

Application Process for Requests for Self-Regulation under The Regulated Health Professions Act

Legislative Framework

A group of persons representing a health profession who wish to be regulated under *The Regulated Health Professions Act* must apply for such designation. Subsection 156(1) of *The Regulated Health Professions Act* provides that:

Applying to be a regulated health profession

156(1) If a group of persons representing a health profession wishes that profession to be regulated under this Act, the group must apply to the minister for the health profession to be designated as a regulated health profession under clause 8(a).

Subsection 156(2) of the Act notes that “the application must be in the form and contain the information required by the minister, and must be accompanied by the application fee prescribed by regulation.” Finally, subsection 156(3) provides that “an application under subsection (1) must be made by the organization that represents the majority of persons carrying on that health profession in Manitoba.”

Subsection 160 of the Act states “The Minister may charge to the group that made the application under section 156 all or part of the costs, including the administrative costs, incurred in conducting the advisory council’s investigation, as determined in accordance with the regulations.”

Process for Satisfying These Requirements

Any application must show consistency with the purpose of the Act, the principal purpose of which is public protection. Before recommending a health service be regulated as a health profession, the Minister must be satisfied that the health services pose a risk of harm to the public or that it is in the public interest that the health service be regulated.

Applications must provide evidence of a need to regulate.

Each application will be examined individually on its merits and a decision will be made only after lengthy discussion and consultation.

The Review Process

1. An application for self-regulation of a profession under the Act must be made in writing to the Minister of Health. The application must include a concise rationale for regulating the profession, a completed questionnaire as set out in Appendix 1 and the required application fee as set out in Appendix 2.
2. The Minister will decide whether to investigate if the profession should be regulated under the Act; direct the Health Professions Advisory Council (HPAC) to undertake such an investigation; refuse the application without investigation; or if the Minister considers it is in the public interest to do so, approve the application without investigation.
3. Applications about the same or related professions may be considered jointly by the Advisory Council, at the Minister's request.
4. Notice of the review of the request may be posted on the HPAC website and/or Manitoba Health's website.
5. Notice of the review may be made in other publications or media where warranted.
6. Following notice, individuals or organizations interested in the review should inform HPAC that they wish to participate in the review process.
7. All participants will be provided with a copy of the profession's completed questionnaire package and informed of the review process including the deadline for written submissions.
8. The purpose of written submissions is to comment on the regulation of the profession in general and to respond to the completed questionnaire package.
9. The profession in question and all participants will be afforded an opportunity to provide a written response to any of the submissions from other participants.
10. Following receipt and analysis of all written submissions, HPAC will inform participants whether public presentations are deemed necessary. Participants will be asked to indicate if they are interested in making a public presentation.
11. The purpose of public presentations is for participants to respond to issues raised in the written submissions of other participants and to respond to specific questions of HPAC.
12. Public presentations will be at the invitation of HPAC and will be selected from among those participants indicating an interest in presenting. HPAC will control the presentation proceedings including setting the agenda and adhering to time allotments for presenters. HPAC will strive to achieve a balance in presenters.

13. Presentations will be held in open meetings unless issues involving public security or personal safety and health suggest to HPAC that the public should be excluded.
14. Reasonable accommodation will provided for persons with disabilities.
15. HPAC may consult with experts, collect data or conduct literature reviews or use any other process for obtaining information it deems necessary. The results of such investigations will be made public before the presentations or before the final deadline for submissions.
16. Persons or organizations with identified expertise may be invited, at the discretion of HPAC, to make presentations. HPAC will provide adequate notice to ensure that all may respond to these presentations.
17. HPAC will consider supplemental submissions containing information relevant to the applications for up to two weeks following the presentations. Supplemental submissions may be posted on the HPAC website.

Access to Information

18. HPAC is subject to *The Freedom of Information and Protection of Privacy Act*, including the protection of personal privacy.

Recommendations

19. HPAC's recommendations will be based only on its assessment of the profession's ability to meet the criteria for regulation.
20. HPAC will submit its recommendations in writing to the Minister of Health.
21. HPAC's recommendations are and remain confidential until they are released by the Minister of Health.

APPENDIX 1

**QUESTIONNAIRE TO BE COMPLETED BY PROFESSIONS
SEEKING REGULATION UNDER *THE REGULATED HEALTH
PROFESSIONS ACT* (Questions are based on ten criteria)**

Criterion #1 – Risk of Harm

A substantial risk of physical, emotional or mental harm to individual patients/clients arises in the practice of the profession, having regard to

- (a) the services performed by practitioners of the health profession,
- (b) the technology, including instruments and materials, used by practitioners,
- (c) the invasiveness of the procedure or mode of treatment used by practitioners

The harm must be recognizable and not remote or dependent on tenuous argument.

