

GOVERNMENT NOTICE

DEPARTMENT OF HEALTH**No. 611****2 June 2008**

PUBLICATION OF BILLS IN TERMS OF PARLIAMENTARY RULES (NA RULE 241 / NCOP RULE 186)

The Minister of Health intends to table the bills following hereunder in Parliament this year. The Bills and their respective memorandums setting out the objects of the Bills are hereby published as required by National Assembly Rule 241(1) and the National Council of Provinces Rule 186(1).

1. The Medical Schemes Amendment Bill, 2008
2. The National Health Amendment Bill, 2008; and
3. The Medicines and Related Substances Amendment Bill, 2008.


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MINISTER OF HEALTH

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments

DRAFT BILL

To amend the National Health Act, 2003, so as to provide for some definitions; the appointment and functions of the Facilitator and Assistant Facilitators; support and remuneration for the Facilitator and Assistant Facilitators; conflict of interest; collective negotiations and individual bargaining on prices; resolution of disputes; limitation of liability; exemption for medicines; short title and commencement of the Act; and matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Insertion of chapter 10A in Act 61 of 2003

1. The National Health Act, 2003 (Act No. 61 of 2003) (“hereinafter referred to as “the principal Act”) is hereby amended by the insertion after chapter 10 of the following chapter:

“Chapter 10A***Definitions***

89A. In this chapter-

- (a) “*prescribed minimum benefits*” mean prescribed minimum benefits as provided for in the regulations made in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998) published under GN R570 of 5 June 2000 as amended; and
- (b) “*prices*” mean tariffs, fees or any form of reimbursement for health services rendered, procedures performed and consumable and disposable items utilised by health establishments, health care providers or health workers.

Objects of Chapter

- 89B. The object of this chapter is to create a framework that-
- (a) enables health care providers, health establishments and medical schemes to-
 - (i) negotiate collectively on prices; and
 - (ii) bargain individually on prices; and
 - (b) ensures transparency and fairness in the determination of prices.

Facilitator, Assistant Facilitators, appointment and functions

- 89C. (1) The Minister shall-
- (a) by notice in the Gazette, invite nominations on the appointment of a Facilitator for Health Pricing (“the Facilitator”);
 - (b) after receiving nominations as contemplated in paragraph (a), appoint a Facilitator and two or more but not exceeding five Assistant Facilitators from such nominations;
 - (c) in an instance where no nominations are received after an invitation, on his or her own accord, appoint the Facilitator and Assistant Facilitators; and
 - (d) ensure that persons appointed as the Facilitator or Assistant Facilitators when severally considered, have qualifications or experience in mediation and dispute resolution, health economics; law; commerce; health or public administration.
- (2) The Facilitator-
- (a) is appointed on a contract with a fixed term; and
 - (b) must not have a direct interest, financial or otherwise in the affairs of any of the parties taking part in the negotiations or bargaining processes contemplated in section 89F.
- (3) The Facilitator must-
- (a) in the prescribed manner-
 - (i) facilitate the collective negotiations contemplated in section 89F(2)(a);

- (ii) record and submit to the Minister for publication agreements reached at such collective negotiations; and
 - (b) where called upon by the parties or a party to individual bargaining, assist such parties during the bargaining process.
- (4) The Facilitator may at the request of a party to collective bargaining, require any other party to furnish the party requesting information with any specified information to assist the latter party to make informed choices during the bargaining process.
- (5) In facilitating the collective negotiation process, the Facilitator must ensure that the process is conducted in a manner that-
- (a) is fair and transparent to the parties involved; and
 - (b) enables the parties to share information that is necessary for them to make informed decisions.
- (6) The Facilitator shall-
- (a) in an instance where parties to collective negotiations fail to agree on prices, confirm that the parties have failed to agree and refer this matter for arbitration in terms of section 89I; and
 - (b) confirm in writing to the Minister at the end of both collective negotiations and individual bargaining processes that such processes were transparent and fair to the parties involved; and
- (7) Assistant Facilitators shall assist the Facilitator in the performance of his or her functions.

Support and remuneration

- 89D. (1) The Director-General shall, with the concurrence of the Facilitator, designate staff of the national department as the secretariat for the Facilitator.

(2) The Minister must, in consultation with the Minister of Finance, determine remuneration for the Facilitator and Assistant Facilitators.

Conflict of interest

89E. Persons nominated for the position of the Facilitator or Assistant Facilitators must upon request by the Minister, submit to the Minister a written statement in which it is declared whether or not they have any direct or indirect interest financially or otherwise, which-

- (a) may constitute a conflict of interest in respect of their functions; or
- (b) could reasonably be expected to compromise themselves in the performance of their functions.

Negotiations and Bargaining

89F. (1) The Minister must, within 60 days of publication of the reference price lists (RPL) contemplated in section 90(1)(v), by notice in the Gazette, invite health care providers, health establishments and medical schemes (hereinafter jointly referred to as "the parties") to negotiate and bargain on prices.

- (2) The parties may-
 - (a) negotiate collectively in instances where the parties are represented by representative organizations or associations; and
 - (b) bargain individually in instances where the parties represent themselves as individual entities.
- (3) The parties to both collective negotiations and individual bargaining-
 - (a) may conduct such negotiations or bargaining separately according to their specific area of interest; and
 - (b) must use the RPL as a source of reference for negotiations and bargaining.

Prescribed minimum benefits

- 89G. (1) In collective negotiations, the parties must agree on maximum prices that can be charged, using the RPL as a source of reference.
- (2) Where the parties to both collective negotiations and individual bargaining have reached agreements on prices, health care providers and health establishments shall not charge prices in excess of those agreed upon if the prices are in respect of prescribed minimum benefits.
- (3) In an instance where-
- (i) negotiations or bargaining as contemplated in section 89F(2) fail and the parties are unable to reach agreement on prices; and
 - (ii) such prices are in respect of prescribed minimum benefits, the parties must inform the Facilitator who shall then refer the matter for arbitration in terms of section 89H.
- (4) A determination made by the arbitrator is also binding in respect of users who are not members or dependants of members of medical schemes.

