

# State Legislative Brief

## RAJASTHAN

### The Rajasthan Right to Health Bill, 2022

#### Key Features

- The Bill provides the right to health and access to healthcare for people in the state. This includes free health care services at any clinical establishment to residents of the state.
- The Bill sets certain obligations on the state government to ensure the right to health and maintain public health.
- Health Authorities will be set up at the state and district level. These bodies will formulate, implement, monitor, and develop mechanisms for quality healthcare and management of public health emergencies.

#### Key Issues and Analysis

- There is no provision for reimbursing private health establishments for providing free healthcare services. This may make these establishments commercially unviable and violate Article 19(1)(g) of the Constitution.
- The District Health Authority is required to upload an action taken report on the web portal for complaints. The Bill does not specify who will have access to the report on the web portal. This may infringe on the patient's right to privacy in medical cases.
- Implementing the right to health may increase the financial obligation of the state. The Bill does not provide for such additional costs.

**The Rajasthan Right to Health Bill, 2022, was introduced in the Rajasthan Assembly on September 22, 2022. The Bill has been referred to a Select Committee (Chair: Mr. Parsadi Lal Meena, the Minister of Health and Medical Services).**

## PART A: HIGHLIGHTS OF THE BILL

### Context

In 1996, the Supreme Court held that the right to life (Article 21) included the right to health within its fold, and also pointed out the obligation of state governments to provide health services.<sup>1</sup> Under the Constitution, public health and sanitation, including hospitals and dispensaries, come under the State List.<sup>2</sup>

In 2018, the National Commission on Human Rights drafted the Charter of Patient Rights to be implemented by state governments.<sup>3</sup> Rajasthan runs certain schemes to ensure health coverage. Under the Mukhyamantri Chiranjeevi Swasthya Bima Yojana, health coverage is provided in over 1,550 private and public hospitals across Rajasthan.<sup>4</sup> Under the yojana, insurance coverage is provided for certain types of treatment.<sup>5</sup>

The Rajasthan Right to Health Bill, 2022, was introduced in the Rajasthan Assembly on September 22, 2022. It seeks to provide for the protection and fulfilment of equitable rights in health and well-being. The Bill has been referred to a Select Committee headed by the Minister of Health and Medical Services, Mr. Parsadi Lal Meena.

### Key Features

- **Right to health:** Every person in the state of Rajasthan will have certain rights regarding health. These include the right to: (i) avail free outdoor and indoor patient department services, medicines, and diagnostics in public health institutions, (ii) emergency treatment and care at all health care providers, without any delay waiting for prepayment or police clearance, (iii) receive information about the nature and cause of illness, results, complications and cost of treatment, and access related records, (iv) informed consent before specific tests or treatments, (v) confidentiality and privacy in treatments at all health care establishments, (vi) referral transport, (vii) safe and quality health care, and (viii) grievance redressal.
- **Additional rights for residents:** Ordinary residents of Rajasthan will have certain additional rights: (i) free health care services from any clinical establishment (as defined under the Clinical Establishment (Registration and Regulation) Act, 2010), and (ii) free transportation, treatment, and insurance coverage against road accidents at all healthcare establishments. The manner for accessing these services will be prescribed under the Rules.
- **Obligations of state government:** The state government will be required to: (i) formulate and prescribe a public health model, (ii) make appropriate provisions in the state budget, (iii) make available healthcare services with due consideration for distance, geographical area, or population density, (iv) lay down standards for quality and safety at all levels, (vii) set up a coordinating mechanism to ensure adequate supply of safe drinking water, sanitation, and nutritionally sufficient safe food, and (viii) institute measures to prevent, treat, and control epidemics and public

health emergencies. In addition, the state government must develop and institutionalise a Human Resource Policy to ensure the equitable distribution of health workers.

- **Health Authorities:** Independent bodies will be set up at the state and district levels, called the State Health Authority (SHA) and District Health Authority (DHA), respectively. These Authorities will formulate, implement, and monitor mechanisms for quality healthcare and management of public health emergencies. The State Health Authority will be chaired by an Indian Administrative Service officer not below the rank of Joint Secretary, who is appointed by the state government. The district collector will chair the District Health Authority. The State Authority will advise the government on any matter concerning public health.
- **Grievance redressal:** The Bill provides a mechanism for resolving complaints against denial of services and infringements of rights. A web portal and helpline centre will be established for filing complaints. The concerned officer will have 24 hours to respond to the complaint. The District Health Authority will take up unresolved complaints exceeding the above timeframe. The District Health Authority shall take appropriate action and upload the action taken report on the web portal within 30 days. If the District Health Authority does not resolve the grievance within 30 days, the complaint will be forwarded to the State Health Authority. The State Authority will hear appeals against the District Authority's decisions.

