

THE DEVELOPMENT OF HEALTH CARE LEGISLATION IN MALAYSIA: AN OVERVIEW

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ABSTRACT:

This article will trace the development of health care legislation in Malaysia since its inception in 1957. Throughout the years, healthcare has continued to be the primary responsibility of the government with careful and precise planning translated into a document known as the Malaysian Plan (1967-2020). In these Malaysian Plans, serious attention and effort have been given towards the progress and success of health care in Malaysia thus, giving the backdrop for the health care system in the country. Further, healthcare regulations and policies are drafted to ensure compliance and provide safe healthcare to every individual who accesses the system. These regulations are developed and implemented at all levels of government namely federal, state and local authorities. The authors used the content analysis methodology to scrutinize legislative documents and government guidelines and policies on health care. Findings suggest that although Malaysia has achieved its objective considerably in health care, it is facing challenges in keeping up with the new demands of the current societal needs in the health care industry hence, health care legislation must follow suit.

Keywords: Healthcare legislation, healthcare system, government policies, Malaysia plans, Ministry of Health.

Introduction

Malaysia's progress in sustaining the welfare of her citizens is dominantly anticipated through the vigorous efforts put by the government in planning and strategizing its healthcare system and its healthcare legislation. Such progress and efforts play significant roles in ascertaining the much needed health quality be it on individual healthcare or public healthcare. In the Legislative Council Debates in September 1957¹, medical and health are matters that had been debated regarding hospitals accommodation, facilities and the improvements thereof apart from issues pertaining to hospitals and staff, Housemen's duties and Kuala Lumpur General Hospital matters.

During such early period, the government gave much emphasis on healthcare services rendered to the citizens and particular attention was given upon healthcare of children and mother-to-be, pregnant mothers and newborns. For instance, the Maternity Hospital of the Kuala Lumpur General Hospital was initiated as early as 1958 of which, construction commenced in 1960, completed and officiated in January 1963. It is the national referral Centre for obstetrical and gynecological services in the country².

Overseeing the matters of healthcare systems and infrastructures, healthcare policy and legislations rests upon the Ministry of Health Malaysia (MOH) administers by a Health Minister and members of the ministry as a federal government body. The ministry (hereinafter referred to as MOH) shoulders a responsibility of acting appropriately and accordingly on all matters pertaining to health and medicine. MOH holds the legal responsibilities provided by the Federal Constitution of Malaysia in the Ninth Schedule List 1(Federal List) No. 14: Medicine and Health³ wherein MOH is empowered to administer within its specified authority and to act on all required and necessary matters regarding medicine, health and sanitation in the federal capital. This includes: (a) hospitals, clinics and dispensaries; medical profession; maternity and child welfare; lepers and leper institutions; (b) lunacy and mental deficiency, including places for

¹ Official Report of the Second Legislative Council (Third Session) 1957.

² Maternity Hospital Kuala Lumpur, Ministry of Health Malaysia, 2014. www.moh.gov.my

³The Ninth Schedule List 1 (Federal List) No. 14: Medicine and Health, Federal Constitution Malaysia.

reception and treatment; (c) poisons and dangerous drugs; and (d) intoxicating drugs and liquors; manufacture and sale of drugs. Hence, the powers to enact, promulgate, apply and enforce all healthcare legislations as well as generating healthcare policy lies upon the federal government through MOH. In relation to healthcare on the aspect of public health in areas of legislation and enforcement, explicitly, the functions of MOH are to promulgate and implement legislation; review, develop and update legislation; ensure enforcement of legislation; and assess and promote compliance⁴. These are, essentially, the current methods in practice in sustaining effective delivery of public health which consequently affecting members of the public individually.

HEALTH CARE LEGISLATIONS AND PROFESSIONAL GOVERNING BODIES

1. Early Development/Pre-Independence. Prior 1957

During this period, healthcare legislations were derived from the English law which is the origin of all Malaysian laws. English law, or rather, the English principles of common law, was adopted and applied into local legislations or was simply applied as case laws. The application of English common law is specified in the Civil Law Act 1956 wherein sections 3 and 5 allowing the application of English common law, equity rules, and statutes in Malaya, after September 1963 in Malaysia. The Civil Law Act 1956 (Revised 1972) in section 3 (1)(a) states that “the Court shall, in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered on the 7th of April 1956.” The date 7th April 1956 is significant because only English law and equity as administered in England on that date is applicable into the Malaysian laws⁵. The application of English common law and equity in Sabah and Sarawak are provided in section 3 (1) (b) and (c) of the Act. It is noteworthy to mention the limitations to the usage of section 3 (1) (a) (b) and (c) whereby there exists two limitations pertaining to the application of the English common law and equity: the usage are relevant to be applied only to

