on the complaint of an aggrieved person, direct a Healthcare Service Provider to pay damages to the aggrieved person as the Health Ombudsman deems appropriate.

37. Representation against the decision or recommendation of the Health Ombudsman – Any person, Healthcare Service Provider or Commission may, within thirty days of the communication of the final decision or recommendation of the Health Ombudsman, file a representation against the decision or recommendation in the Lahore High Court.

38. Health Ombudsman and Staff to be Public Servants – The Health Ombudsman, the employees, officers and all other Staff of the Office of the Health Ombudsman shall be deemed to be public servants within the meaning of Section 21 of the Pakistan Penal Code, 1860 (VII of 1860).

39. Budget, Expenditure and Annual Report – (1) The Health Ombudsman shall prepare budget for its Office and submit it to the Government three months before the commencement of every financial year for allocation of funds and the Government shall make grants to the office of the Health Ombudsman in respect of its budget for each financial year before the commencement of every financial year.

(2) The Health Ombudsman shall be the Principal Accounts Officer of the office of the Health Ombudsman in respect of the expenditure incurred against budgetary or any other grants made to him and shall, for this purpose, exercise all the financial and administrative powers delegated to an administrative department of the Government.

(3) Within three months of the conclusion of the calendar year to which the report pertains, the Ombudsman shall submit an annual report

about the working of the Health Ombudsman to the Government.

(4) The Government shall lay the annual report of the Health Ombudsman before the Provincial Assembly of the Punjab.

40. Bar of Jurisdiction – Same as provided in this Act, no court other than the Lahore High Court shall have jurisdiction:

- (a) to question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Act; or
- (b) to grant an injunction or stay or to make any interim order in relation to any proceeding before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Health Ombudsman.

41. Immunity – No suit, prosecution or other legal proceeding shall lie against the Health Ombudsman, his Staff, advisers, consultants or any person authorized by the Health Ombudsman for anything which is done or intended to be done in good faith under this Act.

42. – Under no circumstances whatsoever, can a health care provider be penalized on criminal grounds unless any act or action on his part is proved as “intentional act” within the meaning of offence as described in ppc . “Nothing is an offence that is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution”.

43- Harassment and putting undue pressure on the health care provider during the discharge of his lawful duty shall be treated as an offence. The offender may be penalized one hundred thousand rupees or one year imprisonment or both by health ombudsman.

CHAPTER VIII MISCELLANEOUS

42. Executive authorities to assist the Commission – All executive authorities and law enforcement agencies of the Government shall act in aid of the Commission.

43. Recovery of fines and other dues as arrears of land revenue – (1) The Government may recover the fines imposed under this Act or other dues recoverable under the Act as arrears of land revenue under the Punjab Land Revenue Act 1967 imposed by the Commission or the Ombudsman.

(2) The Commission may authorize an officer to exercise all the powers of collector under the Punjab Land Revenue Act 1967 for recovery of fines and other dues under this Act.

44. Failure to comply with the decision of the Health Ombudsman – Any person who, in the opinion of the Health Ombudsman, fails to comply with the final decision or recommendation of the Health Ombudsman, the Health Ombudsman may impose a fine which may extend to five hundred thousand

on rupees on the person.

45. Removal of Difficulties – If any difficulty arises in giving effect to any provision of this Act, the Government may make such order not inconsistent with the provisions of this Act as may appear to it to be necessary for the purpose of removing such difficulty.

46. Regulations – (1) The Commission may make Regulations for carrying out the purposes of this Act in consultation with representatives of stakeholders.

(2) Without prejudice to the generality of sub-Section (1), the Commission may make Regulations with respect to all or any of the following matters:

- (a) the forms, fees and registers for the purposes of this Act;
- (b) the records of patients treated in a Healthcare Establishment are provided;
- (c) the records of the Staff of a Healthcare Establishment;
- (d) the requirements as to the number and qualifications of nursing and other Staff in a Healthcare Establishment;
- (e) the apparatus, appliances, equipment and instruments to be provided and maintained in a Healthcare Establishment;
- (f) the ambulances to be provided and maintained by a Healthcare Establishment;
- (g) the standards of accommodation, sanitation, and other amenities in a Healthcare Establishment;
- (h) the cleanliness and hygiene in a Healthcare Establishment;
- (i) the safety and welfare of patients in a Healthcare Establishment are provided;
- (j) the management, control, superintendence and care of a Healthcare Establishment;
- (k) the composition, procedures, duties and responsibilities of quality assurance committees of Healthcare Establishments; and
- (l) the Regulation and control of prices of the Healthcare Services.

(3) The power to make Regulations conferred by this Section shall be subject to the condition of previous publication and, before making any Regulations, the draft thereof shall be published in two newspapers of wide circulation for eliciting public opinion thereon within a period of not less than fifteen days from the date of publication.

