

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; support and remuneration for the Facilitator; conflict of interest; collective 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 an 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) coordinate 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 coordinating the collective bargaining process, the Facilitator must ensure that the process is conducted in a manner that-

- (a) is fair and transparent to the parties involved;
- (b) enables the parties to share information that is necessary for them to make informed decisions; and
- (c) encourages competition on prices.

(6) The Facilitator must 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.

(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 respective organizations or associations; or
 - (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) Where the parties have reached agreements, 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.

- (2) In an instance where-
 - (i) negotiations as contemplated in section 89F(2)(a) fail and the parties are unable to reach agreement on prices; and
 - (ii) such prices are in respect of prescribed minimum benefits,

health establishments and health care providers shall not charge prices in excess of those appearing on the RPL.

- (3) Subsection(2) also applies in respect of users who are not members or dependants of members of medical schemes.

Arbitration, resolution of disputes

89H. (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

89I. 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

89J. The provisions of this Chapter do not apply to the sale of products regulated in terms of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965).”

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.