



**BERMUDA  
1970 : 523**

**HEALTH INSURANCE ACT 1970**

*[NB formerly the Hospital Insurance Act 1970. Retitled by 2004:22 s.19 & Sch para 1(1) effective 1 January 2006]*

ARRANGEMENT OF SECTIONS

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**PART I**

*[Part I references to "Council" deleted and substituted by "Committee" by 2009:49 s.8 effective 15 December 2009 except in the definition of "the Council" in s.1(1)]*

PRELIMINARY

**Interpretation**

1 (1) In this Act, unless the context otherwise requires—

"approved scheme" means a scheme approved by the Minister under section 26 and includes the health insurance scheme for government employees under the Government Employees (Health Insurance) Act 1986;

"the Board" means the Bermuda Hospitals Board established under the Bermuda Hospitals Board Act 1970;

"child" means a person under school-leaving age;

"Committee" means the Health Insurance Committee established under section 11A;

"the Council" means the Bermuda Health Council established under section 3 of the Bermuda Health Council Act 2004;

"the Fund" means the Health Insurance Fund established under section 12;

"FutureCare Fund" means the fund established under section 13A;

"FutureCare plan" means a plan issued by the Committee under section 13B to persons who are over the age of 65 years, providing standard hospital benefit and such other additional benefits as the Minister may by order made under section 13B specify;

"the general hospital" means the King Edward VII Memorial Hospital;

"health insurance plan" means a plan issued by the Committee under section 13 to the public, providing standard hospital benefit and such other additional benefits as the Minister may by order made under section 13 specify;

"health insurance" means insurance in respect of hospital treatment providing any standard hospital benefit, but does not include insurance related solely to personal accident or

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workers' compensation liability under the Workers' Compensation Act 1965, and "contract of health insurance" shall be construed accordingly;

"hospital treatment" means treatment in a hospital as an in-patient or an out-patient;

"indigent person" means a person who in the opinion of the Minister responsible for Health is unable, by reason of inadequate financial resources, to pay the premium required for health insurance;

"insurance business" means the business of health insurance;

"insured" means insured under this Act in respect of hospital treatment with a licensed insurer or under an approved scheme;

"insurer" means an insurance undertaking which issues any contract of insurance as a principal;

"licensed insurer" means an insurer for the time being licensed by the Minister of Finance under section 28 and includes the Committee;

"the Minister" means the Minister responsible for Health;

"prescribed" means prescribed by regulations made under section 40;

"school-leaving age" means the upper limit of compulsory school age in accordance with section 40 of the Education Act 1996;

"self-employed person" means a person over school-leaving age who is gainfully occupied, otherwise than as an employed person;

"standard hospital benefit" means benefit in respect of prescribed in-patient and out-patient treatment ;

"standard premium" means the prescribed premium payable in respect of standard hospital benefit.

(2) For the purposes of this Act—

(a) a person shall be deemed to be over or under any age if he has or has not attained that age, as the case may be;

(b) a person shall be deemed not to have attained the age of 65 until the commencement of the sixty-fifth anniversary of the date of his birth, and similarly with respect to any other age.

(3) For the purposes of this Act "resident" means ordinarily resident in Bermuda and the following persons shall be deemed not to be ordinarily resident in Bermuda—

- (a) members of Her Majesty's Forces who are stationed temporarily in Bermuda, but excluding persons on secondment to the Bermuda Regiment;
- (b) members of the Canadian Forces;
- (c) *[repealed]*;
- (d) *[deleted]*;
- (e) consular officers (other than honorary consuls) and members of the consular staff of any foreign country who are nationals of that country;
- (f) members of the families of persons mentioned in paragraphs (a) to (e) forming part of their households.

(4) In determining any period of ordinary residence such temporary absences from Bermuda as may be prescribed shall be disregarded.

*[section 1 subsection (3)(c) amended by 2002:6 s.4 & Sch 3 effective 18 June 2002; "Insurance Officer" deleted and "Director" inserted by 2002:26 s.2(a) effective 1 August 2005; "Commission" and subsection (3)(d) deleted, "Council" inserted, "Fund" and "Minister" substituted, "health insurance" substituted for "hospital insurance", "indigent person" and "school leaving age" amended, by 2004:22 s.19 & Sch para 1(2) effective 1 January 2006; subsection (1) "Futurecare Fund" and "Futurecare plan" inserted by 2009:10 s.2 effective 1 April 2009; "Committee" inserted and "Director" repealed by 2009:49 s.2 effective 15 December 2009; "health insurance plan" amended by 2010:21 s.2 effective 1 April 2010]*

*[NB 2004:22 s.19 & Sch para 1(5) effective 1 January 2006 amended this Act generally by substituting "Council" for "Commission", "Health Insurance Fund" for "Hospital Insurance Fund" and "health insurance" for "hospital insurance". These amendments are not individually noted.]*

**Subsidy for hospital treatment of certain persons**

2 (1) Subject to this section and the Public Treasury (Administration and Payments) Act 1969, there shall be paid to the Board out of the Consolidated Fund, with the approval of the Minister, a subsidy of such amount as will defray—

- (a) in respect of any resident child, the total cost of any standard hospital benefit received by that child in the general hospital;
- (b) in respect of any resident person over the age of 65 years but under the age of 75 years who has been resident for

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a continuous period of not less than 10 years during the period of 20 years immediately preceding the application for payment of the subsidy and who is or is not insured, four-fifths of the total cost of any standard hospital benefit received by that person in the general hospital;

- (bb) in respect of any resident person over the age of 75 years who has been resident for a continuous period of not less than 10 years during the period of 20 years immediately preceding the application for payment of the subsidy and who is or is not insured, nine-tenths of the total cost of any standard hospital benefit received by that person in the general hospital;
- (c) in respect of any indigent person who either—
  - (i) possesses Bermudian status as defined in the Bermuda Immigration and Protection Act 1956; or
  - (ii) has been resident in Bermuda for not less than ten years, so much of the cost of hospital treatment received by that person as may be agreed between the Minister and the Board;
- (d) the amount of any abatement of income suffered by the Board by reason of any exemption from or reduction of hospital fees enjoyed by any person by virtue of any other statutory provision;
- (dd) subject to regulation 3(2) of the Health Insurance (Artificial Limbs and Appliances) Regulations 1971, in respect of any resident child who, prior to the coming into operation of this Act, was entitled to the youth subsidy, the cost of any artificial limbs or other artificial appliance for a period of one year next after the date on which, but for this provision, the entitlement to such subsidy would otherwise have expired; and
- (e) in respect of any resident person over school-leaving age and under the age of twenty-one years who is a full-time student in Bermuda, the total cost of any standard hospital benefit:

Provided that the cost of maternity treatment shall not be included under this paragraph.

