



# Market Inquiry into the Private Healthcare Sector

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## Outline

- + Constitutional context
- + Pricing of health care services
- + Non-compliance with medical schemes legal framework
- + Impact of non-compliance on human rights
- + Recent developments relevant to inquiry
- + Recommendations
- + SECTION27 partners

# Constitutional context of inquiry

- + Section 27 of the Constitution
  - + Everyone has the right to have access to health care services
- + To realise this right, government must take
  - + “reasonable legislative and other measures” to ensure that more and wider range of people enjoy this right over time.
- + In fulfilling this obligation:
  - + *“Government is entitled to adopt, as part of its policy to provide access to healthcare, measures designed to make medicines more affordable than they presently are”*  
(Court case: *Minister of Health v New Clicks*, 2005)

## A single, unified health care system aimed at realising the right to access to health care services

- + National health Act recognises socio-economic injustices, imbalances and inequities of health services of the past
- + Sets a goal to: “Unite the various elements of the national health system in a common goal to actively promote and improve the national health system in South Africa”.
- + Although the Panel’s focus will be on the private health sector, it is necessary to understand that this sector is part of a unified whole aimed at realising the right to access to health care services

## The Inquiry is a constitutional measure

- + The High Court's judgment in *Netcare v KPMG and the Competition Commission* described the Health Inquiry in itself as a "**constitutional measure**" taken in order to comply with the state's obligation to "**promote and fulfil that right of access to health care**"

# The constitutional obligations of market participants in private health care markets

- + Constitutional obligations in terms of the Bill of rights on both state and private parties
- + A “negative constitutional obligation not to impair” a user of the health care system
- + A positive obligation to support the state’s efforts to progressively realise the right to access to health care services
  - + A duty to comply fully with relevant regulations

# International Convention on Economic, Social and Cultural Rights

- + **Article 12** The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- + Came into force on **12 April 2015**

## General Comment 14, ICESCR

“Payment for health care services, as well as services related to the underlying determinants of health has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups”



## Pricing of healthcare services

- + High and increasing prices in the private health sector
- + Lack of a price setting mechanism leaves patients vulnerable, who must pay balance of unpredictable invoices not paid by schemes
- + Potential mechanisms for price regulation should be transparent, independent and involve relevant stakeholders

## Non-compliance with medical schemes legal framework

- + PMB provisions require schemes to pay in full, and without co-payment or deductions, for diagnosis, treatment and care of PMBs
- + Provisions protect rights of users
- + High number of CMS complaints concerning non-payment, short-payment

# HPCSA

- + HPCSA has a duty to protect the interests of the public and the profession
- + For eg, HPCSA must deal with complaints about overcharging
- + Benchmark for overcharging includes ethical tariffs, a process that stalled in 2013

## Violations of the right to have access to health care services

- + Failures to comply with PMB regulations expose people to the risk and reality of aggravated illness, placing users under significant physical, financial, emotional and psychological strain and deteriorating health.
- + SECTION27 submits short payment and non-payment for claims relating to PMBs therefore amount to serious violations of the right to access to health care services

## Violations of the right to have access to health care services

- + Any violations of rights should be specifically highlighted to educate the public about what kind of conduct by industry players amounts to rights violations
- + Recommendations for remedying rights violations should be specially addressed by the Panel

## Recent developments relevant to the Inquiry

- + Genesis Medical Scheme v Minister of Health
- + Investigation into multi-system failures at the HPCSA
- + NDOH proposed amendment to Regulation 8 to the Medical Schemes Act

# Genesis Medical Scheme v Minister of Health

- + Genesis launched attack on Minister's powers to require "payment in full" for PMB conditions
- + Intervening respondents: HASA, CMS, SAPPF, MS
- + *Amici curiae*: TAC, SADAG, PLWC
- + Genesis has appealed order allowing intervening respondents to the SCA

# Genesis Medical Scheme v Minister of Health

- + Court acknowledged public interest in this matter concerning the Minister's powers to make provision for payment of PMBs.
- + "The relief would probably also affect the availability of healthcare services to many members of the public."



## Ministerial Task Team (MTT) investigation into the HPCSA

- + MTT investigated allegations of maladministration, irregularities, mismanagement, poor governance
- + **25.10.2015** report found eg delays professional conduct complaints
- + State of multi-system dysfunction, failure to deliver on its objectives
- + Recommends: Disciplinary action against top officials for mismanagement

## Draft Amendment to Regulation 8

- + July 2015, proposal to amend regulation 8 placing a cap on medical scheme liability
- + Proposed tariff 2006 NHRPL plus CPI
- + Effectively imposes co-payments on patients for PMBs
- + Given current legal position, proposal is a retrogressive measure contrary to the Constitution and international law

## Draft Amendment to Regulation 8

- + This proposal will benefit from outcomes of the Inquiry - information and analysis will enable policymakers to ensure evidence-based interventions

# General Recommendations

- + The Panel's recommendations should aim to achieve more equitable access to healthcare services and avoid interventions that are likely to have a retrogressive effect on the right to health

## Summary of recommendations

- + Price regulation
- + CMS & HPCSA – strengthen public interest mandate to protect patients
- + Consider MTT recommendations to strengthen the HPCSA

## Summary of recommendations CMS

- + Assist and equip the CMS to ensure compliance with public interest legislation, including PMBs
- + Assess existing capacity of CMS
- + Medical scheme members knowledge and accessibility to multiple complaints mechanisms

## Post-inquiry recommendations

- + Creation of structure including stakeholders to take forward Panel's recommendations
- + Indication of most urgent recommendations (eg where rights violations taking place)
- + Proposed timeline for implementation of recommendations
- + Proposed measures to be undertaken by Compcom

## SECTION27 partners

- + Southern African HIV Clinicians Society
- + Mr Ivan Evans
- + Rural Health Advocacy Project
- + South African Depression & Anxiety Group
- + South African Federation for Mental Health
- + Treatment Action Campaign



Thank you

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