1. Define what practitioners of the profession do. Specify what diagnoses (if any) and assessments they make. Specify the treatment modalities and services they provide.
2. Specify the diagnostic tools, equipment and methods used by practitioners of the profession.
3. Specify areas of practice, treatment modalities, and services which are:
 - a) Performed exclusively by practitioners of the profession
 - b) Also performed by other regulated health professions
 - c) Also performed by other unregulated health professions
 - d) Performed in conjunction with other regulated health professions
 - i) Provide specific information about the nature and extent of any overlaps in practice with other health professions. Include references to, and copies of, scientific literature and other published information.
 - ii) Provide specific information about which treatment modalities and services provided by your practitioners differ from other health professions. Include references to, and copies of, scientific literature and other published information.
4. What professional titles do you recommend be restricted to members of your profession?
5. Specify the circumstances (if any) under which a member of the profession should be required to refer a patient/client to another health profession?
6. Specify which diagnoses/assessments, treatment modalities and services entail a risk of harm to patients/clients.

7. To what extent has the public's health, safety or well-being been endangered because your profession has not been regulated?
 - a) Provide examples of patients/clients being harmed by a practitioner who performed services incompetently or inappropriately. Include references to, and copies of, scientific literature and other published information.
 - b) How many complaints of harm to patients/clients has the association received each year for the past 10 years? How were complaints handled? What were the outcomes? Provide supporting documentation.
8. How will regulation decrease the risk of significant harm of the profession's treatments/services to patients/clients?
9. What percentage of practitioners of the profession normally carries liability insurance coverage? Does the association urge its members to carry liability insurance coverage?

Criterion #2 – Sufficiency of Supervision

A significant number of members of the profession do not have the quality of their performance monitored effectively; either by supervisors in regulated institutions, by supervisors who are themselves regulated professionals, or by regulated professions who assign this profession's services.

1. Are practitioners of the profession directly or indirectly supervised in the performance of their duties and responsibilities by other regulated practitioners or administrators of regulated institutions? Which particular tasks/services, if any, are subject to a greater or lesser degree of supervision? Please explain how and why this supervisory relationship is no longer appropriate or adequate.
2. Are practitioners of the profession currently performing reserved acts under the delegation of regulated professionals? Please explain how and why this situation is no longer appropriate or adequate.

Criterion #3 – Alternative Regulatory Mechanism

Regulation under the RHPA must be a more appropriate means to regulate the profession than other means.

1. Are individuals who practise this profession in Manitoba subject to regulation restrictions found in any other Act? Please specify.
2. Has the profession in question considered regulation as a distinct subsection within a profession already being regulated, and if so, have they rejected this route? If so, what were the reasons for rejection?
3. Has the profession in question considered joining other unregulated professions in a similar field who are or may seek regulation? If not, please explain why not.

4. Should self-regulation be determined not appropriate for the profession, what would be the most appropriate alternative form(s) of regulation? How might other applicable laws or existing standards meet the profession's needs?
5. What Acts in other Canadian, American and International jurisdictions regulate the profession? What is the statutory scope of practice in these jurisdictions?

Criterion #4 – Body of Knowledge

The members of this profession must call upon a distinctive, systematic body of knowledge in assessing, treating or serving their patients/clients. The core activities performed by members of this profession must be discernible as a clear and integrated whole and must be broadly accepted as such within the profession.

1. Describe the core body of knowledge of the profession.
2. Please provide a proposed scope of practice and relate it to this body of knowledge. Include references to, and copies of, scientific literature and other published information.

For the following question, provide the rationale for your position including relating each to the body of knowledge, educational preparation and standards of practice. Also include references to, and copies of, scientific literature and other published information providing evidence for your argument and rationale.

3. With respect to the proposed scope of practice statement:
 - a) What reserved acts (if any) should members of the profession be authorized to perform?
 - b) What specific acts should practitioners be permitted to delegate to others? Specify the circumstances when members of the profession may choose to delegate.
 - c) What diagnostic/treatment modalities and services should members of the profession be permitted to perform?
 - d) What are the limitations of practice (if any) for members of the profession? Are there acts within this field of health care which practitioners should not perform? What diagnostic/assessment abilities, treatment modalities and services are not part of the scope of practice for members of the profession?
 - e) If you are proposing a new reserved act, please describe whether this act would be exclusive to your profession or whether there are opportunities for sharing of the act. If there are opportunities for sharing, please describe any consultation that has taken place with other impacted regulators.

Criterion #5 – Educational Requirements for Entry to Practice

There must be qualifications and minimum standards of competence for persons applying to practise the profession.

These components must include defined routes of entry to the profession such as:

- (a) competency assessment, or
- (b) academic preparation at a recognized educational institution.