(2) Where a person receives hospital treatment in a ward other than a public ward, the amount of subsidy payable under subsection (1)(a), (b), (c) or (e) in respect of that person shall be limited to the

amount which would have been payable if the treatment had been received in a public ward.

(3) Subject to section 39, a person shall be entitled to receive free or partially free hospital treatment to the extent that subsidy is payable in respect of him under this section and any contract of health insurance effected in respect of that person shall have effect only in relation to that portion of the cost of any hospital treatment which is not met out of subsidy.

(4) Subsidy payments to the Board under subsection (1) shall be made at such times and subject to such conditions relating to the submission and verification of the accounts of the Board as may be prescribed.

(5) Without prejudice to section 16 of the Bermuda Hospitals Board Act 1970 any subsidy paid under subsection (1) shall be held and applied by the Board to furthering the purposes of the general hospital.

(6) In subsection (1)(e) "full-time student" means a full-time student at either—

- (a) the Bermuda College; or
- (b) a school which is a recognized school within the meaning of section 14 of the Education Act 1954; or
- (c) any educational institution approved by the Minister for the purposes of that paragraph.

*[section 2 amended by 1995:9 effective 1 April 1995; and by 2004:22 effective 1 January 2006. NB reference to 21 years in subsection (1)(e) not amended by 2001:20 – see s.6(3) & Sch 1 of that Act.]*

**Treatment received in hospital abroad for which subsidy would have been payable if treatment received in Bermuda**

3 (1) Where any person receives treatment in a hospital outside Bermuda in respect of which subsidy would have been payable to the Board under section 2(1)(a), (b), (bb) or (e) if that treatment had been received in the general hospital, he shall be entitled to claim and recover from the Accountant General so much of the actual cost of such treatment as would have been so payable in respect of him by way of subsidy.

(2) Payment of claims under this section shall be made out of the Consolidated Fund.

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(3) Regulations made under section 40 may make provision for the form and manner in which claims under this section shall be submitted and for the determination of such claims.

*[section 3 subsection (1) reference to 2(1)(bb) inserted by 2002:26 s.4 deemed effective 1 September 1987]*

### **Mutual Re-insurance Fund**

3A (1) There shall be a fund to be called the Mutual Re-insurance Fund into which there shall be paid by every licensed insurer and every employer who operates an approved scheme a prescribed amount as part of the standard premium for each insured person.

(2) There shall be payable out of the Mutual Re-insurance Fund—

- (a) all claims for haemodialysis;
- (b) after a licensed insurer has paid all claims arising in connection with a kidney transplant for which the insurer is liable under the contract, up to \$30,000 towards the cost of the kidney transplant and the full cost of all maintenance drugs;
- (c) all claims for in-patient hospital treatment arising after the first sixty days of such treatment, where the patient has been hospitalized for a continuous period in excess of sixty days.
- (d) *[deleted by 2005:3]*

(2A) There may be paid out of the Mutual Re-insurance Fund into the Fund or the Futurecare Fund such sum as the Minister may, from time to time by order, prescribe.

(2B) Section 6 of the Statutory Instruments Act 1977 does not apply to an order made under subsection (2A).

(3) The Mutual-Re-insurance Fund shall be maintained and administered by the Committee which shall have power to invest any proportion thereof in approved securities as may be considered necessary by the Committee; and for the purpose of this subsection the expression "approved securities" has the meaning assigned to it by section 4(5)(b) of the Public Funds Act 1954.

(4) For the purposes of this Act, "hospice care" means in-patient or residential care for an individual who has a terminal illness that requires palliative care.

*[section 3A amended by 1990:23 effective 1 April 1990; by 1991:10 effective 1 April 1991; by 1992:7 effective 31 March 1992; by 1998:25 effective 30 June 1998;*

*subsection (2)(f) inserted by 2000:7 s.2 effective 1 April 2000; subsections (2)-(2B) substituted by 2002:7 s.2 effective 1 April 2002; by 2004:22 effective 1 January 2006; subsection (2)(d) deleted by 2005:3 s.2 effective 21 March 2005; subsection (1) and (2A) amended by 2009:10 s.3 effective 1 April 2009]*

4 [repealed by 1986:14]

5 [repealed by 1986:14]

## **PART II**

### **HEALTH INSURANCE COMMITTEE**

*[Part II Heading amended and sections 6 to 11 repealed by 2004:22 s.19 & Sch para 1(3) effective 1 January 2006; Part II Heading amended by 2009:49 s.3 effective 15 December 2009; Part II references to "Council" deleted and substituted by "Committee" by 2009:49 s.8 effective 15 December 2009]*

#### **Establishment of Committee**

11A (1) There is established a Committee to be known as the Health Insurance Committee which shall, subject to any general directions of the Minister, have the powers conferred, and discharge the duties imposed, upon it by or under this Act.

(2) The Committee shall consist of—

- (a) the Permanent Secretary with responsibility for health who shall be the Chairperson;
- (b) the Financial Secretary who shall be the Deputy Chairperson;
- (ba) the Chief Medical Officer;
- (c) the Permanent Secretary with responsibility for financial assistance;
- (d) the Chief Executive Officer of the Bermuda Health Council;
- (e) the public officer responsible for health insurance who is designated as such by the Minister; and
- (f) two persons (who are not public officers) appointed by the Minister—
  - (i) one who has experience and good standing in the medical profession in Bermuda; and
  - (ii) the other who has experience and good standing in the health insurance sector of the insurance industry in Bermuda.