## PART B: KEY ISSUES AND ANALYSIS

### Obligations on the private sector may violate their right to carry out business

*Bill:* Under the Bill, a resident of Rajasthan has the right to avail free healthcare services from any clinical establishment, Clause: 3 such as hospitals, clinics, laboratories. This will include private establishments. The Bill does not specify if the state (d) will reimburse private clinical establishments for providing such free services. This may violate Article 19(1)(g) of the Constitution, which guarantees the right to practice any profession or carry on any occupation, trade or business.<sup>6</sup>

An obligation on the private sector to provide free services to residents implies that no resident will pay any charges. If the government does not reimburse the cost, the private establishments will have no revenue, and would likely shut down. In 2007, the Delhi High Court had ruled that the state's obligation to provide healthcare to its citizens is equally imposed on private hospitals that take concessional land from the state.<sup>7</sup> Such hospitals have an obligation to provide free treatment to 10% Out-Patient Department (OPD) and 25% In-Patient Department (IPD) patients. While there is an obligation on private health care establishments that received concessional land, no such obligation is cast on establishments that have not received land concessions.

The Right to Education Act, 2009 provides an example where the private sector is required to provide free services.<sup>8</sup> They have to reserve 25% of seats for free education to weaker sections. They would be reimbursed up to the per-child amount incurred by the government.

### Grievance redressal mechanism may violate the right to privacy

*Bill:* A web portal and helpline centre will be established for filing complaints on denial of services and infringement of Clause 10 rights. The concerned officer will have 24 hours to respond to the complaint. The District Health Authority will take up unresolved complaints exceeding the above timeframe. It shall take appropriate action and upload the action taken report on the web portal within 30 days. Depending on the nature of the complaint, a patient's medical information may also be part of the action taken report. The Bill does not specify if anyone besides the complainant will have access to the report on the web portal. This may infringe on the patient's right to privacy in medical cases.

In 1998, the Supreme Court held that professional doctor-patient relationships are a matter of confidence.<sup>9</sup> Public disclosure of such private facts may constitute an invasion of the right of privacy. In 2017, the Supreme Court held that any restriction on the right to privacy must be proportionate to the need for such state interference.<sup>10</sup>

### Implications of mandating free healthcare

*Bill:* The Bill provides for residents of Rajasthan to avail free health services in any clinical establishment. Any person in Clause: 3 the state can avail: (i) free outdoor and indoor patient department services, consultations, medicines, and diagnostics in (b), 3(c), public health institutions, (ii) emergency treatment and care at all health care providers without prepayment, and (iii) 3 (d), access to referral transport by all healthcare establishments. Residents can also avail free transportation, free treatment, 3(p), 3(s), and free insurance coverage against road accidents at all health care establishments. This raises a few issues. 4(b), 4(c), 4(g), and 4(i)

Under the Bill, one of the obligations of the state government is to make appropriate provisions in the state budget regarding healthcare. The Financial Memorandum states that there may be a recurring expenditure of Rs 14.5 crore every year. This includes the expenditure on allowances for members of the SHA and DHA, and other expenses on human resources. It also states that the implementation of various provisions of the Bill will be taken care of by the

regular budgetary expenditure towards health (Rs 20,111 crore in 2022-23). Fulfilling all the obligations cast on the state under the Bill would require incremental funds for deployment of human resources, infrastructure development, and public health functions. The Financial Memorandum of the Bill does not mention costs related to any of these factors, or any additional costs from providing free healthcare services to everyone in the state.

