Board of Healthcare Funders of Southern Africa NPC
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SUBMISSIONS TO HEALTH MARKET INQUIRY REGARDING PROPOSED REGULATORY INTERVENTIONS FOR LICENSING OF HEALTH FACILITIES

1. The Board of Healthcare Funders of Southern Africa ("BHF") is a representative body of the majority of Medical Schemes and Medical Schemes Administrators throughout South Africa, Zimbabwe, Botswana, Namibia and Lesotho.

2. We note that the Health Market Inquiry ("HMI") has invited stakeholders to make submissions on the observations and proposed remedies contained in its document entitled "Proposed regulatory interventions for the licensing of health facilities" ("the document").

3. The BHF lodges these submissions in response to the abovementioned invitation, and does so by addressing the following three themes:

   3.1. measures to address licencing and quality concerns;

   3.2. a standardised national licensing regime across the nine provinces;

   3.3. the BHF (or other body appointed by the Council for Medical Schemes ("CMS")) to continue issuing practice code numbers.

4. At the outset, the BHF re-affirms its support of the objectives of the HMI, and its recognition of the urgent need to address the issues causing barriers to entry and affecting the accessibility and affordability of healthcare. In addition, the BHF re-emphasizes its full continued cooperation with the HMI to ensure optimal outputs are achieved, to which end it remains prepared to offer critical aggregated and de-identified data demonstrating the current number, geographical spread and usage of healthcare facilities.

3.1. MEASURES TO ADDRESS LICENCING AND QUALITY CONCERNS

5. In order to contextualise the BHF's submissions, it is necessary first to highlight the pertinent distinctions between the issuing of licenses, on the one hand, and the issuing of practice code numbers ("PCNs"), on the other hand. Fundamentally, the issuing of licenses is concerned primarily with the need for and quality of the healthcare facility (i.e. the need for the health services and the

facility's competency to offer health services), while the issuing of PCNs is concerned mainly with ensuring the legitimacy of the healthcare facility's claims for payment (i.e. its fitness to have its claims paid by medical schemes). These are inherently distinct matters which, as a matter of necessity, invite different considerations and requirements.

6. The imperative to reduce and eliminate barriers to entry for healthcare facilities must be balanced against the equally legitimate imperative to protect the healthcare funding industry from exposure to illegitimate, unlawful and abusive claims.

7. It follows that there are and will be instances where it is appropriate to issue a license but not necessarily a PCN, or where it is appropriate to suspend or withdraw a PCN but not necessarily the license. It would therefore oversimplify the position to lump the two processes together, since they are very clearly legally distinct in both their purpose and requirements.

8. The submissions which follow are premised upon this fundamentally important distinction.

9. The BHF agrees with the concerns raised by the HMI in respect of the licensing and quality control of healthcare facilities, and that urgent regulatory intervention is required to address this. These healthcare facilities that require regulatory intervention due to lacunas in the regulatory environment within inadequate regulatory oversight include laboratories, emergency medical services, blood and tissue transport couriers etc.

10. The BHF considers this particularly important since it relies on the information received from the relevant licensing authority to ensure that the healthcare facility in question is suitably clinically qualified to render the health services for which it is raising a charge. Absent that assurance, it will not be appropriate to issue a PCN to any given healthcare facility.

11. The BHF is accordingly strongly in support of there being a mandatory monitoring and reporting framework requiring provincial authorities to collect data from healthcare facilities periodically and to report standardised information to a national authority to enable it to exercise oversight of the licensing process and market capacity. The lack of standardised licensing and processes in various areas of health service may cause a challenge in the reporting of standardised information to a national authority. For example, health facilities are issued different licenses (R187 / R158) dependent on which province it is located, and Remunerative Work Outside Public Service (RWOPS) where each province has its own processes for issuing the approvals.

3.2. STANDARDISED NATIONAL LICENSING REGIME

12. The BHF supports the proposal for a standardised national licensing regime across the nine provinces. The BHF also agrees that implementation of the standardised regime can be driven at a provincial level, specifically insofar as ongoing quality control measures are concerned.