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(3) A member referred to in subsections (2)(a), (2)(b), (2)(ba) or (2)(c) may designate a public officer to attend a meeting on his behalf.

(4) A person appointed under subsection (2)(f) shall be appointed for a term of three years and is eligible for reappointment.

(5) In the case of absence or inability of a person appointed under subsection (2)(f) to act, the Minister may appoint a person to act temporarily in his place.

(6) A person appointed under subsection (2)(f) may at any time resign his office by instrument in writing addressed and transmitted through the Chairperson to the Minister and from the date of receipt by the Minister of the instrument that member shall cease to be a member.

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

(8) The validity of any proceedings of the Committee shall not be affected by any defect in the appointment of a member.

(9) No act done or proceeding taken under this Act by the Committee shall be questioned on the ground of any omission, defect, or irregularity not affecting the merits of the case.

(10) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Committee in respect of any act done bona fide in pursuance or execution or intended execution of this Act.

(11) Fees shall be paid to members of the Committee in accordance with the Government Authorities (Fees) Act 1971.

*[Section 11A inserted by 2009:49 s.4 effective 15 December 2009; amended by 2010:21 s.3 effective 1 April 2010]*

### **Meetings of Committee**

11B (1) The Committee shall meet as often as may be necessary or expedient for the performance of its functions.

(2) The Chairperson may at any time call a meeting of the Committee and shall call a meeting to be held within five days of a written request for that purpose addressed to him by any three members.

(3) At any meeting of the Committee three members shall constitute a quorum.

(4) At any meeting of the Committee, in the absence of the Chairperson the Deputy Chairperson shall take the chair and in the absence of both the Chairperson and the Deputy Chairperson the members present shall elect one of their number to take the chair.

(5) At any meeting of the Committee, every member (or his designate referred to in section 11A(3)) shall have one vote but, in the event of an equality of votes, the chair of the meeting shall have a second or casting vote.

(6) Subject to subsection (5), the decisions of the Committee shall be by a majority vote.

(7) The Committee shall have power to co-opt persons for the purpose of any particular meeting if such persons are considered by it to be competent to assist in any special area of the Committee's deliberations, but any such persons shall not be entitled to vote at the meeting.

(8) Minutes of each meeting of the Committee shall be kept in proper form.

(9) Subject to this section, the Committee may regulate its own proceedings.

*[Section 11B inserted by 2009:49 s.4 effective 15 December 2009]*

**Functions of the Committee**

11C (1) The functions of the Committee are—

- (a) to manage the health insurance plan and the FutureCare plan;
- (b) to receive claims submitted by or on behalf of insured persons in respect of payments to be made out of the Health Insurance Fund, the FutureCare Fund and the Mutual Re-Insurance Fund (“the Funds”);
- (c) to investigate and decide on such claims;
- (d) to authorize the payment of claims which have been approved by it;
- (e) to manage and keep under constant review the state of the Funds;
- (f) to keep under constant review, and advise the Minister regarding, the payment of subsidies under sections 2 and 3;
- (g) to make recommendations to the Minister in respect of matters concerning the Funds; and
- (h) to perform such other functions as may be assigned to it by or under this Act or by the Minister.

(2) The Committee shall make an annual report to the Minister containing such information as the Minister may require.

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*[Section 11C inserted by 2009:49 s.4 effective 15 December 2009]*

### **Minister may consult Committee**

11D In the exercise of his functions under this Act the Minister may consult the Committee on any matter but, notwithstanding that the Minister has consulted the Committee on any matter, he may act in his discretion in that matter.

*[Section 11D inserted by 2009:49 s.4 effective 15 December 2009]*

### **Health Insurance Fund**

12 (1) For the purpose of this Part there shall be established under the control and management of the Committee, a Health Insurance Fund into which shall be paid all premiums payable to the Committee in respect of the health insurance plan and out of which shall be paid all claims for benefit in respect of the health insurance plan and any other expenses incurred by the Committee in carrying out its functions in respect of the health insurance plan.

(2) There shall be paid to the credit of the Fund an initial sum of one hundred thousand dollars which shall be paid out of the Consolidated Fund at such times and in such amounts as the Committee, with the approval of the Minister, may require.

(3) Subject to the approval of the House of Assembly signified by resolution, the initial sum paid under subsection (2) may from time to time be increased by resolution of the Committee and any increase of that sum, approved as aforesaid, shall be charged on the Consolidated Fund.

*[section 12 amended by 2004:22 effective 1 January 2006; subsection (1) amended by 2009:10 s.4 effective 1 April 2009]*

### **Health Insurance Plan**

13 (1) Subject to this section the Committee shall offer to the public a health insurance plan.

(2) The Minister shall make an order under this section specifying—

(a) the premium (including the standard premium) to be paid to the Committee in respect of each health insurance plan effected with the Committee under subsection (1) during the subsistence of that plan;

(b) the additional benefits (including the items of treatment) covered by the health insurance plan,

and may amend any such order from time to time as the circumstances warrant.

(3) A health insurance plan may be effected with the Committee in respect of more than one person and in that event the corresponding multiple of the premium payable under an order made under subsection (2) shall be charged accordingly.

(4) *[Repealed]*

(5) Section 6 of the Statutory Instruments Act 1977 [title 1 item 3] shall not apply to an order made under this section.

*[section 13 amended by 2004:22 effective 1 January 2006; subsection (1) and (4) amended by 2009:10 s.5 effective 1 April 2009; subsection (1) amended and (4) repealed by 2009:49 s.5 effective 15 December 2009]*

#### **FutureCare Fund**

13A (1) There is established under the control and management of the Committee, a FutureCare Fund into which shall be paid all premiums payable to the Committee in respect of the FutureCare plan and out of which shall be paid all claims for benefit in respect of the FutureCare plan and any other expenses incurred by the Committee in carrying out its functions in respect of the FutureCare plan.