Non-Prescribed minimum benefits

89H. The parties negotiating and bargaining on prices that do not relate to prescribed minimum benefits must also use the RPL as a source of reference.

Arbitration, resolution of disputes

- 89I. (1) A party or parties to the bargaining process or the Facilitator may in the prescribed manner refer a dispute arising from the bargaining process to the Minister.
- (2) The Minister shall within 30 days of receipt of the notice of the dispute, refer the dispute to an arbitrator agreeable to both parties and appointed by the Minister.

(3) Where the parties fail to agree on the appointment of the arbitrator, the Minister shall, after consultation with the Minister of Justice and Constitutional Development, appoint the arbitrator.

(4) The arbitrator shall make a determination on the dispute within 30 days and inform the parties, the Facilitator where the dispute was referred for resolution by the Facilitator and the Minister of such determination.

(5) The costs of arbitration shall be borne by the parties to the dispute, with the arbitrator having the power to make an appropriate cost order having taken into account the conduct of the parties during arbitration.

Limitation of liability

89J. The Facilitator and the secretariat are not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising the functions in terms of this Chapter.

Exemption, Medicines

89K. The provisions of this Chapter do not apply to the sale of medicines.

Amendment of section 90 of Act 61 of 2003

2. Section 90 of the principal Act is hereby amended by the substitution in subsection (1) of paragraph (v) of the following paragraph:

“(v) the processes of determination and publication by the Director-General of one or more reference price lists for services rendered, procedures performed, and consumable and disposable items utilised by categories of health establishments, health care providers or health workers in the private health sector which may be used-

- (i) by a medical scheme as a reference to determine its own benefits; and

- (ii) by health establishments, health care providers or health workers in the private health sector as a reference to determine their own fees.

[but which are not mandatory;] and”

Short title and commencement

3. This Act is called the National Health Amendment Act, 2008 and shall come into operation on a date fixed by the President by proclamation in the Gazette.

**EXPLANATORY MEMORANDUM ON THE OBJECTS OF THE NATIONAL
HEALTH AMENDMENT BILL, 2008**

1. PURPOSE OF THE BILL

The purpose of the Bill is to introduce a new chapter in the National Health Act, 2003 that provides for a framework for health pricing.

2. CLAUSE BY CLAUSE ANALYSIS OF THE BILL

The Bill seeks to introduce Chapter 10A in the National Health Act, 2003 (Act No. 61 of 2003), so as to specifically, clause by clause, provide for the following:

2.1 Clause 89A

It provides for the insertion of new definitions of some of the words used in the new chapter.

2.2 Clause 89B

It makes provision for the objects of the Chapter, which is to provide for a framework to enable health care providers, health establishments and medical schemes ("stakeholders") to negotiate and bargain on prices.

2.3 Clause 89C

The clause provides for the actual appointment of the Facilitator and Assistant Facilitators by the Minister from nominations by interested persons. It further provides for the functions of the Facilitator which include facilitating collective negotiations by stakeholders; recording and submitting to the Minister agreements reached on prices; assisting the parties during the negotiations process; ensuring that negotiations are conducted in a transparent and fair manner; and confirming to the Minister that indeed such negotiations were conducted in a transparent and fair manner.

2.4 Clause 89D

The clause provides for the support for and remuneration of the Facilitator, that the Director-General shall designate staff of the Department to serve as the Secretariat for the Facilitator and that the Facilitator's remuneration is determined by the Minister in consultation with the Minister of Finance.

2.5 Clause 89E

The clause deals with conflict of interest, that the Facilitator must make a declaration to the Minister in this regard.

2.6 Clause 89F

The clause provides for the actual negotiations and bargaining on prices, that the parties may negotiate collectively as organizations or associations and bargain individually as individual entities; that negotiations must start after the publication by the Department of the reference price lists and that these lists must serve as a price reference for the parties during the negotiations process; that where the parties have reached agreements on prices, health care providers and health establishments shall not charge prices in excess of those agreed upon.

2.7 Clause 89G

The Clause provides for an eventuality where the parties fails to agree on prices, that in such an instance, if the services rendered relate to prescribed minimum benefits, health care providers and health establishments shall not charge prices in excess of those appearing on the reference price lists. This requirement also extends to patients who are not members of medical schemes. Provision is made for specialists that these may charge in excess of prices appearing on the reference price lists.

2.8 Clause 89H

The Clause provides for non-prescribed minimum benefits, that whatever the parties charge must be in relation to the reference price lists.

2.9 Clause 89I

The Clause provides for the resolution of disputes, that where disputes arise during the negotiations process, such disputes may be referred to the Minister and that the Minister shall appoint an arbitrator agreeable to both parties to resolve the dispute and that where the parties cannot agree on the arbitrator, the Minister may appoint one after consultation with the Minister of Justice and Constitutional Development.

2.10 Clause 89J

The clause provides for limitation of liability for the Facilitator and the secretariat for acts performed in good faith in the performance of their functions.

2.11 Clause 89K

The Clause exempts medicines from the provisions of the new chapter because medicines' prices are already regulated in terms of other legislation.

3. CONSULTATION

The provisions of the Bill resulted from consultative processes between the National Department and Provinces as well as stakeholders in the private health care industry. The Bill was also published for comment.

4. FINANCIAL IMPLICATIONS

The financial implications have been estimated and the necessary budget will be allocated.

5. PARLIAMENTARY PROCEDURE

This Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution.