

APPEALS POLICY

Title: Appeals Policy
Effective: 11th January 2018

1.0 PURPOSE

- 1.1 The policy establishes a formal mechanism for appeals handling.
 - 1.2 The purpose of this policy is to define the process by which the Bermuda Health Council (Health Council) hears appeals of ratifications and decisions of the Bermuda Health Council Board or Secretariat.
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2.0 APPLICATION & SCOPE

- 2.1 The policy applies to the Board, Board Committees and the Secretariat who work to provide oversight and execution of strategic goals, ensuring accountability, and making decisions on matters pertaining to the fulfilment of the Health Council's legal mandate.
 - 2.2 The Health Council uses this policy to govern the handling of appeals of Health Council decisions based on a formal request received from a stakeholder. Topics of consideration include, but are not limited to:
 - Health Technology Reviews
 - Standard Health Benefit approvals
 - Voluntary registration and inspections of health facilities
 - Health insurance licenses
 - Opinion and recommendation letters
 - Publication of non-compliant employers
 - Performance of statutory bodies
 - 2.3 The policy excludes advice, opinions, recommendations and decisions made in which the Health Council is a member of the decision making body or agency.
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3.0 DEFINITIONS

- 3.1. *Appeal* – a formal request for review of the ratifications and decisions made by the Health Council Secretariat or Board.
- 3.2. *Appeals Panel Committee (Appeals Panel, the Panel)* - a committee that represents the Bermuda Health Council and has authority to make decisions on behalf of the Bermuda Health Council regarding appeals. The panel composition is outlined in 9.3

- 3.3. *Appellant* – the person, entity or individual with legal authority to act on behalf of the person or entity (e.g. a power of attorney, or legal guardianship) who seeks reconsideration of a matter determined by the Council.
- 3.4. *Board* - the ordinary and ex-officio members of the Council appointed by the Minister of Health in accordance with the Bermuda Health Council Act 2004.
- 3.5. *Complaint* – any expression of dissatisfaction, cause for complaining, formal protest or grievance pertaining to the mandated functions of the Health Council where illegal behaviour or serious misconduct is alleged by a stakeholder. Complaints must be received in writing directly from the complainant.
- 3.6. *Council* - the Board and Secretariat combined. It may also be referred to as the Bermuda Health Council or the Health Council.
- 3.7. *Secretariat* - the employed staff of the Bermuda Health Council, including the Chief Executive Officer (CEO).

4.0 AUTHORITY

- 4.1. This policy is in accordance with the Bermuda Health Council’s Governance Policy which outlines the structure and authority used by the organization (Table 1) to fulfil its legal mandate defined by the Bermuda Health Council Act 2004, Health Insurance Act 1970 and subsequent regulations and amendments.

Table 1. Health Council’s decision authority levels are as follows:

Business type	Board	Committee	Secretariat
1. Strategy (e.g. missions, survival, leadership, major)	Approves	Recommends	Advises
2. Financial & Governance (e.g. budget, F&G policies)	Ratifies	Approves	Advises
3. Complex functions (e.g. new licences, fees, new SHBs)	Ratifies	Approves	Advises
4. Operational (e.g. mandated, status quo, licences, HR, facility)	Informed	Informed	Approves

5.0 BACKGROUND & GOALS

- 5.1. The Health Council is committed to increasing accountability and transparency within its functions and operations to continuously strengthen the integrity of its decision-making process. This policy serves to:
 - a. Define the scope and application for the appeals process
 - b. Identify the grounds for submitting an appeal
 - c. Outline how an appeal should be submitted
 - d. Outline the procedures in the appeals process
 - e. Evaluate the fairness and consistency of ratifications and decisions made by the Council
 - f. Outline the procedure of how feedback is given for resolutions resulting from appeals

6.0 CONFLICT OF INTEREST

- 6.1 Persons participating in the Appeals Panel should always act in a manner that promotes fairness and integrity. This includes avoiding even the appearance of a conflict of interest.
- 6.2 The management of actual or possible conflicts of interest will be handled in accordance with the Health Council's Governance and Conflict of Interest Policies.
- 6.3 Members of the Appeals Panel must disclose actual or possible conflicts of interest on any matter before discussion or voting occurs. This is necessary to prevent personal interests from interfering with the performance and integrity of the appeals process.
- 6.4 Members of the Appeals Panel will not include persons who were involved in the original decision making except in cases where clinical expertise is required and such clinical expertise is limited to a small pool of health professionals (less than five). In these instances, participation in the original decision making must be formally disclosed as per the Conflict of Interest Policy.