(2) There shall be paid to the credit of the FutureCare Fund an initial sum of ten million dollars which shall be paid out of the Consolidated Fund at such times and in such amounts as the Committee, with the approval of the Minister, may require.

(3) Subject to the approval of the House of Assembly signified by resolution, the initial sum paid under subsection (2) may from time to time be increased by resolution of the Committee and any increase of that sum, approved as aforesaid, shall be charged on the Consolidated Fund.

*[Section 13A inserted by 2009:10 s.6 effective 1 April 2009]*

#### **FutureCare plan**

13B (1) Subject to this section and section 13C, the Committee shall offer to the public a FutureCare plan for persons who are over the age of 65 years.

(2) The Minister shall make an order under this section specifying—

- (a) the premium (including the standard premium) to be paid to the Committee in respect of each FutureCare plan effected with the Committee under subsection (1) during the subsistence of that plan;

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(b) the additional benefits (including the items of treatment) covered by the FutureCare plan,

and may amend any such order from time to time as the circumstances warrant.

(2A) The Minister may, in an order under subsection (2), specify different premiums for different categories of person, in particular, different premiums for—

(a) persons who—

(i) on 31 March 2010, were already enrolled in the FutureCare plan; or

(ii) were eligible to be enrolled during the period 1 January 2009 to 31 March 2010 but who, on 31 March 2010, were not yet enrolled in the FutureCare plan; and

(b) persons who—

(i) on 31 March 2010, were not yet eligible because they had not yet attained the age of 65, but attain the age of 65 (and therefore become eligible to be enrolled in the FutureCare plan) on or after 1 April 2010;

(ii) on or after 1 April 2010, become eligible under section 13C(2A); or

(iii) on or after 1 April 2010, otherwise become eligible to be enrolled in the FutureCare plan.

(3) A FutureCare plan may be effected with the Committee in respect of more than one person and in that event the corresponding multiple of the premium payable under an order made under subsection (2) shall be charged accordingly.

(4) *[Repealed]*

(5) Section 6 of the Statutory Instruments Act 1977 shall not apply to an order made under this section.

*[Section 13B inserted by 2009:10 s.6 effective 1 April 2009; subsection (4) repealed by 2009:49 s.6 effective 15 December 2009; subsection (2A) inserted by 2010:21 s.4 effective 1 April 2010]*

**Enrolment under FutureCare plan**

13C (1) A person who, on 31 March 2009, is enrolled under the health insurance plan and is, on that date, over the age of 65 years shall be transferred by the Committee to the FutureCare plan with effect from 1 April 2009.

(2) A person who, on 31 March 2009, is not enrolled under the health insurance plan, is eligible to be enrolled in the FutureCare plan if, and only if—

(a) the person attains the age of 65 years after 1 January 2009; or

(b) in the case of an indigent person, at the time the person seeks enrolment, the person is over the age of 65 years.

(2A) Notwithstanding subsection (2), any person who is over the age of 70 years is eligible to be enrolled in the FutureCare plan.

(3) Notwithstanding subsections (1) and (2), the Minister may by order declare a period of time to be a period during which any person who is over the age of 65 years may be enrolled in the FutureCare plan.

(4) The negative resolution procedure shall apply to an order made under this section.

*[Section 13C inserted by 2009:10 s.6 effective 1 April 2009; subsection (2A) inserted by 2010:21 s.5 effective 1 April 2010]*

**Committee to offer only health insurance plan or FutureCare plan**

13D The Committee shall not offer to the public any contract or plan of insurance other than the health insurance plan or the FutureCare plan.

*[Section 13D inserted by 2009:49 s.7 effective 15 December 2009]*

**Determination of claims and questions**

14 (1) Every claim to benefit and every question arising in connection with the health insurance plan or the FutureCare plan shall be determined by the Committee in the first instance after such inquiry as the Committee may deem necessary.

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(2) If the Committee disallows a claim under the health insurance plan or the FutureCare plan, as the case may be, or determines a question adversely to the applicant, it shall notify the claimant or applicant in writing of its decision, the reasons therefor and the right of appeal to a court of summary jurisdiction under section 15.

(3) The decision of the Committee on any claim or question shall, subject to section 15 be conclusive for the purposes of any proceedings under this Act.

*[section 14 amended by 2004:22 effective 1 January 2006; amended by 2009:10 s.7 effective 1 April 2009]*

### **Appeals**

15 (1) Any person aggrieved by the decision of the Committee on any claim or question arising in connection with the health insurance plan or the FutureCare plan may, within thirty days of the date on which the decision was given, appeal against that decision to a court of summary jurisdiction.

(2) Reasonable notice shall be given to the Committee of any appeal under this section.

(3) The Committee shall be entitled to appear and be heard, either through a barrister and attorney or through an officer of the Committee duly authorized in that behalf, at any hearing of an appeal under this section.

(4) On the hearing of an appeal under this section a court of summary jurisdiction may make such order (including an order for costs) as it thinks fit.

*[section 15 amended by 2004:22 effective 1 January 2006; amended by 2009:10 s.8 effective 1 April 2009]*

### **Accounts**

16 (1) The Committee shall cause proper accounts of the Fund, the FutureCare Fund and the Mutual Re-insurance Fund to be maintained in such form as the Accountant General may direct.

(2) The accounts of the Fund, the FutureCare Fund and the Mutual Re-insurance Fund shall be audited annually by the Auditor.

*[section 16 subsections (1) and (2) amended by 2002:7 s.3 effective 1 April 2002; amended by 2004:22 effective 1 January 2006; amended by 2009:10 s.9 effective 1 April 2009]*

**Annual Report**

17 (1) The Committee shall, as soon as practicable after the end of each financial year, forward to the Minister—

- (a) a report on the operations of the Committee during that year; and
- (b) a copy of the accounts of the Fund, the FutureCare Fund and of the Mutual Re-insurance Fund for that year certified by the Auditor.

(2) The report prepared for the purposes of subsection (1)(a) shall set out any directions given by the Minister to the Committee during that year.

(3) The Minister shall cause copies of the report of the Committee and the accounts of the Fund, the FutureCare Fund and of the Mutual Re-insurance Fund forwarded to him under subsection (1) to be laid before both Houses of the Legislature.