In 2018-19, in Rajasthan, the total expenditure on health was Rs 29,905 crore.<sup>11</sup> Of this, 43.7% was spent by the government (both state and centre) and 44.9% was paid from out-of-pocket expenditure by individuals (average expenditure of Rs 1,745 per person). In 2017-18, the average medical expenditure incurred for treatment during hospitalisation (public and private) for Rajasthan was Rs 17,435 per capita.<sup>12</sup> Providing free healthcare and emergency services would possibly include funding a significant proportion of the cost incurred by individuals. This implies that the state will have to increase the budgetary allocation on health. In the financial year 2022-23, the expected budget for Health and Family Welfare in Rajasthan is Rs 20,111 crore.<sup>13</sup> In 2022-23, Rajasthan allocated 7.4% of its overall budget on health, which is higher than the average of 6% across all states.

Note that, since 2021-22, several people in the state have already been provided insurance coverage under the Mukhyamantri Chiranjeevi Swasthya Bima Yojana. Under the scheme, eligible families receive an annual health insurance worth Rs 10 lakh and accidental coverage worth five lakh rupees.<sup>14,15</sup> The scheme is only available for IPD procedures and other identified procedures. Under the scheme, over 1,660 packages and procedures are available for various diseases. Packages in the scheme cover bed expenses, expenditure for anaesthesia and blood oxygen. The scheme covers: (i) beneficiaries under the National Food Security Act, 2013, (ii) socio-economically marginalised communities recognised under the Socio-Economic Caste Census 2011, and (iii) contract government workers. Families that do not fall into any of the categories can pay Rs 850 to access premium coverage. The insurance covers expenditure of tests, medicine, and doctor's consultation incurred five days prior to and 15 days of hospitalisation. In 2022-23, the state has allocated Rs 2,228 crore towards this scheme.

Additionally, the central government is implementing the Ayushman Bharat Scheme to achieve universal health coverage.<sup>16</sup> The scheme has two components: (i) creation of Health and Wellness Centres (HWCs) to provide comprehensive primary healthcare, and (ii) Pradhan Mantri Jan Arogya Yojana (PM-JAY), an insurance scheme to cover secondary and tertiary hospitalisation up to five lakh rupees. As on January 30, 2023, Rajasthan has 9,611 HWCs, making 6% of total HWCs in the country.<sup>17</sup> Under PM-JAY, the eligibility for households is the deprivation and occupational criteria under the Socio-Economic Caste Census of 2011.<sup>16</sup> The package rate (for surgical benefits) includes registration charges, bed charges, cost of medicines, and food to patients. PM-JAY provides states with flexibility to choose their own implementation models, such as: (i) assurance/trust model, or (ii) insurance model, or (iii) hybrid model.<sup>18</sup> Rajasthan has adopted the insurance model, where the claims are paid by the insurance company and State Health Agencies pay a premium to insurance companies.<sup>18</sup> As of February 09, 2023, there are 1,098 hospitals in Rajasthan eligible for empanelment.<sup>19</sup> As on October 2020, PM-JAY covers 58.9 lakh family beneficiaries in the state.<sup>20</sup> As of March 2022, there are over 1.3 crore families eligible for PM-JAY and the Mukhyamantri Chiranjeevi Swasthya Bima Yojana in the state.<sup>21</sup> Note that there may be an overlap between beneficiaries under both schemes due to certain matching eligibility criterion.

### Institutional and health worker shortage

*Bill:* The Bill obligates the government to develop and institutionalise a Human Resource Policy for Health to ensure the availability and equitable distribution of health workers. Ensuring free and quality healthcare at all establishments  
 Clause: would require adequate human resources and infrastructure at all clinical establishments. Data suggests that there may  
 4(c) be a shortage of such resources in the state. This may affect the effective implementation of the right to health.

To achieve the Sustainable Development Goal targets of universal health coverage by 2030, WHO suggests an adequate density of 44.5 health workers per 10,000 population.<sup>22</sup> In 2016, Rajasthan had an approximate density of 14.4 health workers per 10,000 population, which was lower than the national average of 20.1 health workers per 10,000 persons.<sup>23</sup> The Rural Health Statistics (2022) published by the Ministry of Health and Family Welfare notes that as on March 31, 2022 in Rajasthan has a shortage of 1,939 specialists at Community Health Centres (CHCs) in rural areas (Surgeons, OB&GY, Physicians and Paediatricians).<sup>24</sup>

**Table 1: Shortfall of healthcare workers in rural Rajasthan as on March 31, 2022**

Category	Required (R)	Sanctioned (S)	In Position (P)	Vacant (S-P)	Shortfall (R-P)
Female health workers/ANMs at SCs & PHCs	15,656	17,937	15,483	2,454	173
Total specialists at CHCs	2,464	1,555	525	1,030	1,939
Lab Technicians at PHCs & CHCs	2,749	3,186	2,149	1,037	600
Radiographers at CHCs	616	700	356	344	260
Pharmacists at PHCs & CHCs	2,749	2,360	1,198	1,162	1,551

Source: The Rural Health Statistics 2021-22; PRS.