Entry qualifications must be independently assessed.

1. Does the professional association set standards of practice for diagnostic/treatment modalities and services based on the identified body of knowledge? Please explain. Are these standards enforced? Please explain. Provide a copy of the standards of practice and ethical guidelines.
2. Identify and describe the educational and clinical/practical training programs available in Manitoba. Specify theoretical and clinical/practical experiences.
 - a) Describe how the profession's body of knowledge and approach to diagnostic/treatment modalities and services are taught in this program.
 - b) Relate the education and training to the diagnostic/assessment abilities, treatment modalities and services
 - c) What percentage of the practitioners of the profession has Manitoba education and training?
 - d) What percentage of the members of the Association has Manitoba education and training?
3. Identify and describe each of the Canadian, American and International academic education and clinical/practical training programs available to persons seeking to enter this profession. Specify theoretical and clinical/practical experiences.
 - a) Describe how the profession's body of knowledge and approach to diagnostic/treatment modalities and services are taught in these institutions.
 - b) Relate the education and training to the diagnostic/assessment abilities, treatment modalities and services
 - c) What percentage of the practitioners in the province has Canadian, American or International education and training?
 - d) What percentage of the members of the Association has Canadian, American or International education and training?

4. Identify and explain the major differences between programs in different jurisdictions.
5. What academic/vocational/technical education/training, post-graduate and continuing education/training is required by:
 - a) The association for membership
 - b) Employers
 - c) Other Canadian jurisdictions for registration by a regulating body
6. Do you contemplate levels of registration? Please explain.

Criterion #6 – Leadership’s Ability to Favour the Public Interest

The profession’s leadership has shown that it will distinguish between the public interest and the profession’s self-interest and in self-regulating will favour the former over the latter.

1. Why is it in the public interest to regulate the profession?
2. Provide evidence of the profession’s commitment to the public interest through its communications, policies and/or procedures.
3. Does the association have a complaints and disciplinary procedure? Please describe this briefly. How long has this procedure been in place? How effective has it been?
4. Explain how the proposed scope of practice is in the public interest and provides adequate public protection while not unduly restricting the public’s choice of health care providers.

Criterion #7 – Membership support and willingness to be regulated and likelihood of complying with regulation

The members of the profession support self-regulation for themselves with sufficient numbers and commitment that widespread compliance is likely. The practitioners of the profession are sufficiently numerous to staff all committees of a governing body with committed members and are willing to accept the full costs of regulation. At the same time, the profession must be able to maintain a separate professional association.

1. Do the members of the profession/association want self-regulation? Please describe any consultation process and the response/results achieved.
2. Do the other organizations (if any) which represent practitioners in similar or related areas of health care agree with the need for regulation? Please explain and describe any consultation process undertaken with other related health professions. What were the responses/results achieved?

3. How many persons practice this profession in Manitoba? How many of these practitioners belong to an association? Please provide independently assessed and verified figures, if possible.
4. Explain how members of the profession will be able to assume the responsibilities, including the expense, of administering their own College? (if applicable)
5. What would be the proposed fee structure for College members?

Criterion #8 – Economic impact of regulation

The profession must demonstrate an understanding and appreciation of the economic impact of regulation on the profession, the public and the health care system.

1. Describe the effect of regulation on:
 - Practitioner availability
 - Education and training programs
 - The enhancement of quality of the profession's services
 - Prices, access and service efficiency

Criterion #9 – Public need for regulation

The profession must demonstrate that a significant public need would be met through regulation.

1. Is there a demonstrable public need for regulating the profession? Please describe any process undertaken to determine the public need and the response/results achieved.
2. Describe any agreements on trade and/or mobility that may be affected by regulation of the profession. What are the plans to address these issues?

Criterion #10 – Possible Additional Criteria

The following are examples of additional criteria that may be considered:

- (a) the extent to which the health profession has demonstrated that there is a public interest in ensuring the availability of regulated services provided by the health profession;
- (b) the extent to which the services of the health profession provide a recognized and demonstrated benefit to the health, safety or well being of the public;
- (c) Demonstrated commitment to continuous professional development.
- (d) Professional titles recommended to be restricted to members of the profession.

Please submit completed applications to:

Regulated Health Professions Initiative
Legislative Unit
Manitoba Health
300 Carlton Street
Winnipeg, Manitoba R3B 3M9
Phone: (204) 788-6608
Fax: (204) 945-1020
LegUnitGen@gov.mb.ca

APPENDIX 2

The fee to be submitted with an application for self-regulation under *The Regulated Health Professions Act* is \$2000.00.

Any costs in excess of the first \$7,500.00 of the costs incurred by the Health Professions Advisory Council for the investigation as to whether the profession should be regulated under the *Act* may be charged to the applicant.