*[section 17 subsections (1)(b) and (3) amended by 2002:7 s.4 effective 1 April 2002; amended by 2004:22 effective 1 January 2006; amended by 2009:10 s.10 effective 1 April 2009]*

**Committee may make rules**

18 (1) The Committee may, with the approval of the Minister, make rules —

- (a) prescribing the form and manner in which applications for enrolment for the health insurance plan shall be made;
- (aa) prescribing the form and manner in which applications for enrolment for the FutureCare plan shall be made;
- (b) specifying the periods during which applications for enrolment for the health insurance plan shall be made and providing for the enrolment of certain persons or classes of persons outside those periods;
- (ba) specifying the periods during which applications for enrolment for the FutureCare plan shall be made and providing for the enrolment of certain persons or classes of persons outside those periods;
- (c) providing for the payment of benefits and the collection of premiums in respect of the health insurance plan;
- (ca) providing for the payment of benefits and the collection of premiums in respect of the FutureCare plan;

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(d) providing for the maintenance of records in respect of persons insured with the Committee.

(2) The negative resolution procedure shall apply to rules made under this section.

*[section 18 amended by 2004:22 effective 1 January 2006; amended by 2009:10 s.11 effective 1 April 2009]*

### **PART III**

#### **COMPULSORY HEALTH INSURANCE SCHEME**

##### **Interpretation of Part III**

19 For the purposes of this Part—

"an employee" means any person in respect of whom his employer is liable to pay an employer's contribution under section 4 of the Contributory Pensions Act 1970 [*title 18 item 7*];

"the non-employed spouse of an employee" means the lawfully married spouse of an employee, being a spouse ordinarily resident in Bermuda who is not—

- (i) living apart from the other spouse under a deed of separation or order of a court;
- (ii) liable to pay a contribution as a self-employed person under section 4 of the Contributory Pensions Act 1970; or
- (iii) herself or himself an employee.

*[Section 19 definition "an employee" amended by 2009:10 s.12 effective 1 April 2009]*

##### **Compulsory health insurance**

20 (1) Subject to this section and section 26, every employer shall effect and continue in force a contract of health insurance with a licensed insurer providing not less than full standard hospital benefit in respect of himself, every employee and the non-employed spouse of every employee:

Provided that if an employee is, at the date of commencement of his employment with an employer, already insured for full standard hospital benefits, it shall be sufficient for the employer to continue in force the policy of insurance in respect of such employee.

(2) Subsection (1) shall not apply to an employer who, with the approval of the Council, temporarily employs one or more employees if the Council is satisfied that the employment of such employee or employees is not likely to endure for a period of more than one month.

(3) If a spouse ceases to be the non-employed spouse of an employee within the meaning of section 19, the obligation imposed on the employer by this section shall cease to have effect.

(4) An employer who fails to comply with subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$500

(5) Subsection (1) shall apply to every self-employed person; and every partner in a partnership shall be regarded as a self-employed person.

*[section 20 amended by 2002:26 effective 1 August 2005; by 2004:22 effective 1 January 2006; by 2009:49 s.9 effective 15 December 2009]*

**Licensed insurer must report failure of employer to comply with section 20**

20A (1) A licensed insurer with whom an employer has effected a contract of health insurance in accordance with the requirements of section 20(1) shall report to the Council any failure on the part of the employer to comply with those requirements.

(2) A licensed insurer who fails to comply with subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$1,000

*[section 20A amended by 2004:22 effective 1 January 2006; by 2009:49 s.10 effective 15 December 2009]*

**Employer may deduct half cost of premium from salary of employee**

21 An employer shall be liable to pay the total cost of the premium payable under any contract of health insurance effected in respect of an employee under section 20 but shall be entitled to deduct from the salary, wages or other remuneration payable to that employee for the period in respect of which the deduction is to be made, an amount not exceeding one half of the premium so paid in respect of that employee:

Provided that an employer shall not, in the case of any employee, be entitled to deduct, in respect of any period, more than one half of the amount of the standard premium payable in respect of that period.

*[section 21 amended by 2004:22 effective 1 January 2005]*

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### **Employer may deduct total cost of premium for spouse from salary of employee**

22 An employer shall be liable to pay the total cost of the premium payable under any contract of health insurance effected in respect of the non-employed spouse of an employee under section 20, but shall be entitled to deduct from the salary, wages or other remuneration payable to that employee for the period in respect of which the deduction is to be made, in addition to any amount deductible under section 21, an amount not exceeding one half of the premium so paid in respect of the non-employed spouse of that employee:

Provided that an employer shall not, in the case of the non-employed spouse or any employee, be entitled to deduct, in respect of any period, more than one half of the amount of the standard premium payable in respect of that period.

*[section 22 amended by 2004:22 effective 1 January 2006]*

### **Unlawful deductions by employer**

23 If any employer deducts or attempts to deduct from the salary, wages or other remuneration of an employee more than the amount which he is entitled to deduct in respect of any period under sections 21 and 22 he commits an offence:

Punishment on summary conviction: a fine of \$1,000

### **Employee must provide information to employer**

24 (1) Every employee shall keep his employer informed of all facts relevant to the employer's liability in relation to such employee's spouse under section 20 and of any change of circumstances which would affect the employer's liability under section 20.

(2) Any employee who contravenes subsection (1) shall be liable to his employer for any expense incurred by him for which he would otherwise not have been liable.

(3) Without prejudice to subsection (2), an employee who contravenes subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$10 for each day in respect of which he is in default.

### **Duty of employer to provide information to employee**

24A (1) An employer shall promptly after the beginning of an employee's employment with an employer give a written statement to an employee of the name and address of the licensed insurer with whom the employee's contract of health insurance has been effected, the date when

the contract of health insurance came into force and the insurance number of the contract of health insurance.

(2) Where an employer to whom the provisions of this Act apply fails or neglects to effect a contract of health insurance which he is required to effect by the provisions of this Act or to pay any premium payable under a contract of health insurance which under the provisions of this Act he is liable to pay, the employer shall promptly give a written statement to the employee of such failure or neglect.