7.0 GROUNDS FOR SUBMISSION

- 7.1 The appeals process is used when an appellant has compelling grounds for a matter to be appealed including, but not limited to, any one of the following grounds:
 - a. The Health Council did not have jurisdiction to make a determination on the matter
 - b. The decision is contrary to other Health Council policies or legislation
 - c. Material facts and information could not be (or were not) submitted at the initial time of deliberation
 - d. The weight of the submitted evidence does not support the outcome
 - e. Circumstances related to the initial decision have significantly changed

8.0 SUBMISSION PROCEDURES

- 8.1 All appeals must be made in writing, signed and addressed to the Chief Executive Officer of the Health Council within twenty-one (21) days of the date on which the written position of the Health Council was issued. The request should include whether the appellant wishes to present in person during the appeals process.
- 8.2 Only the person or organization affected or an individual with legal authority to act on behalf of the appellant (e.g. a power of attorney, or legal guardianship) may submit an appeals application.
- 8.3 The appellant must fully complete the Appeals Form then submit the document and accompanying information in person, by courier, or via email to healthcouncil@bhec.bm. The form can be retrieved from the Health Council.
- 8.4 The appeal is considered to be filed at the time it is received by the Health Council. Appellants should receive confirmation of receipt within seven (7) days.

8.5 The relevant Board Committee should have enough information to deliberate the appeal. The application should include the following details, where applicable:

Grounds/Allegation	Minimum details required
a. The Health Council did not have jurisdiction to make the necessary determination	A detailed description of how it exceeded its jurisdiction should be submitted
b. Health Council's position was erroneous in law or did not conform to internal policies	The law or policy at issue and the precise error the Health Council made in applying the law or policy
c. New material facts and information have arisen since the original decision was made	A detailed description of the new facts, why the applicant could not have put them before the Health Council during the original deliberation, where these new facts were derived from, and how those facts would have changed the original decision
d. Weight of the evidence was not used to support the outcome	An explanation of the nexus between the evidence that was originally submitted and the outcome sought by the appellant

9.0 APPEALS PROCESS

- 9.1 Once an appeal has been received, the Secretariat will file the documents, update the Appeals Log (saved on the Council's shared drive) noting the grounds for the appeal, the details of the appellant and the date of any correspondence related to the appeal.
- 9.2 The Secretariat will then advise the Chairman of the Appeals Panel of the subject matter identifying details and information. Nominations of ad hoc subject matter experts to sit on the Appeals Panel will also be provided for the Chairman's consideration.
- 9.3 The Appeals Panel is comprised of the Executive Committee, and Chairs of each of the Board Committees. The CEO serves as the Secretary. The Panel can include invited members such as subject matter experts, and legal representatives as needed.
- 9.4 Anyone involved in the initial decision of the Health Council is excluded from participating in the Appeals Panel. There may be circumstances in which participation is required from someone involved in the initial decision; in this case, the person will be excluded from voting during the Appeals Panel. For example, if subject matter expertise is required for clinical decision making purposes and there are only a small number of subject matter experts (less than five)
- 9.5 Upon confirmation of the Appeals Panel's membership, the Secretariat will distribute the appeals application, corresponding documents, previous deliberations, and meeting details to the Panel.
- 9.6 The Secretariat will also send a correspondence to the appellant that provides notification of the appeals date. The appeals date will be set within twenty-one (21) days of submission of the written request for appeal. Appellants may appear before the panel; only an appellant can waive this requirement. The Health Council supports that everyone has a right to be heard.

- 9.7 The appeals application, corresponding documents and the Health Council's position should be sent to the Appeals Panel at least five days in advance so that members may review and research the subject matter.
- 9.8 A written record is kept of all Appeals Panel deliberations and is saved on the Health Council's share drive.
- 9.9 Appellants will receive a written decision of the appeal outcome within twenty-one (21) days of appearing before the Appeals Panel.

10.0 REFERENCES

- EA Procedure for the investigation and resolution of Complaints and Appeals. 2011. <http://www.european-accreditation.org/publication/ea-17-eaprocedure-for-the-investigation-and-resolution-of-complaints-and-appeals-part-23>. Last accessed 5th January 2018.
- ANSI Appeals Board. https://www.ansi.org/about_ansi/structure_management/committees/appeals/appeals_board Last accessed 5th January 2018.
- No.02–Application for Reconsideration of a Board Decision. 2013. <http://www.cirb-ccri.gc.ca/eic/site/047.nsf/eng/00100.html> Last accessed 8th January 2018.

11.0 CONTACTS FOR MORE INFORMATION

- 11.1. For more information about this policy or its application, please contact the Bermuda Health Council's Health Regulation Team.

12.0 SIGNATURES



Tawanna Wedderburn, Chief Executive Officer

22nd January 2018

Date



Tiara Carlington, Corporate Office

18 January 2018

Date