⁴ Sirajoon Noor Ghani, Hematram Yadav, Healthcare in Malaysia, University of Malaya Press, Kuala Lumpur, 2008, p. 260-261

⁵ Wu Min Aun, An Introduction to the Malaysian Legal System, 2nd Edition, Heinemann Educational Books., Singapore, 1978, p. 18

the extent permitted by local circumstances⁶ or it is applied only in the absence of local statutes on the particular subjects, hence, local law takes precedence over English law as the latter is only meant to fill in gaps in the local system and, only that part of the English law that is suited to local circumstances will be applied⁷.

The following healthcare legislations have been put in place since before the independence of the Federation of Malaya i.e. during the British Colonial period. These legislations have been applied ever since and at present being enforced accordingly. No doubt that some revisions have been made appropriately to the relevant statutes to enhance the content to suit the progressive development in the country. The said legislations are:-

- Children and Young Persons Act 1947 (Act 232)
- Interpretation Act 1948 (and 1967; Consolidated and Revised 1989)
- Nurse Act 1950 (Revised 1969)
- Poisons Act 1952 (Revised 1989)
- Registration of Pharmacists Act 1951 (Revised 1989)
- Mental Disorders Ordinance 1952
- Sale of Drugs Act 1952 (Revised 1989)
- Penal Code
- Evidence Act 1950
- Workers Compensation Act 1952
- Midwives Ordinance 1954 (Repealed: Midwives Act 1966)
- School (General Regulations) Ordinance 1956
- Medicines (Advertisement & Sale) Act 1956
- Fees Act 1951 (Act 209)
- Dangerous Drug Act 1952 (Act 234)
- Fumigation Cyanide (Fumigation) Act 1953 (Act 260)

⁶ Wan Arfah Hamzah, Ramy Bulan, *An Introduction to the Malaysian Legal System*, Penerbit Fajar Bakti Sdn. Bhd., Shah Alam Selangor, 2003, p. 111-115;
See also, Noor Aziah Mohd Awal, *Pengenalan Kepada Sistem Perundangan Di Malaysia*, International Law Book Services, Petaling Jaya Selangor, 2003, p. 30-31

⁷ Wu Min Aun, *An Introduction to the Malaysian Legal System*, 2nd Edition, Heinemann Educational Books., Singapore, 1978, p. 19-20

- Sale of Food and Drugs Ordinance 1952 (No. 28 of 1952)
- Drainage Works Act 1954 (Act 354)
- Explosives Act 1957 (Act 207)
- Lepers Enactment (Cap. 180)
- Burials Enactment 1910 (Cap. 189)

Whilst these laws originated prior to the independence of Malaya (as it was named then), the laws have continued to be adopted and applied so long as they are consistent with the provisions in the Federal Constitution of Malaysia (Constitution). In Malaysia, the supreme law is the Constitution and it is provided in the Constitution that “any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.”⁸ As such, the legislations adopted and as applied at present have been accordingly and appropriately passed to be consistent with the provisions in the Constitution.

2. The Federation of Malaya 1957

The Federation of Malaya consisted of three Straits Settlement states and nine Malay Rulers’ states commenced in August 31st 1957. This was also known as the date of Independence of Malaya from the English ruling. The House of Parliament, consisting of two legislative councils known as the House of Representatives and House of Senate was formed and headed by the appointed selected monarch decrees by the Conference of the Malay Rulers known by the title of *Duli Yang Maha Mulia Yang Di-Pertuan Agung*.⁹

The Federal Constitution was drafted, formed and adopted within the federation at the inception of the Federation of Malaya. All legislations as had been in placed prior to independence were continued to be implemented and enforced with the primary source of legislations enshrined within the legislative body, the Parliament. The most significant development in relation to healthcare is the enactment of Education Act 1961. This is a piece of law that deals with the

⁸ Article 4 (1) Constitution, Supreme Law of the Federation.

⁹ Article 32 Supreme Head of the Federation, and his Consort, Constitution, Part IV THE FEDERATION *Chapter 1—The Supreme Head*

affairs of school children. The Education Act is importantly connected with healthcare due to the concerns of the government with the health conditions of children and young persons. Due to such correlation, MOH together with the Ministry of Education, has worked hand-in-hand in promoting and providing healthcare services and medicines to school children. Thus, the government policy on immunization and dental-care are to be applied generally to children of school age and under 15 years old had been applied in Malaya and later, Malaysia. Immunization program is not mandatory but is applied generally in schools and most of the time parents are receptive towards the immunization program. Effectively, healthcare program to school children was initiated in 1967 after the formation of Federation of Malaysia.

3. The Modern Malaysia: The Federation of Malaysia 1963

In September 16th 1963, The Federation of Malaysia was formed. With the inclusion of states from Borneo – Sabah and Sarawak, into Malaya, the ten states in the Peninsular. Significantly, in terms of development of healthcare legislations, in four decades, recognisable growth of healthcare legislations can be seen. Healthcare legislation has evolved to bigger scope during these decades to include not only legislation for the protection and wellbeing of individuals but correspondently, legislation on public healthcare.

In relation to the general wellbeing of the people, a Family Planning Act 1966 was enacted.

In the 1970s, expansion in areas of medical, medicines and health issues were taken into consideration. This vigorous development was at par with the government's policy on healthcare that was greatly influenced by the momentous economic activities. These were the decades where the Malaysia Plans were formed and implemented. The followings are the related legislation:-

- Dental Act 1971
- Private Hospitals Act 1971 (Repealed and substituted with Private Health Care Facilities and Services Act 1998)
- Medical Act 1971 and regulations 1974
- Human Tissues Act 1974

- Pesticides Act 1974
- Destruction of Disease-bearing Insects Act 1975
- Medical Assistant Registration Act 1977

The 1980s and the 1990's saw more progress in medical and healthcare wherein together with the initiatives in the Malaysia Plans and the increase on wealth in the country, has accelerated the government's focus and purpose on healthcare service and protection not only towards individual healthcare but public healthcare has been the focal point as well that include healthcare for workers and responsibilities and liabilities of employers towards their workers to provide safe and hazardous-free working environment and place of work. The relevant healthcare legislations enacted during this period are:-

- Fees (Medical) Order 1982
- Food Act 1983
- Child Care Act 1984
- Atomic Energy Licensing Act 1984
- Prevention and Control of Infectious Diseases Act 1988

The new legislations enacted in the 1990s are as follows:-

- Child Protection Act 1991
- Optical Act 1991
- Occupational Safety and Health Act 1994 (OSHA)
- Telemedicine Act 1997
- Private Health Care Facilities and Services Act 1998

One must not overlook the background in the progress of healthcare legislations whereby the progress was contributed largely by the government policy pursuant to health as contained in the Malaysia Plans and during these decades seven Malaysia Plans have been made and implemented comprising of the 1st Malaysia Plan 1966-1971, the 2nd Malaysia Plan 1971-1975, the 3rd Malaysia Plan 1976-1980, the 4th Malaysia Plan 1981-1985, the 6th Malaysia Plan 1990-1995, the 7th Malaysia Plan 1996-2000. The Malaysia Plan is a five year economic development

plan that also consist the matter of Health as one of its main objective to achieve for the country as a part of the economic reform and other subject matters.¹⁰

4. Healthcare and Medical Professionals Governing Bodies

In addition to the existing healthcare legislations as set in placed, bodies of medical professionals and supporting healthcare personnel comprising of nurses, midwives and hospital's assistances are established.

Malaysian Medical Council (MMC) is a governing body for medical professionals concerns with the licensing of physicians having procedures on registration to practice or to cease practice of medical doctors, dentists; having the disciplinary authority over the complaints received by MMC from complainants/patients and having powers to conduct disciplinary proceedings¹¹; having the powers in control of practice of medicine; supervising the intake of medical students local and foreign, ensuring the standard of medical practice and medical learning in local tertiary institutions and medical students obtaining medical learning in foreign universities are monitored appropriately¹². MMC is established in 1971 under Medical Act 1971 thus, making it a body established under MOH.¹³ The Code of Professional Conduct 1986 is a document that consist of powers of MMC in disciplinary jurisdiction to act according to the Code against registered person under MMC for committing infamous conduct or being convicted or committing fraud licensing or not qualified for registration due to non-entitlement or has been removed from registration outside of Malaysia. MMC has power to accept the decision of the court of justice as a conclusive decision with regards to any registered medical professional being duly convicted by any court of justice within Malaysia.