47. Rules – (1) The Government may, by notification in the official Gazette, make Rules for giving effect to the provisions of this Act.

(2) The power to make Rules conferred by this Section shall be subject to the condition of previous publication and, before making any rule, the draft thereof shall be published in the official Gazette for eliciting public opinion thereon within a period of not less than fifteen days from the date of publication.

STATEMENT OF OBJECTS AND REASONS

Government of Punjab has embarked upon a comprehensive set of reform measures in the health sector. The specification of these measures in the form of the Health Policy followed the work of the Working Group on Health and the involvement of a wide range of stakeholders. The health policy addresses thirty three “issues” under three broad categories:

- Governance and Larger Systemic Issues
- Primary and Secondary Health Care
- Tertiary Health Care

The establishment of the Health Care Commission is included amongst eight governance and larger systemic issues:

- Capacity Constraints and Systemic Weaknesses
- Restructuring of the DGHS Office
- PHF Restructuring
- Ownership and Implementation of Reform
- Private Sector Mainstreaming and Public Private Partnerships
- Creation of Punjab Health Commission
- Medical Research

Thus it is important to recognize that this specific initiative forms part of a larger set of initiatives intended to be mutually reinforcing and coherent as a whole.

The establishment of the Health Care Commission is a pivotal measure intended to have impact across the full range of reform activities. Our understanding of it is that it will derive its authority from the highest level in the Province and through legislation will be vested with the means of guiding, influencing, and directing where necessary all matters related to the quality of health care delivery whether in the public or private sectors. It will have associated roles related to capacity strengthening and improving the use of resources for health care. It will act as both a leading body and catalyst for health care reform in Punjab. To undertake this role effectively it will act ‘at arms length’ from other institutions in the health sector.

The Commission will oversee six areas of activity:

- Health service organizational standards
- Clinical governance
- Patients rights and responsibilities
- Health care provider’s rights and responsibilities.
- Inspection, audit and investigation
- Supporting capacity strengthening
- Promoting effective and efficient resource use

The Commission will have a leading role in all of these areas but will determine those matters it will directly execute itself; those where it will Commission work of individuals or other organizations under contract to it; and those where it will provide direction, guidance, and information to other

institutions. As presently conceived the Commission role includes the “Ombudsman” function. However, there is a view that the Ombudsman function should be separate from the Commission and we have been mindful of this in continuing to refine the proposal. The clear performance of the government is to establish new health ombudsman function in Punjab.

The Commission will be the licensing authority for health service delivery organizations. It is anticipated that it will also become the accrediting authority for health service delivery organizations. The Commission will not be a direct purchaser of health care services but will act in a regulatory role within the health market, providing guidance and if necessary direction on the content of contracts and the relationships between service purchasers and providers. These roles will be developed step-by-step over time, rigorous at each stage, but in a way as to not cause unnecessary disruption in service delivery. It will build upon and complement the work of other organizations with a remit for assessing aspects of quality.

Health Ombudsman will receive complaints against commission and healthcare providers. Will also have powers to direct health services providers to pay damages to the victims of the delinquent act of the health service provider. Appeal against the orders of Commission as well as Ombudsman shall lie with the High Court.

The work of the Commission can build upon work already undertaken in respect of Minimum Service Delivery Standards, Standard Operating Procedures, Standardised Medical Protocols, and Job Descriptions. It will also build upon the work undertaken in the assessments of Autonomous Medical Institutions and being refined in the form of assessment tools. The Commission will require time to review these contributions and develop them into robust instruments.

Within the management arrangements of the Commission the six areas will be organizationally separated and integration will be achieved at the level of the CEO, the governing body, and an advisory council. It will be our expectation that the advisory council will be broadly representative and inclusive in its membership; that the governing body will be appointed by the Chief Minister, relatively small, highly capable, and be the key point of accountability of the CEO that it will appoint.

The Commission Staffing will be expert and relatively lean. It is anticipated that the maximum number of professional and management Staff will be in the order of 150. In the Punjab there are in excess of 250 hospitals (public and private) and upwards of 25,000 other medical facilities (not including traditional and herbal practitioners). The implication of this is that first line responsibilities for quality assurance and dealing with complaints will lie with other organizations working within frameworks established by the Commission. However, the Commission will undertake routine and random checks and be the point of appeal for complainants.

The Commission will establish collaborative relationships with similar organizations internationally and with organizations with similar and

associated functions for other sectors in Punjab and Pakistan. The UK Care Quality Commission (CQC) has already agreed in principle to such collaboration. Such collaboration may extend to joint Accreditation by the Commission and one or more national and international accrediting organizations.

All these measures require a comprehensive legislation on this subject. Hence this Bill.

MINISTER INCHARGE