13. However, for the reasons set out both above and below, the BHF does not agree that the function of issuing PCNs should be administered by the Office of Health Standards Compliance ("OHSC").

14. There may be a difference between licensing and quality. The licensing of a health facility's focus area is ensure it is set up to operate within a particular scope. The assessment of the quality of services, falling under the OHSC, is to ensure compliance of health care safety and quality standards in health facilities. It is important to reiterate, the main concern of the PCN is to ensure the legitimacy of the healthcare facility's claims for payment, and the PCN that is aligned to the scope and accreditation of the health facility.

3.3. THE BHF TO CONTINUE ISSUING PRACTICE CODE NUMBERS

15. The document states that the rationale behind the issuing of PCNs by the BHF is not entirely understood. The document states further that facilities without this information could be hindered from billing, which could heighten barriers to entry and lead to the exclusion of market players, and that this function should not be done by market players but should be a function embedded in the licensing process.

16. The BHF was appointed by the CMS in terms of the provisions of the Medical Schemes Act 131 of 1998 ("MSA") to administer the issuing of PCNs and is contractually entitled to continue to do so. PCNs are defined in the MSA as "*the number allotted to a supplier of a health service as a practice number by an organisation or body approved by the Council*". Therefore, the CMS determines who is responsible for the issuing of PCNs. It is accordingly not legally competent for the HMI to propose that this function be fulfilled by the OHSC, unless it is appointed by the CMS. To the extent that the HMI proposes this function being fulfilled by the OHSC, irrespective of whether the CMS appoints it or not, that would be unlawful unless and until legislative reform deprives the CMS of that prerogative.

17. As mentioned above, the BHF respectfully disagrees with that submission.

18. Furthermore, to the extent that a PCN is required for the purposes of having claims paid by medical schemes, the need for a PCN does not pose a barrier to entry, since healthcare facilities can render service without having a PCN.

19. Healthcare facilities which are allocated PCNs are enabled to have their accounts submitted to and paid by medical schemes. The organisation seized with the responsibility of issuing PCNs (presently

the BHF) fulfils a vital gate-keeping function in regard to the multi-billion Rand medical schemes industry. Controls and measures therefore required to prevent abusive claims practices, fraud, money laundering, perverse incentives, kickback schemes, vertical integration, anti-competitive behaviour and corruption. This necessitates that additional considerations applying for, obtaining and maintaining a PCN.

20. The reason that the medical schemes industry's reliance on the PCNS has been so effective is because it represents a singular system for the entire healthcare industry, with perfectly sequential and distinguishable codes ensuring that there is no duplicity of PCNs and that schemes can be assured of the legitimacy of all claims processed against any relevant PCN. That will be lost through the fragmentation of the PCN issuing function through various licensing authorities.

21. The housing of the PCN issuing function within a single organisation ensures uniformity and consistency in the issuing, suspension and withdrawal of PCNs. This is perfectly aligned with the HMI's objective of ensuring standardisation and uniformity in regard to the licensing of facilities. Ironically, for the reasons set out above, the delegation of the function of issuing PCNs to the relevant licensing authorities will actually conduce to exactly the lack of uniformity and standardisation which appears to be driving the HMI's proposal in the first place.

22. Moreover, and as mentioned above, PCNs and licenses are issued for fundamentally distinct (albeit equally important) legal purposes and are governed by different legislative frameworks. The PCN is focused primarily with the billing of the respective supplier of a health service, whereas the license is aimed at regulating the eligibility of a supplier to offer the health service. The requirements to obtain and maintain a PCN go beyond those of acquiring a license. Furthermore, the grounds to suspend or revoke a PCN are not aligned to those of revoking a license.

23. Last, but not least significantly, to establish a suitably competent system for issuing PCNs in the near future without relying on, or infringing, the BHF's intellectual property rights in the process may not be possible. However, BHF is currently engaging with CMS to find a suitable solution to manage the regulatory framework of issuing the PCN.

Yours sincerely,

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