The state also has a shortage of 1,551 pharmacists at Primary Health Centres (PHCs) and CHCs. Rajasthan has witnessed one of the highest increases in the number of Sub Centres (SCs) since 2005, with 3,011 centres.<sup>24</sup> Other states include Gujarat (1,858), Madhya Pradesh (1,413) and Chhattisgarh (1,306). Similarly, Rajasthan has had a significant increase in PHCs, with 420 additional PHCs (others are Jammu and Kashmir (557), Karnataka (457), and Gujarat (404)). In 2022, Rajasthan also reported a surplus in nursing staff at PHCs and CHCs. As of March 31, 2022, Rajasthan does not have a shortage of doctors at PHCs in rural areas.

1. Civil Appeal No. 16980-81 of 1996, [State of Punjab v. Mohinder Singh Chawla](#), Supreme Court, 1996.
2. Entry 6, List II, State List, [Seventh Schedule](#), The Constitution of India.
3. [Charter of Patient Rights](#), Ministry of Health and Family Welfare, 2018.
4. ["District Wise Empanelled Hospital List"](#), Mukhyamantri Chiranjeevi Swasthya Bima Yojana, Government of Rajasthan, as accessed on February 09, 2023.
5. ["Purpose of Scheme"](#), Mukhyamatri Chiranjeevi Swasthya Bima Yojana, Government of Rajasthan, as accessed on January 17, 2023.
6. Article 19 (1)(g), [The Constitution of India](#).
7. Social Jurists, A Lawyers Group v. Government of NCT of Delhi, Delhi High Court, 140 (2007 DLT 698, 2007).
8. Section 12, [The Right of Children to Free and Compulsory Education Act](#), 2009.
9. Civil Appeal No. 4641 of 1998, Mr X v. Hospital Z, Supreme Court, 1998.
10. Writ Petition (Civil) No. 492 of 2012, [Justice K S Puttaswamy & Anr. v. Union of India](#), Supreme Court, 2017.
11. ["National Health Accounts Estimates for India for the year 2018-19"](#), National Health Systems Resource Centre, Ministry of Health and Family Welfare, 2022.
12. [Key Indicators of Social Consumption: Health 2017-18](#), Ministry of Statistics and Programme Implementation, 2019.
13. [Revenue Expenditures: Social Services 2022-23](#), Government of Rajasthan, 2022.
14. ["Scheme Registration Process"](#), Mukhyamantri Chiranjeevi Swasthya Bima Yojana, Government of Rajasthan, as accessed on January 17, 2023.
15. ["Budget Speech 2022-23"](#), Government of Rajasthan, February 23, 2022.
16. ["About Pradhan Mantri Jan Arogya Yojana \(PM-JAY\)"](#), National Health Authority, Ministry of Health and Family Welfare, as accessed on February 07, 2023.
17. [State-wise Functional ABHWCs as on 30th January](#), Ayushman Bharat Health and Wellness Centres, Ministry of Health and Family Welfare, January 30, 2023, as accessed on February 05, 2023.
18. [National Health Authority Annual Report for 2021-22](#), National Health Authority, Ministry of Health and Family Welfare, 2022.
19. ["HEM Empanelled Hospitals"](#), PM-JAY, National Health Authority, Ministry of Health and Family Welfare, as accessed on February 09, 2023.
20. ["State Health Profile Rajasthan"](#), National Health Authority, Ministry of Health and Family Welfare, October 2020, as accessed on February 09, 2023.
21. ["State/UTs at a Glance"](#), National Health Authority, Ministry of Health and Family Welfare, March 2022, as accessed on February 09, 2023.
22. [Health Workforce in India: Where, How, and Why to Invest](#), World Health Organisation, 2021.
23. [The Health Workforce in India](#), World Health Organisation, 2016.
24. [Rural Health Statistics 2021-22](#), Ministry of Health and Family Welfare.

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