¹⁰ The Economic Planning Unit Ministry of Finance Malaysia, New Economic Policies, <http://www.epu.gov.my/en/development-policies/new-economic-policy>

¹¹ Sirajoon Noor Ghani, Hematram Yadav, Healthcare in Malaysia, University of Malaya Press, Kuala Lumpur, 2008, p. 247-249

¹² Kartina Aisha Choong, 'Malaysia' In International Encyclopedia of Laws: Medical Law, Kluwer Law International BV, The Netherlands, 2012, p. 59-60

¹³ Malaysian Medical Council. <http://www.mmc.gov.my/>

Malaysian Medical Association (MMA) – This is an organization established for the main purpose of enhancing and protecting the interests of its fellow members from the medical profession within Malaysia. MMA provides guidance to its members on Code of Ethics consists of Hippocratic Oath, Declaration of Geneva - Physician's Oath, and World Medical Association International Code of Medical Ethics.¹⁴ MMA has several charters that are extremely informative and persuasive in content such are probable to be fundamental guidance not only to their members per se but also to legal professionals, law academicians and members of the public especially patients and patient-to-be. There are four charters. Namely, the MMA Member's Charter, HIV/AIDS Charter, Patient's Charter, and Senior Citizen's Charter. Most important charter would be the Patient's Charter wherein contain provisions for Rights of Patient and Liabilities of Patient. It is indeed a document which requires closer scrutiny particularly the law researcher and government policy-maker.¹⁵

There are other healthcare organisations that exist under MOH¹⁶ in relation to midwives and nurses known as Malaysian Midwives Board¹⁷ and Malaysian Nurses Board¹⁸. These are bodies having powers under the Midwives Act 1966 and the Nurse Act 1950 (Revised 1969). Established under the related legislation, it is apparent that the legislations give these organisations specific powers to perform their duties in securing, monitoring and maintaining the best qualified healthcare professionals to be able to give the best quality healthcare services and safety to patients.

THE CURRENT POSITION AND THE 11TH MALAYSIA PLAN-2016-2020

¹⁴ Malaysian Medical Council. <http://registerrmma.org.my/pages/index.php>

¹⁵ Patients Charter, MMA. <https://www.mma.org.my/patients-charter>

¹⁶ Ministry of Health Malaysia, MOH. <http://www.moh.gov.my/english.php>

¹⁷ Midwives Board Malaysia, The Code Of Professional Conduct And Practice Of A Midwife. [file:///D:/Downloads/midwives_board_malaysia-code_of_professional_conduct_and_practice_of_a_midwife%20\(1\).pdf](file:///D:/Downloads/midwives_board_malaysia-code_of_professional_conduct_and_practice_of_a_midwife%20(1).pdf)

¹⁸ Nursing Board Malaysia, Code Of Professional Conduct For Nurses. file:///D:/Downloads/nursing_board_malaysia-code_of_professional_conduct_1998.pdf

The Mental Health Act 2001 and Regulations (MHA) is the most current development in healthcare legislations in Malaysia. The existence of MHA has brought about the rescinding of the former mental health legislations that were being used in Peninsular Malaysia, Mental Disorders Ordinance 1952, Sabah - the Lunatics Ordinance 1951 and Sarawak - the Mental Health Ordinance 1961. MHA is a comprehensive piece of legislations wherein not only it gives provisions on detention/reception of persons suffering mental disorder condition but MHA consists provisions pertaining to treatment and rehabilitation of same as well as recognising the legal right of these persons who suffer such condition.¹⁹

The progress on healthcare is further enhanced in the 11th Malaysia Plan 2016-2020 (RMK11) whereas health is observed and perceived as rights of the citizens and public. This has prompted the government to adopt the concept of “improving wellbeing for all” and “enhancing inclusiveness towards equitable society” as among the objectives projected in this Eleventh Malaysia Plan. The progress and transformations in healthcare as intended to be achieved, amongst others, are the ratio of doctors-population targeted at 1:400 doctor to population by the year 2020; the ratio of hospital beds to the population being reduced to 2.3 beds per 1,000 population which would give larger access to healthcare services in both public and private healthcare facilities. It is indicated that the government will review and formulate health legislation and intensify enforcement through strengthened coordination between government agencies and the private sector in reaching the objective of improving the health delivery system such as in the areas of disease control, food safety, medical practice and professionalism, and pharmaceuticals are the pivotal areas.