(3) An employer who violates subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a fine of not less than five hundred dollars and not more than one thousand dollars or to imprisonment for six months.

*[section 24A inserted by 1991:33 effective 8 July 1991; and amended by 2004:22 effective 1 January 2006]*

**Recovery of damages from employer in default**

25 (1) Where an employer to whom this Act applies has failed or neglected—

- (a) to effect any contract of health insurance which he is required to effect by section 20;
- (b) to pay any premium payable under a contract of health insurance which under this Part he is liable to pay; or
- (c) to comply with the requirements of this Act or any regulations made thereunder relating to the payment of premiums and submission of records,

and by reason thereof any person has lost any benefit to which he would have been entitled if such failure or neglect had not occurred, that person shall be entitled to recover from the employer before a court of summary jurisdiction as a civil debt a sum equal to the amount of benefit so lost.

(2) The Board may institute proceedings under subsection (1) on behalf of any person to whom that subsection applies and in that event the Board shall be subrogated to the rights of that person.

(3) In any proceedings brought under subsection (1), a certificate purporting to be issued by the Council specifying the amount of any benefit which would, in the absence of any failure or neglect by an employer, have been payable for hospital treatment under the contract of health insurance shall be prima facie evidence of the facts stated therein.

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(4) Without prejudice to subsection (1) an employer who fails or neglects—

(a) to effect any contract of health insurance which he is required to effect under section 20; or

(b) to pay any premium payable under a contract of health insurance which under this Part he is liable to pay,

commits an offence:

Punishment on summary conviction : imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

Provided that in any proceedings under this subsection relating to the failure or neglect of an employer to comply with this subsection in respect of the non-employed spouse of an employee it shall be a defence for the employer to prove that he did not know, and could not reasonably be expected to have known, that the employee in question had a spouse, or that such spouse was a person in respect of whom he was required to effect a contract of health insurance under this Part.

(5) Where subsection (4)(b) applies to an employer, then, without prejudice to any other provision of this Act the insurer shall be entitled to recover from the employer before a court of summary jurisdiction the amount of the premium or premiums payable under the contract of insurance.

(6) Without prejudice to any other provision of this Act, where an employer fails or neglects—

(a) to effect any contract of health insurance which he is required to effect by this Act; or

(b) to pay any premium payable under a contract of health insurance which under this Part he is liable to pay and such failure or neglect causes the contract of health insurance to lapse,

then, the Council is entitled to institute proceedings to recover from the employer before the Supreme Court or a court of summary jurisdiction as a civil debt a sum equal to the amount of the unpaid premium.

(7) In any proceedings instituted under subsection (6), a certificate purporting to be issued by the Council specifying the amount of the unpaid premium which would, in the absence of the employer's failure or neglect, would [*sic*] have been payable as premium under a contract of health insurance shall be prima facie evidence of the facts stated therein.

*[section 25 amended 1991:33 effective 8 July 1991; by 2002:26 effective 1 August 2005; by 2004:22 effective 1 January 2006; amended by 2009:10 s.13 effective 1 April 2009; by 2009:49 s.11 effective 15 December 2009]*

**Approved schemes**

26 (1) An employer shall be deemed to discharge the obligations imposed on him under section 20 if, being an employer of such number of employees as may be prescribed, he makes arrangements for the provision of health insurance, to the extent that section 20 so requires, in respect of himself and each of his employees and in respect of the non-employed spouse of each of his employees, by means of an approved scheme.

(2) An employer who proposes to discharge the obligations imposed on him by section 20 by means of an approved scheme shall submit such details relating to the proposed scheme as the Minister may require and the Minister shall, subject to subsection (3), if he is satisfied that the proposed scheme provides not less than full standard hospital benefit, give his approval thereto in such manner and subject to such conditions as he may determine.

(3) The Minister shall not approve any proposed scheme and may revoke an approval previously granted unless the employer provides and maintains in force a security, consisting of an undertaking by a surety approved by the Minister to make good any failure by the employer to discharge any liability which he may incur under this Act by virtue of the operation of an approved scheme.

(4) Sections 21, 22, 23, 24 and 25 shall have effect in relation to an approved scheme as they have effect in relation to a contract of health insurance.

*[section 26 amended by 2004:22 effective 1 January 2006]*

**PART IV**

**VOLUNTARY HEALTH INSURANCE SCHEME**

**Voluntary health insurance**

27 (1) Subject to this section, any person may conclude a contract of health insurance providing not less than full standard hospital benefit with a licensed insurer.

(2) It shall not be lawful for any insurer to offer to the public any contract of health insurance unless—

- (a) he is a licensed insurer; and

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(b) the contract provides not less than full standard hospital benefit.

(3) Any insurer who offers to the public a contract of health insurance in contravention of subsection (2) commits an offence:

Punishment on summary conviction : imprisonment for 12 months or a fine of \$1,000 or both such imprisonment and fine.

*[section 27 amended by 2004:22 effective 1 January 2006]*

### **Licensing of insurers**

28 (1) Subject to the Bermuda Immigration and Protection Act 1956, any insurer desirous of undertaking insurance business may apply to the Minister of Finance for a licence.

(2) An application under subsection (1) shall be in such form as may be specified by the Minister of Finance and in considering any such application the Minister of Finance shall have regard to the financial standing of the applicant and for this purpose may require the production of such documents or financial statements as he may consider relevant.

(3) Where the Minister of Finance is satisfied that the applicant is a fit and proper person and that he has the requisite expert personnel, premises and experience properly to undertake insurance business, he may, on payment of the prescribed fee, grant a licence to that person to undertake insurance business.

(4) A licence shall be of such duration as may be prescribed and the Minister of Finance may grant a licence subject to such terms and conditions as he may consider appropriate.

(5) The Minister of Finance shall have the power at any time to require a licensed insurer to produce any documents and answer any questions which the Minister of Finance may consider relevant.

### **Refusal to grant licence**

29 (1) Where the Minister of Finance refuses to grant a licence under section 28 he shall give his reasons for such refusal, in writing, to the applicant.

