

Health Omnibus Law Series: Key Updates on Healthcare Services Provisions

In brief

As mentioned in our previous client alert, the Health Omnibus Law governs new requirements and regulations in Indonesia's health sector. One such sector is healthcare services, which has new requirements and regulations concerning healthcare facilities, councils and professionals. In this alert, we discuss the new restrictions, forms and provisions in the healthcare services sector under the Health Omnibus Law.

In this issue

Key Takeaway

Conclusion

Key takeaways

The Health Omnibus Law introduces the following key changes in the healthcare services sector.

1. The single purpose provision will no longer apply

As of the effective date of the Health Omnibus Law (i.e., 8 August 2023), the single purpose business activity limitation is no longer applicable for hospitals. Private profit-oriented hospitals will be allowed to carry out other healthcare-related activities, such as operating clinics, pharmacies and laboratories. The Health Omnibus Law also gives more opportunity for foreign investors to invest in healthcare facilities because they would be able to operate hospitals, clinics, pharmacies and laboratories under one company.

While technically the single purpose requirement has been lifted effectively as of 8 August 2023, clients should expect some delay in the implementation of this new policy. We have seen several examples in practice where the Online Single Submission ("**OSS**") system has rejected requests from hospital business actors in relation to their KBLI expansion to include other healthcare services-related business lines in addition to KBLI No. 86103 (private hospital business).

Nevertheless, the Ministry of Health ("**MOH**") has moved rapidly to address this issue. The MOH has coordinated with the Capital Investment Coordination Board (*Badan Koordinasi Penanaman Modal* or "**BKPM**") and has issued the following explicit clarifications/instructions to BKPM:

- (a) The single purpose limitation is no longer applicable, and hospitals may perform other healthcare services activities.
- (b) BKPM is to immediately facilitate the implementation of the new rule on hospital business limitations under the Health Omnibus Law in the OSS system, so that business actors engaging in the hospital business are allowed to carry out other healthcare services activities.

The above clarification/instruction was reflected in a letter sent by the MOH (i.e., through the Directorate General of Healthcare Services) No. YR.02.01/D/11735/2023 dated 16 October 2023 regarding a request for OSS facilitation in relation to KBLI No. 86103 ("**MOH Letter**"). The full list of business lines that can be carried out by hospital business actors in tandem with KBLI No. 86103 is set out in the MOH Letter.

Recently, some business actors have managed to register other healthcare service-related business lines in tandem with their KBLI No. 86103. However, we are not entirely sure if the issue has been fully resolved, or if BKPM will consistently grant multipurpose NIB for hospital business actors.



2. Differentiation between medical professionals and healthcare professionals

The Health Omnibus Law differentiates between medical professionals and healthcare professionals. Medical professionals are defined as individuals who dedicate themselves to the healthcare sector and have a professional attitude, knowledge and skills through a **medical or dentistry professional education degree** who require authorization to perform health efforts¹. Healthcare professionals are individuals who dedicate themselves to the healthcare sector and have a professional attitude, knowledge and skills through a **higher education degree**, which for certain types requires authority to conduct health efforts.

In most cases, the provisions of the Health Omnibus Law apply to both medical and healthcare professionals equally. However, certain provisions are only applicable to either medical or healthcare professionals. We provide some key examples below.

No.	Provisions	Applicability
1.	<u>Article 127 (1)</u> Transplant of organs and/or body tissues may only be performed at healthcare facilities by medical personnel who have the expertise and authority.	Medical professionals <input checked="" type="checkbox"/>
		Healthcare professionals <input checked="" type="checkbox"/>
2.	<u>Article 198 (1)</u> Medical professionals are either of the following: a. Doctors b. Dentists	Medical professionals <input checked="" type="checkbox"/>
		Healthcare professionals <input checked="" type="checkbox"/>
3.	<u>Article 210 (1)</u> Medical professionals must have at least a professional degree.	Medical professionals <input checked="" type="checkbox"/>
		Healthcare professionals <input checked="" type="checkbox"/>
4.	<u>Article 145 (1) and (3)</u> Pharmaceutical practice can be done by healthcare professionals in certain conditions.	Medical professionals <input checked="" type="checkbox"/>
		Healthcare professionals <input checked="" type="checkbox"/>
5.	<u>Article 199 (1)</u> Healthcare professionals are any of the following: a. Clinical psychologist b. Nursing personnel c. Midwifery personnel d. Pharmaceutical personnel e. Public health personnel f. Environmental health personnel g. Nutritionist h. Physical therapist	Medical professionals <input checked="" type="checkbox"/>
		Healthcare professionals <input checked="" type="checkbox"/>

¹ Health effort is defined as all forms of activities and/or a series of activities carried out in an integrated and sustainable manner to maintain and improve the level of public health in the form of promotive, preventive, curative, rehabilitative and/or palliative activities by the central government, regional government and/or the public.



	<ul style="list-style-type: none"> i. Medical technician j. Biomedical engineer k. Traditional healthcare personnel l. Other healthcare professionals stipulated by the MOH 	
6.	<u>Article 210 (2)</u> Healthcare professionals must have at least an associate degree (known as Diploma III).	Medical professionals <input checked="" type="checkbox"/> Healthcare professionals <input checked="" type="checkbox"/>

The above changes in definition may cause ambiguity when interpreting the applicability of certain rules in other regulations. For example, MOH Regulation No. 58 of 2016 on Sponsorship for Healthcare Professionals and MOH Circular Letter No. HK.02.01/MENKES/66/2017 on Sponsorship Reporting Mechanism in accordance with MOH Regulation 58 do not differentiate between the terms "medical professional" and "healthcare professional." Instead, the term "healthcare professional" is equally applied to doctors and other nonvocational healthcare professionals.

The Health Omnibus Law has stipulated (under Article 453) that implementing regulations of the revoked laws would still be applicable, but in case of discrepancies, the provisions under the Health Omnibus Law will prevail over those implementing regulations. However, in our opinion, these provisions do not offer clear guidelines that can cover all legal loopholes or ambiguities that persist under the prevailing laws and regulations.

The full effect of these changes should be considered on a case-by-case basis, depending on the intent and purpose of each affected regulation. For instance, in the case of MOH Regulation 58, the term "healthcare professionals" should ideally be substituted with "medical professionals and healthcare professionals."

In the absence of further implementing regulations for the Health Omnibus Law, clients would need to carefully interpret the prevailing regulations. When in doubt, we would suggest that clients seek out clarifications from the MOH and/or relevant government authorities immediately, to avoid misinformation.

3. Flexibility in hospital director criteria

The Health Omnibus Law changes the conditions governing the organizational structure of hospitals. Under the current regulation, a head or director of a hospital must be a health worker (i.e., a dentist or a doctor) who has expertise in hospital management. Under the Health Omnibus Law, the head of a hospital will no longer have to be a doctor or a dentist, but can also be another professional who specializes in hospital management.

It will be easier for a company that conducts hospital business activities to find professionals who specialize in hospital management than to find doctors or dentists who also have hospital management expertise and skills.

4. New council authority under the MOH

A new council will replace all existing councils and remain an independent organization. However, it will not report directly to the president but will report through the Ministry of Health. One of the responsibilities of the council is to carry out all registrations for doctors, dentists and other healthcare professionals.

5. Simpler process for medical and healthcare professionals to obtain practice licenses

The requirements for a Registration Certificate (*Surat Tanda Registrasi*) ("**STR**") and Practice License (*Surat Izin Praktik*) ("**SIP**") will be simplified. Approval or recommendation from councils for the issuance of STR and SIP is no longer required. To obtain an STR, medical and healthcare professionals will only need to have a diploma of education in the health sector and a certificate of competency. Once medical and healthcare professionals have a valid STR, they only need to find a place to practice to obtain an SIP. We set out below a table comparing SIP and STR provisions under the revoked regulations and under the Health Omnibus Law.



	STR		SIP	
	Revoked Regulation	Health Omnibus Law	Revoked Regulation	Health Omnibus Law
Requirements	<ul style="list-style-type: none"> • Diploma of education in the health sector • Certificate of competency or professional certificate • Physical and mental health certificate • Statement letter on having taken a professional oath/pledge • Statement of willingness to comply with and implement the principles of professional ethics 	<ul style="list-style-type: none"> • Diploma of education in the health sector and/or professional certificate • Certificate of competency 	<ul style="list-style-type: none"> • Valid STR • Recommendation from a professional organization • Place to practice 	<ul style="list-style-type: none"> • STR • Place to practice
Effective period	Five years	Lifetime	Five years	Five years
Issued by	Indonesian Medical Council (<i>Konsil Kedokteran Indonesia</i>)	Council on behalf of the MOH	The regional/municipal governments, based on the recommendation of the relevant professional organization in the regional/municipal area where the HCP will practice	<ul style="list-style-type: none"> • The regional/municipal government in the area where the HCP will practice • The MOH (in certain situations)

6. Easier access for foreign medical and healthcare professionals

Foreign specialist and subspecialist medical professionals and foreign healthcare professionals with a certain competence level will be allowed to practice in healthcare facilities in Indonesia, subject to the following conditions:

- There is an express request and need from the healthcare facilities to use the services of the medical and healthcare professional.
- Foreign healthcare professionals must engage in transfer technology and knowledge during their tenure.



- (c) They can only practice for a maximum of two years (which may be extended once for an additional two years) (i.e., the SIP and STR for medical and healthcare professionals will therefore be effective for a maximum of two years and may be extended once for another two years).

They are no longer required to obtain temporary STR and SIP as provided under the revoked laws. Instead, foreign medical and healthcare professionals will be required to have STR and SIP like medical and healthcare professional licenses in general. However, in addition to obtaining STR and SIP, foreign medical healthcare professionals will also be required to follow the competency evaluation and adaptation process.

The major change is that under the Health Omnibus Law, competency evaluation will no longer be assessed solely based on the authority of the Indonesian Medical Council (*Konsil Kedokteran Indonesia* or KKI) and other professional association stakeholders (e.g., Medical Council (*Konsil Kedokteran*) or Dentist Council (*Konsil Kedokteran Gigi*)). Instead, the MOH will be the main authority to conduct the assessment, together with the Ministry of Education, and an MOH-formed council and collegium. The change was aimed to make the process more impartial by placing the assessment directly under government authorities, instead of local associations or organizational bodies.

Nevertheless, the four-year maximum period of practice still does not offer much opportunity for medical or healthcare professionals to build a sustainable career in Indonesia. Realistically, this limited time period could be attractive for foreign medical or healthcare professionals in nearby countries who might have interest in gaining more experience and/or credentials by practicing in Indonesia.

7. Exemptions for foreign medical and healthcare professionals for registration process

Foreign medical and healthcare professionals who are foreign graduates will be exempted from the registration process if they have practiced as a specialist or subspecialist for at least five years outside Indonesia, or if they are experts in certain areas and have the relevant competency certification and have practiced for at least five years outside Indonesia. In these cases, their competency will be evaluated through a portfolio assessment.

8. Criminal sanctions against medical and healthcare professionals and hospitals

The Health Omnibus Law provides various sanctions that are applicable to medical and healthcare professionals, as well as hospitals. We provide some key examples below.

No.	Provision	Sanction
1.	<u>Article 440 (1)</u> If medical or healthcare professionals are considered negligent because they caused serious injuries to a patient.	Imprisonment of up to three years or a criminal fine of up to IDR 250 million.
2.	<u>Article 440 (1)</u> If medical or healthcare professionals are considered negligent because they caused the death of a patient.	Imprisonment of up to five years or a criminal fine of up to IDR 500 million.
3.	<u>Articles 447 and 448:</u> Criminal penalties if the criminal actions: (a) Is carried out by a corporation to fulfill the aims and objectives of the corporation. (b) Is part of the corporate policy of a corporation. (c) Is carried out by a corporation to benefit the corporation unlawfully	<ul style="list-style-type: none"> • Criminal liability is imposed on corporations, managers who have functional positions, givers of orders, control holders and/or beneficial owners of corporations. • An additional penalty of up to IDR 5 billion can be imposed on corporations if the criminal action is punishable with 7 to 15 years of imprisonment. • Further, the following additional sanctions may be imposed on the corporation: <ul style="list-style-type: none"> (a) Payment of compensation (b) Revocation of certain permits (c) Closure of all or part of the business premises and/or corporate activities



Conclusion

The spirit of the Health Omnibus Law is to accelerate the growth of healthcare services in Indonesia. The Indonesian government is looking for ways to increase the quantity and quality of healthcare services in Indonesia, including increasing the number of healthcare facilities and medical/healthcare professionals. This is reflected in the points above, which aim to give the opportunity to both local and foreign parties to invest in healthcare services in Indonesia.

We are still awaiting the implementing regulations of the Health Omnibus Law. But businesses can now start planning for future involvement in the healthcare services sectors in Indonesia.

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