Patient safety - It is worthy to observe the initiative taken by the government in 2004 in establishing a council for patient safety known as the Patient Safety Council. The Director General of Health, Datuk Dr. Noor Hisham Abdullah, reiterated that the approach taken regarding patient safety was “patient safety must always be a priority.” The implementation of such is by applying seven strategies specifically denote as “organizational structures”, “good networking and collaboration”, “policies and guidelines”, “promoting and educating, “monitoring system”, “research” and “having specific program on patient safety such as Incident

¹⁹ See: Mental Health Act 2001 (Act 615). <file:///D:/Downloads/mental%20health%20act%202001.pdf>

Reporting and Root Cause Analysis; Clean Care Safer Care; Safe Surgery Saves Lives; medication safety and transfusion safety”²⁰. The step taken on having patient safety as one important agenda in the administrative of healthcare in Malaysia has indeed raise the standard of quality healthcare in services delivery and protecting patients of unwanted negligent misconduct when the patient gain access to healthcare services in healthcare premises.²¹

IDENTIFIED CHALLENGES AND FINDINGS

This above analysis has identified the challenges faced in the above-said implementation. It simultaneously identifies specific findings which requires the attention of the relevant authorities and bodies.

1. Challenges

The DG of Health has stated clearly the challenges facing healthcare with regards to implementation of policy and laws by way of integration in legislation, regulations and enforcement. He has also mentioned issues and challenges in health include quality and safety in health, increased disease burden – promotion and prevention, and people satisfaction. These are a few of a number of challenges listed by the DG of Health since the pronouncement of RMK11 in 2015.²²

The comments received on RMK11 health objective are basically on the effectiveness of the health delivery system while taking into consideration the magnitude and continuous rising in admission numbers of patients accessing healthcare facilities and premises added with the fact

²⁰ Datuk Dr. Noor Hisham Abdullah, Director General of Health, Patient Must Always Be A Priority, 2012. <https://kpkesehatan.com/2015/04/30/patient-safety-must-always-be-a-priority/>

²¹ Datuk Dr. Noor Hisham Abdullah, Director General of Health, Patient Must Always Be A Priority, 2012. <https://kpkesehatan.com/2015/04/30/patient-safety-must-always-be-a-priority/>

²² Datuk Dr. Noor Hisham Abdullah, Director General of Health, Patient Must Always Be A Priority, 2012. <https://kpkesehatan.com/2015/04/30/patient-safety-must-always-be-a-priority/>

that increasing chronic disease and the disease burden are seen to be big challenges to the government in delivering its commitments on quality sustainable healthcare²³.

Fronting the challenges and the way forward as suggested by the DG of Health is by adopting transformation of Malaysia's healthcare system and preventive measures to be dynamically applied while taking into perspective that Malaysia is going into a phase of aging nation in 15 years.²⁴

2. Finding

Healthcare policy and legislations are about issues pertaining to “access”, “quality” and “financing” with regards to how individuals and the public in general can have such access to medical and healthcare services and facilities as provided by healthcare providers whether they are public or government-related healthcare providers or private healthcare providers and as to what policies and laws that give impact on individual's ability to access needed care; the quality of healthcare the person received which will involve question such as whether the care received by the individual appropriate, cost-effective, and non-negligent and it will involve consequently, financing issues such as, is the person insured? Or when is insurance required to be used?²⁵

It is apparent that healthcare legislation in Malaysia has indeed gone through a passage of time that reveal the dynamic of healthcare legislation development that has grown from simply having legislation and regulations on basic human needs and requirement to later include legislation purposively administer healthcare not only on public facilities and services but new technology development and new diseases threat as well.

²³ BMI Research, Malaysia's Public Sector Healthcare Goals to Face Challenges, 2015.
<http://www.bmiresearch.com/news-and-views/malaysias-public-sector-healthcare-goals-to-face-challenges>

²⁴ Datuk Dr. Noor Hisham Abdullah, Director General of Health, Patient Must Always Be A Priority, 2012.
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²⁵ Joel B. Teitelbaum and Sara E. Wilensky, Essentials of Health Policy and Law, Third Edition, Jones & Bartlett Learning, Burlington Massachusetts United States, 2015, p. 104

CONCLUDING REMARKS

It is a situation of “yet to be seen” on whether the new approach being taken in facing healthcare issues and challenges by the adoption of transformation in healthcare system and in applying greater integration and preventive measures of the government really work or not. There are increasingly pressing issues that take place or rather, re-occur, such as the issue of vaccination/immunization the question whether or not it should now be a mandatory rule to ensure all newborns and young children be given the necessary doses of which at present, is only a guideline.

Issues about governance and best practice in private healthcare services and public healthcare or even in the public sector regarding safe workplace environment and premises and workers healthcare benefits are still something that needed closer studies by the law-maker/policy-maker for weighing whether governance and best practice are essentially practice in harmony with other healthcare participants or stakeholders.

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Malaysian Medical Council

Malaysian Medical Association

Malaysian Midwives Board

Malaysian Nurses Board

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