*[section 29 deleted and substituted by 2002:32 s.2 effective 11 December 2002]*

### **Suspension or revocation of licence**

29A (1) The Minister of Finance may at any time suspend or revoke a licence—

- (a) if he is satisfied that a licensed insurer is no longer a fit and proper person to undertake insurance business;
- (b) for any contravention of any terms or conditions subject to which the licence is granted;
- (c) if a licensed insurer is carrying on business in a manner detrimental to the public interest;
- (d) if a licensed insurer defaults without just cause on any contract of health insurance;
- (e) if a licensed insurer ceases to carry on business in Bermuda; or
- (f) if a licensed insurer does not reimburse a medical or a dental practitioner in accordance with the scale of fees prescribed under section 13A of the Bermuda Hospitals Board Act 1970.

(2) A suspension or a revocation under subsection (1) shall not affect the liability of the insurer in respect of any contract of health insurance in force at the date of such suspension or revocation.

*[section 29A inserted by 2002:32 s.3 effective 11 December 2002; and amended by 2004:22 effective 1 January 2006]*

#### **Appeal to Supreme Court**

30 (1) Where the Minister of Finance-

- (a) refuses to grant a licence under section 28; or
- (b) suspends or revokes a licence under section 29A(1);

the insurer concerned may appeal against that refusal, suspension or revocation, to the Supreme Court.

(2) The Chief Justice may make rules for the procedure on an appeal brought under this section in the like manner and subject to the like formalities as he may make rules of procedure for the Supreme Court.

(3) On an appeal brought under this section the Supreme Court may confirm or reverse the decision of the Minister of Finance or remit the matter with the opinion of the Supreme Court thereon to the Minister of Finance.

*[section 30 subsection (1) substituted by 2002:32 s.4 effective 11 December 2002]*

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### **PART V**

#### GENERAL

##### **Scope of indemnity**

31 (1) Notwithstanding anything in any statutory provision, rule of law or the common law, a licensed insurer issuing a contract of health insurance shall be liable to indemnify the person or class of persons specified in the contract in respect of any liability for hospital treatment which the contract purports to cover.

(2) A licensed insurer shall be liable to indemnify an insured person in respect of any hospital treatment incurred during the currency of a contract of health insurance, being hospital treatment covered by that contract, and such liability shall continue until the full benefit entitlement under the contract has been exhausted.

(3) Any condition in a contract of health insurance providing that no liability shall arise under the contract or that any liability so arising shall cease in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the contract shall be of no legal effect.

(4) Subject to subsection (5), a contract of health insurance concluded with a licensed insurer other than the Council shall not be terminated by the insurer, otherwise than in accordance with any provision of the contract entitling the insurer to terminate for non-payment of premiums, except during a period when application for enrolment without evidence of insurability for the health insurance plan may be made by the insured person.

(5) Notwithstanding any rule of law, a licensed insurer shall not be entitled to avoid or cancel a contract of health insurance effected under Part III on the ground that it was obtained by non-disclosure of a material fact or by a representation of fact which was false in some material particular, but shall be entitled, on giving notice of not less than one month to the other party thereto, but not otherwise, to avoid or cancel, on any of those grounds, a contract of health insurance effected otherwise than under Part III.

(6) The termination, avoidance or cancellation of a contract of health insurance under subsection (4) or (5) shall not affect the liability of the insurer in respect of hospital treatment covered by the contract which is not completed at the date of such termination or cancellation.

(7) For the purpose of subsection (5) "material" means of such a nature as to influence a prudent insurer in determining whether he will take the risk, and if so, what premium and on what conditions.

*[section 31 amended by 2004:22 effective 1 January 2006; subsection (4) amended by 2009:10 s.14 effective 1 April 2009]*

**Motor vehicle accident; rights of insured vest in licensed insurer**

32 (1) Where a licensed insurer or an employer who operates an approved scheme pays a claim for hospital treatment in respect of his insured by reason of his insured having been injured in an accident involving a motor vehicle, and a person who is insured under a policy of insurance issued to him pursuant to the Motor Car Insurance (Third Party Risks) Act 1943 either admits liability for the injuries or is adjudged by a court of competent jurisdiction to be so liable, then notwithstanding anything to the contrary in any contract or any enactment or the common law, the injured person shall have a right to recover the expenses incurred for hospital treatment for which such person is insured pursuant to this Act, and such right shall be transferred to and vest in the licensed insurer or employer who operates an approved scheme, as the case may be.

(2) Where, pursuant to subsection (1) a claim is made by the licensed insurer or employer who operates an approved scheme, such insurer or employer, as the case may be, shall be entitled to be paid interest on the amount of the claim calculated from the date of payment by him of the hospital expenses to the date of reimbursement to him of those expenses; so however that in no case shall the rate of interest exceed the statutory rate as defined in section 1 of the Interest and Credit Charges (Regulation) Act 1975 and in every case where a judgment has been obtained payment of interest shall be subject to any order made by the court.

(3) Where a person who is injured in an accident receives subsidy pursuant to section 2 and he, the licensed insurer or the employer, as the case may be, by virtue of a right to recover expenses under subsection (1), recovers expenses for hospital treatment, the person who so recovers shall refund the amount of the subsidy to Government and if he fails to do so the Accountant-General is entitled to recover the amount of subsidy from him before the Supreme Court or a court of summary jurisdiction as a civil debt.

*[section 32 amended by 1991:33 effective 8 July 1991]*

**False declaration**

33 If any person for the purpose of obtaining any benefit or other payment under a contract of health insurance, whether for himself or some other person, or for any other purpose connected with this Act—

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- (a) knowingly makes any false statement or false representation; or
- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished any document or information which he knows to be false in a material particular,

he commits an offence:

Punishment on summary conviction : imprisonment for 6 months or a fine of \$250 or both such imprisonment and fine.

*[Section 33 amended by 2009:10 s.15 effective 1 April 2009]*

### **Offence by corporate body; liability of officers**

34 Where an offence under this Act which has been committed by a corporate body is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of any manager, director, secretary or other officer of the body corporate, such person, as well as the corporate body, shall be liable to be proceeded against and punished accordingly.

### **Authorized officer of Council may bring proceedings**

35 Any officer of the Council, inspector or other public officer, duly authorized in that behalf by the Council or the Minister, as the case may be, may, although not a barrister and attorney, institute, prosecute and conduct before a court of summary jurisdiction any proceedings for an offence under this Act or any regulations made thereunder.

*[section 35 amended by 2004:22 effective 1 January 2006]*

### **Recovery by Board of cost of hospital treatment**

36 Any sums due to the Board in respect of hospital treatment provided for any person may, without prejudice to any other remedy, be recovered summarily as a civil debt either from that person or, where that person is insured, from the licensed insurer or employer operating an approved scheme, as the case may be.

### **Payment direct to Board**

37 A licensed insurer may satisfy any debt due to the Board in respect of hospital treatment received by an insured person by direct payment to the Board and any payment so made shall satisfy the insurer's obligations under the contract of health insurance to the extent of such payment.

*[section 37 amended by 2004:22 effective 1 January 2006]*

**Subsidized hospital treatment; evidence of entitlement**

38 (1) An application may be made to the Committee by or on behalf of any person to whom section 2(1)(a), (b) or (e) applies (in this section referred to as "an entitled person") for a certificate of entitlement.

(2) An application under subsection (1) shall be made in such form and in such manner as may be prescribed and the applicant shall produce such information as the Committee may require for the purpose of determining any application.

(3) Where the Committee is satisfied that a person in respect of whom an application is made is an entitled person, the Committee shall issue to the applicant a certificate of entitlement specifying the character of his entitlement under section 2.

(4) A certificate of entitlement shall be revoked by the Committee if the person specified therein ceases to be entitled to subsidised hospital treatment and notice of such revocation shall be given to the applicant and to the Board; and for the purpose of this subsection a person ceases to be entitled to subsidized hospital treatment if he ceases to be ordinarily resident in Bermuda or is absent from Bermuda for any continuous period of six months:

Provided that where such a person satisfies the Committee that he has resumed ordinary residence in Bermuda, a new certificate of entitlement may be issued upon application by that person.

(5) A certificate of entitlement shall be sufficient evidence for the purpose of any provision of this Act that the person in respect of whom it is issued is an entitled person, and that the character of his entitlement is that specified in the certificate.

*[section 38 amended by 2002:26 effective 1 August 2005; by 2009:49 s.12 effective 15 December 2009]*

**Payment under Workers' Compensation Act 1965; abatement under this Act**

39 Any subsidy payable under section 2 and any benefit payable under a contract of health insurance in respect of hospital treatment shall abate to the extent that any compensation or benefit is paid in respect of the same hospital treatment under section 34 of the Workers' Compensation Act 1965.

*[section 39 amended by 2004:22 effective 1 January 2006]*

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### Minister may make regulations

40 (1) The Minister may, acting on the recommendations of the Council, make regulations for the purpose of carrying this Act into effect and, without prejudice to the generality of the foregoing, regulations may—

- (a) prescribe the items of treatment to be included in standard hospital benefit;
- (b) prescribe the amount of the standard premium payable in respect of the standard hospital benefit;
- (c) *[repealed]*
- (ca) *[repealed]*
- (d) provide for the exemption of any class of employer or employees from Part III;
- (e) prescribe the manner in which deductions may be made from the salary, wages or other remuneration of an employee under Part III;
- (f) provide for the regulation and control of licensed insurers;
- (g) require licensed insurers and employers to submit such reports and records relating to insured persons as the Minister may determine;
- (h) provide for the appointment of and conferment of powers on, inspectors for the purposes of this Act;
- (i) provide for the apportionment between licensed insurers of the cost of hospital treatment in cases where more than one contract of health insurance is in operation in relation to any person;
- (j) prescribe the period of cover in respect of which an insured person shall be entitled to benefit under a contract of health insurance;
- (k) *[repealed]*
- (ka) *[repealed]*
- (l) provide for the imposition of a fine of \$2,000.00 for any contravention of the regulations;
- (m) subject to subsection (1A), provide for any other matter to be prescribed under this Act.

(1A) The Minister may, acting on the recommendations of the Committee, make regulations—

- (a) prescribing the terms and conditions of the health insurance plan or the FutureCare plan, including allowable exclusions, and provisions as to cancellation, automatic renewal and cover on termination of employment;
- (b) prescribing the conditions subject to which benefit under the health insurance plan or the FutureCare plan shall be payable for treatment of insured persons provided in a hospital outside Bermuda; and
- (c) under sections 2(4), 3(3) or 38(2) of this Act.

(2) The affirmative resolution procedure shall apply to regulations made under this section.

(3) [omitted]

*[section 40 subsection (1) amended by 2004:22 s.19 & Sch para 1(4) effective 1 January 2006; subsection (1) amended by 2009:10 s.16 effective 1 April 2009; subsection (1) amended and (1A) inserted by 2009:49 s.12A effective 15 December 2009]*

**Commencement**

41 [omitted]

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*[Amended by:*

<i>1975 : 70</i>	<i>1987 : 42</i>	<i>2002 : 7</i>
<i>1977 : 23</i>	<i>1990 : 23</i>	<i>2002 : 26</i>
<i>1977 : 35</i>	<i>1991 : 10</i>	<i>2002 : 32</i>
<i>BR 15/1979</i>	<i>1991 : 33</i>	<i>2004 : 22</i>
<i>1981 : 37</i>	<i>1992 : 7</i>	<i>2005 : 3</i>
<i>BR 33/1981</i>	<i>1995 : 9</i>	<i>2009 : 10</i>
<i>1984 : 15</i>	<i>1998 : 25</i>	<i>2009 : 49</i>
<i>1986 : 14</i>	<i>2000 : 7</i>	<i>2010 : 21]</i>
<i>1986 : 26</i>	<i>2001 : 20</i>	
<i>1987 : 6</i>	<i>2002 : 6</i>	