

LEGAL ALERT

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Higher Standards of Care under the Private Aged Healthcare Facilities and Services Act 2018

The Private Aged Healthcare Facilities and Services Act 2018 (“**the Act**”) was gazetted on 29 March 2018 and has yet to come into force. The Act is expected to provide a more holistic regulatory environment for elderly care in Malaysia and ensure that all private healthcare centres and services are licensed and regulated. This would be the first time a specific law has been introduced to regulate and protect the standards of care for the elderly in Malaysia.

Elderly persons, referred to as “aged persons” under the Act, are those of 60 years of age and above. It is expected that the older population in Malaysia will increase and that by 2030, Malaysia will be recognised as an ageing nation with the older population constituting more than 15% of the whole nation. Therefore, it only seems fitting for the law to progress in order to cater for the protection of the older generation.

Key features of the Act

1. The Act would apply to both residential and day care facilities

Under the Act, any person providing private aged healthcare facilities and services to four or more aged persons will require an operating licence from the Director General of the Ministry of Health (“**MoH**”). It is important to note that the Act also applies to day care facilities and not just residential facilities (such as nursing homes). A day care facility is defined as “*a facility without residential accommodation where aged healthcare facilities and services are provided for a continuous period exceeding 3 hours per day for at least 3 days in a week*”.

2. Application for approval to provide private aged healthcare facilities and services


Any person who wishes to provide private aged healthcare facilities and services must apply for an approval from the MoH. A prescribed fee shall be imposed for such application. In deciding whether to grant the approval, the MoH will consider amongst others:

- the type of premises where the aged healthcare facilities and services are to be provided;
- the healthcare services to be provided;
- the availability of and access to existing private aged healthcare facilities and services in the area of application for approval; and
- the present and future needs for private aged healthcare facilities and services in the area of application for approval.

3. Licence for the operation of private aged healthcare facilities

An application for licence to operate private aged healthcare facilities and services can only be made by a holder of a MoH approval. The licence application shall be made within three years from the date of approval (unless an extension has been granted).

In the event that no application for licence is made within three years, the approval granted shall be deemed revoked. The period of validity of the licence is three years from the date it was issued and is renewable with MoH’s approval. The licensee shall not transfer or assign the licence, unless the prior approval of MoH has been obtained.



Any person who operates a private aged healthcare facility or service for four or more aged persons without the approval or licence commits an offence and will, upon conviction, be subjected to fines stipulated under the Act.

Once the MoH decides to proceed with the licence application, it will conduct an inspection of the premises where the aged healthcare facilities and services are to be provided to determine whether such premises comply with the required standards.

4. Duties of the licensed operator

The licensee must, amongst others, ensure that:

- healthcare professionals employed or engaged by the licensee are suitably and legally qualified;
- caregivers are trained and competent;
- assessment of care recipient is carried out by a healthcare professional;
- arrangements are made for healthcare professional to be available at the premises;
- annual report on the private aged healthcare facilities and services is submitted to the MoH; and
- the private aged healthcare facilities and services is managed by a person in charge.

5. Policy statement upon admission

Upon admission, all care recipients must be provided with a policy statement which shall also be displayed in the premises and contain the following:

- the rights of the care recipient;
- the duties of the licensee; and
- a grievance mechanism plan and procedure.

6. Grievance mechanism plan and procedure

The grievance mechanism plan and procedure sets out the procedure to address any complaint by the care recipient, their relatives or any person acting on behalf of or in direct contact with the care recipient. All the persons named must be made aware of the availability of such plan and procedure.

7. Revocation of the licence

The MoH may revoke the approval, licence or refuse to renew a licence on any of the following grounds:

- any false or misleading statement by the licensee;
- fraud or dishonesty relating to the licence and licensee;
- failure to comply with directions of the MoH;
- the operation of the healthcare facilities and services being detrimental to the interest of the care recipients;
- employment of unqualified person;
- the holder of approval or licensee is adjudged a bankrupt; or
- cessation of operations.

It is hoped that strict implementation of the Act will serve as a push for a more structured environment for aged living. Better care and facilities, together with strict supervision and enforcement by the authorities should help to remove the stigma surrounding old folks homes and elderly care facilities.

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If you have any questions or require any additional information, you may contact [Idahani Ismas Ismail](#) or the ZICO Law partner you usually deal with.

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