



OPINION NO. 04 S-20 23

Republika ng Pilipinas  
**KAGAWARAN NG KATARUNGAN**  
*Department of Justice*  
*Manila*

JAN 30 2023

**Atty. ELI DINO D. SANTOS**  
Officer-in-Charge  
Office of the President and CEO  
Philippine Health Insurance Corporation  
Citystate Centre, 709 Shaw Boulevard  
Pasig City

**Dear Atty. Santos:**

This refers to your requests<sup>1</sup> seeking this Department's opinion on the following matters:

- (1) Whether the penalty of revocation of accreditation provided for under Republic Act (RA) No. 7875,<sup>2</sup> as amended by RA No. 10606<sup>3</sup> may still be imposed for offenses committed during its effectivity, but decided upon after the effectivity of RA No. 11223, otherwise known as the "Universal Health Care Act", which latter law does not expressly provide for such kind penalty. Simply put, may the Universal Health Care (UHC) Act be given retroactive application to pending cases if favorable to respondent health care provider?; and
- (2) Assuming that the penalty of revocation of accreditation shall be imposed, may the PhilHealth lift the same after compliance by the health care provider of the prescribed conditions, or is the revocation of accreditation permanent?

You stated that the right to health is a fundamental human right<sup>4</sup> and that the State is constitutionally mandated to promote the health of the people and to ensure access to health care.<sup>5</sup> In line with this, RA No. 11223 mandated the PhilHealth to "[e]nsure that all Filipinos are guaranteed equitable access to

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<sup>1</sup> PhilHealth sent 2 letter-requests. In its letter dated 07 November 2022, one of its queries was "[a]re government (DOH-owned or LGU-owned) health care facilities immune from suit?" In its second letter-request, dated 25 November 2022, PHILHEALTH deleted such query stating that it has already requested the Office of the Government Corporate Counsel (OGCC) to clarify OGCC Opinion No. 196, s. 2021, where it opined that DOH-hospitals may validly raise the defense of state immunity when sued.

<sup>2</sup> Also known as the "National Health Insurance Act of 1995".

<sup>3</sup> Entitled "AN ACT AMENDING REPUBLIC ACT NO. 7875, OTHERWISE KNOWN AS THE "NATIONAL HEALTH INSURANCE ACT OF 1995", AS AMENDED, AND FOR OTHER PURPOSES".

<sup>4</sup> Section 15, Article II of the 1987 Constitution.

<sup>5</sup> Section 11, Article XIII, id.

quality and affordable health care goods and services, and protected against financial risk”.<sup>6</sup> You believed that there is a need to engage more, if not all, health care providers to provide health services to those in need. This is so because the access to health care of all Filipinos is crucial, especially in areas where there is only one health facility or only one government hospital is accessible and where majority of the population is indigent and, thus, wholly dependent on the PhilHealth for access to health care. As such, you claimed that the suspension or revocation of the accreditation of a health care provider, especially if such is a lone health care provider in a particular area, or a public hospital under the supervision of the Department of Health (DOH) or the local government units (LGUs), will have a substantial and adverse impact on the delivery of health care services to the public.

Citing Section 16(l)<sup>7</sup> of RA No. 7875, as amended, you stated that one of the powers and functions of PhilHealth is “to determine requirements and issue guidelines for the accreditation of health care providers x x x.” The procedure and requirements for such accreditation is set forth in Section 59<sup>8</sup>,

<sup>6</sup> Section 3(b), Chapter 1, RA No. 11223.

<sup>7</sup> SEC. 16. *Powers and Functions.* – The Corporation shall have the following powers and functions:

x x x

(l) to determine requirements and issue guidelines for the accreditation of health care providers for the Program in accordance with this Act;

x x x

<sup>8</sup> **SECTION 59. Guideline on the Accreditation of Health Care Institutions**

The accreditation of HCIs shall be guided by the following:

- a. The Corporation shall prescribe the requirements for the accreditation of HCIs applying for basic and advanced participation.
- b. The HCI shall apply for accreditation through basic participation and advanced participation by submitting the duly accomplished forms and documents and upon payment of the required fees as prescribed by the Corporation. Such documents shall be subject to verification and authentication at the discretion of the Corporation.
- c. The HCI shall submit the requirements for accreditation to its respective PhilHealth Regional Offices (PRO) for evaluation and processing.
- d. The accreditation of HCIs through the basic participation shall be continuous unless withdrawn, suspended or revoked based on the rules set by the Corporation.
- e. The HCIs shall be visited and inspected as often and necessary to determine compliance with the requirements and conditions for accreditation
- f. The Corporation shall determine the period of accreditation within a reasonable period of time from receipt of application and reserves the right to issue, deny or withdraw the accreditation after an evaluation of the capability and integrity of the health care institution.
- g. All matters pertaining to accreditation shall be decided by the Accreditation Committee whose decision shall become effective upon approval by the President and CEO. Only decisions on application for basic participation may be the subject of a motion for

Rule II of the Revised Implementing Rules and Regulations (RIRR) of RA No. 7875, as amended. RA No 11223 and its IRR, however, did not contain any provision regarding the procedure for accreditation.

Adjunct to the above-mentioned power and function, you likewise stressed PhilHealth's quasi-judicial power under Section 17<sup>9</sup> of RA No. 7875, as amended, "to suspend, revoke permanently, or restore the accreditation of a health care provider x x x". This, you claim, was clarified by Section 170 of the RIRR of RA No. 7875, as amended, which states that the revocation of accreditation is imposed for fourth offense, if involving non-fraudulent offense, and for third offense, if fraudulent in nature. You further claim that Section 32 of the same law also provides that "a health care provider found guilty of any violation of this Act shall not be eligible to apply for the renewal of accreditation."

You cited the specific provisions of the law, and its amendments, that provides the penalty against erring health care providers, which may range from fine to suspension of accreditation, to wit: (a) Section 44,<sup>10</sup> Article X of RA No. 7875 provides for a penalty of fine and suspension or revocation of accreditation; (b) Section 44<sup>11</sup> of RA No. 7875, as amended by RA No. 10606

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reconsideration to be filed with the Accreditation Committee. Only one motion for reconsideration shall be entertained.

h. Accreditation shall take effect prospectively. Claims for services before the effectivity of accreditation and after the withdrawal of accreditation shall be denied.

<sup>9</sup> SEC. 17. *Quasi-Judicial Powers.* – The Corporation, to carry out its tasks more effectively, shall be vested with the following powers:

x x x

(c) Subject to the respondent's right to due process, to suspend temporarily, revoke permanently, or restore the accreditation of a health care provider x x x

The revocation of a health care provider's accreditation shall operate to disqualify him from obtaining another accreditation in his own name, under a different name, or through another person, whether natural or juridical.

<sup>10</sup> SEC. 44. *Penal Provisions.* Any violation of the provisions of this Act, after due notice and hearing, **shall suffer the following penalties:**

**A fine of not less than Ten thousand pesos (P10,000) nor more than Fifty thousand pesos (P50,000)** in case the violation is committed by the hospital management or provider. **In addition, its accreditation shall be suspended or revoked from three (3) months to the whole term of accreditation:** *Provided, however,* That recidivists may not anymore be accredited as a participant of the Program;

x x x                      x x x                      x x x. (Emphases and underscoring supplied.)

<sup>11</sup> SEC. 44. *Penal Provisions.* – Any violation of the provisions of this Act, after due notice and hearing, **shall suffer the following penalties:**

(a) Violation by an Accredited Health Care Provider – Any accredited health care provider who commits a violation, abuse, unethical practice or fraudulent act which tends to undermine or defeat the objectives of the Program **shall be punished with a fine of not less than Fifty thousand pesos (P50,000.00) but not more than One hundred thousand pesos (P100,000.00) or suspension of accreditation from three (3) months to the whole term of accreditation, or both, at the discretion of the Corporation:** *Provided,* That recidivists may no longer be accredited as a participant of the Program;



provides for a penalty of fine, or suspension of accreditation, or both, at the discretion of the PhilHealth; and (c) Section 38(b)<sup>12</sup> of RA No. 11223 provides for a penalty of fine, or suspension of contract up to three (3) months or the remaining period of its contract or accreditation whichever is shorter, or both, at the discretion of the PhilHealth, taking into consideration the gravity of the offense.

Anent this matter, you recalled our Opinion No. 18, series of 2021, which was in response to your prior query also on the retroactive application of the penal provisions of RA No. 10606 and RA No. 11223, where we stated that Section 44 of RA No. 10606 and Section 38(b) of RA No. 11223 cannot be given retroactive application even assuming that they are more favorable to the concerned health care provider. You expressed the need to revisit the said opinion in light of the previously stated statutory and constitutional injunctions on the protection and promotion of right to health of the people.

We shall address your queries *in seriatim*.

**DISCUSSION**

***Whether the penalty of revocation of accreditation provided for under RA No. 7875, as amended by RA No. 10606 may still be imposed for offenses committed during its effectivity, but decided upon after the effectivity of RA No. 11223, which latter law does not expressly provide for such kind penalty. Stated differently, may RA 11223 be given retroactive application to pending cases if favorable to respondent health care provider?***

x x x (Emphases and underscoring supplied.)

<sup>12</sup> SEC. 38. *Penal Provisions.* – Any violation of the provisions of this Act, after due notice and hearing, **shall suffer the corresponding penalties as herein provided:**

x x x

(b) A health care provider contracted for the provision of individual-based health services who commits an unethical act, abuses the authority vested upon the health care provider, or performs fraudulent act **shall be punished by a fine of Two hundred thousand pesos (P200,000.00) for each count, or suspension of contract up to three (3) months or the remaining period of its contract or accreditation whichever is shorter, or both, at the discretion of the PhilHealth, taking into consideration the gravity fo the offense.**

The same shall also constitute a criminal violation punishable by imprisonment for six (6) months and one (1) day up to six (6) years, upon discretion of the court without prejudice to criminal liability defined under the Revised Penal Code.

If the health care provider is a juridical person, its officers and employees or other representatives found to be responsible, who acted negligently or with intent, or have directly or indirectly caused the commission of the violation, shall be liable. Recidivists may no longer be contracted as participants of the Program.

At the outset, we fully understand PhilHealth's predicament but, after a thorough review of our Opinion No. 18, s. 2021, we find no cogent reason to deviate therefrom.

To repeat, as a rule, all laws are prospective in application unless the contrary is expressly provided, or unless the law is procedural or curative in nature.<sup>16</sup>

RA No. 7875 and all its amendatory laws did not provide that they should be applied retrospectively, thus, the general rule that they are prospective in application applies. In fact, such prospective application is emphasized in Section 188, Rule III,<sup>17</sup> Title X<sup>18</sup> of the RIRR of RA No. 7875, as amended, which categorically states:

#### **SECTION 188. Applicability of this Rules**

Complaints already filed with and under deliberation by appropriate bodies of the Corporation prior to the effectivity of this Rules shall be governed in accordance with the previous rules.

Clearly, those cases pending prior to the effectivity of the RIRR of RA No. 7875, as amended, shall be governed in accordance with the previous rules or the rules prevailing at the time of the commission of the violation and the filing of the complaint. Concomitant thereto, the penalties to be imposed are the prescribed penalties provided under that prior rules. Hence, the penal provision of Section 38(b) of RA No. 11223 cannot be given retroactive application.

It was your view then that the penal provision of RA No. 11223 being more favorable to the respondent should be applied retroactively. We disagree.

While at first glance, Section 38(b) of RA No. 11223 may appear to be more favorable to the respondent health care provider since PhilHealth has the discretion to impose a penalty of fine only or suspension of contract or accreditation whichever is shorter, or both, a careful perusal of the entirety of the said provision, however, reveals that it in fact provides for a much stiffer penalty. It bears emphasis that not only does it impose a much higher amount of fine, *i.e.*, ₱200,000.00 for each count, its second paragraph also states that **"[t]he same shall also constitute a criminal violation punishable by imprisonment for six (6) months and one (1) day up to six (6) years, upon discretion of the court without prejudice to criminal liability defined under the Revised Penal Code."** In addition, Section 38.9, Rule X of the IRR of RA No. 11223 states that **"the filing of an administrative or criminal action does not preclude PhilHealth from filing a separate civil action against**

<sup>16</sup> *Eastern Mediterranean Maritime Ltd., et al. v. Estanislao Surio, et al.*, G.R. No. 154213, 23 August 2012.

<sup>17</sup> Final Provisions.

<sup>18</sup> Penal Offenses and Penalties.

the health care provider before the appropriate court.” Hence, under RA No. 11223, any erring health care provider will be held administratively, criminally and civilly liable.

Similarly noteworthy is the penalty of revocation of accreditation which is imposed against the health care provider for its third or fourth offense, if involving fraudulent or non-fraudulent offenses, respectively.<sup>19</sup> The term used for repeat offender under RA No. 7875, as amended, and even under RA No. 11223, is “recidivist/s”. Under Section 171 of the RIRR of RA No. 7875, as amended, recidivists refer to “health care providers who have been found guilty of the maximum number of offenses and meted the penalty of revocation of accreditation in accordance with the herein Scale of Administrative Penalties.” On the other hand, Section 4.31, Rule I of the IRR of RA No. 11223 defines recidivist as “one who, at the time of hearing for an offense, shall have been previously found liable with finality by the Adjudication Office or by the Board of PhilHealth, for three (3) offenses, under these Rules.” Indeed, while RA No. 11223 does not expressly provide for the penalty of revocation of accreditation, it does state, however, in Section 38(b) and in Section 38.6 of its IRR that recidivists “may no longer be contracted as participants of the Program”, which operates as a revocation of accreditation of the health care provider.

***Assuming that the penalty of revocation of accreditation shall be imposed, may the PhilHealth lift the same after compliance by the health care provider of the prescribed conditions, or is the revocation of accreditation permanent?***

The PhilHealth, under Section 16(l) of RA No. 7875, as amended, has the power “to determine requirements and issue guidelines for the accreditation of health care providers x x x.”<sup>20</sup> While there is no provision regarding the procedure for accreditation in RA No. 11223 and its IRR, Section 16(l) is not one of the specific provisions repealed under Section 45 thereof. Hence, the power of the PhilHealth to determine the requirements and guidelines for the accreditation of health care providers, still stands and is still applicable. The procedure and requirements for such accreditation is set forth in Section 59<sup>21</sup>, Rule II of the RIRR of RA No. 7875, as amended.

Now, under Section 17<sup>22</sup> of RA No. 7875, as amended, the PhilHealth, in the exercise of its quasi-judicial power, is authorized “to suspend, revoke permanently, or restore the accreditation of a health care provider x x x”. Further, Section 38.7, Rule X of the IRR of RA 11223, explicitly states:

<sup>19</sup> Section 170 of the RIRR of RA No. 7875, as amended.

<sup>20</sup> Section 16(l) of RA No. 7875, as amended.

<sup>21</sup> Supra note 11.

<sup>22</sup> Supra note 12.



**Definition of Offenses**

38.7 **PhilHealth shall prescribe the definitions of specific offenses of health care providers and members, rules on administrative cases, and the period to resolve from investigation to the resolution of the cases including Rules on Preventive Suspension, Withdrawal of Contract or Accreditation, x x x.**

As previously discussed, the penalty of revocation of accreditation is only imposed to those health care providers which/who are considered recidivists. To note, both RA No. 7875, as amended, and RA No. 11223 explicitly state that recidivists may no longer be accredited or contracted as participants of the Program.

The use of the word “may” makes the provision permissive. Statutory construction instructs us that the word “may” implies that it is not mandatory but discretionary. It is an auxiliary verb indicating liberty, opportunity, permission and possibility.<sup>23</sup> Following the same, the Philhealth, being the policy making body with respect to the country’s NCIP, and the agency expressly authorized by law “to suspend, **revoke permanently, or restore the accreditation of a health care provider**”, may lift the penalty of revocation of accreditation imposed upon the respondent health care provider, if based on its assessment the erring health care provider has already faithfully complied with all its requirements and guidelines. In short, the PhilHealth has the discretion to permanently revoke the accreditation of a health care provider or to restore its accreditation, depending on its findings and assessment.

Please be guided accordingly.

Very truly yours,

**JESUS CRISPIN G. REMULLA**  
Secretary

Department of Justice  
CN: O202301262



<sup>23</sup> *UCPB General Insurance Company, Inc. v. Hughes Electronics Corporation*, G.R. No. 190385, 16 November 2016.