



**Hospital
Association
South
Africa**
Advancing Healthcare

**Submissions
on the compensation
for occupational injuries
and diseases amendment bill
[b21-2020]**

Hospital Association of South Africa



AGENDA

Introduction

Prohibition on the cession of claims by
healthcare practitioners

Inclusion of domestic workers into the ambit
of the Compensation for Occupation
Injuries and Diseases Act 130 of 1993
("COIDA")

Inclusion of compensation for rehabilitation
into the ambit of COIDA

"Medical Associations" to be defined

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Introduction

Hospital Association of South Africa (**HASA**) is an **association** comprising of the following **members in the private hospital sector**, and was established to represent the private hospital sector in appropriate forums and to **serve the interests of its members** who are drawn from this sector:

- Life Healthcare
- Mediclinic
- The National Hospital Network
- Netcare
- other independent hospitals and hospital groups, including the Wisani Medical Centre in Ga-Rankuwa and Joint Medical Holdings



HASA members comprise approximately **80 percent of acute hospital beds in South Africa**, distributed across all 9 provinces, giving us a truly national footprint. Our members also contribute significantly to the South African economy. In the 2016/17 financial year, **private hospitals contributed R55,5 billion** to the economy, equivalent to 1.3 percent of GDP and supported 248,504 jobs throughout the economy, equivalent to 1.57 percent of national employment.

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Prohibition on Cession of Claims

CONTEXT

Clause 43 of the Compensation for Occupational Injuries and Diseases Amendment Bill [B21-2020] (“COIDA Bill”), reads as follows:



“Section 73 of the principal Act is hereby amended by the addition of the following subsections:

- (3) ...
- (4) Any provision of **any agreement** existing at the commencement of this Act or concluded thereafter in terms of which a **service provider cedes or purports to cede** or relinquishes or purports to relinquish any **rights to a medical claim** in terms of this Act, shall be **void.**”

Prohibition on Cession of Claims

Prohibition of third parties

- The effect of clause 43 of the COIDA Bill is to **prohibit third parties** (namely Claims Administrators and Service Providers) from **taking cession of medical service providers' claims**

Role of claims administrators and service providers

- Compensation Fund has a long history of inefficient administration insofar as processing and paying claims to (amongst others) medical service providers
- Historical administration inefficiencies within the Compensation Fund are what gave rise to the third party intermediaries whose services ensure that medical service providers:
 - do not have to have the specialised knowledge required to ensure reimbursement from the Compensation Fund; and
 - do not have to wait inordinate lengths of time for the Compensation Fund to reimburse them for services rendered
 - can focus on the clinical management of IOD patients
- Medical service providers make use of Claims Administrators and Service Providers, not only in respect of their Compensation Fund work, but their work with medical aid patients too
- Claims administrators and service providers play a significant role in ensuring debt collection

Prohibition on Cession of Claims

Consequences of the amendment

This amendment has wide reaching consequences including:

- **threatens the provision of medical services to COIDA patients at private sector hospitals**, and therefore their access to healthcare services as guaranteed in the Constitution of the Republic of South Africa, 1996 (“**Constitution**”), and will adversely impact revenue streams of private sector hospitals
 - In the absence of Claims Administrators and Service Providers, medical service providers will increasingly **refuse to treat COIDA patients**
 - This work would be **pushed to** the already overburdened **public sector**
 - This will detrimentally impact the patient’s health, recovery and future well-being which will negate what is essentially the primary purpose of the COIDA
 - The removal of Claims Administrators and Service Providers from the claims process, will constitute a **retrogressive measure on the rights of COIDA patients to access health care services as guaranteed in section 27(1) of the Constitution**

Focus on clinical work

- **Medical service providers** should, given the high-stress environment within which they operate, have the ability to **focus on clinical work** and to use third parties to do paperwork, administrative functions and debt collections
- If this amendment is to be implemented, the Compensation Fund would need to **ensure that additional (ongoing) support structures** are put in place to ensure that **medical service providers are adequately trained and skilled** to deal with the **claims process**

Prohibition on Cession of Claims

PROBLEMATIC

Full **social and economic impact** of this amendment has **not been investigated at this stage**



- The Socio-Economic Impact Assessment System Final Impact Assessment for Compensation for Injuries and Diseases Act (COIDA), version May 2015 issued by the Department of Planning, Monitoring and Evaluation (“SEIAS”) does not set out the full impact of this amendment.
- There appears to have been **no consultation or consideration of the private healthcare sector when conducting the SEIAS activities**. This is a significant oversight as **medical service providers will be required to shoulder the burden associated with processing Compensation Fund claims**, should Claims Administrators and Service Providers be removed from the claims process

Prohibition on Cession of Claims

PROBLEMATIC

Insofar as HASA is aware, the Compensation Fund and/or the Department of Employment and Labour has **not**, to date, provided **coherent substantiation of the rationale** for introducing the amendment contemplated in **clause 43** of the COIDA Bill



- the SEIAS suggests that a benefit of this amendment would be “*Reduce fraud and corruption by third parties who buy claims from Doctors*”
- there is **no basis** on which this purported **rationale** can be **supported**
- the very fact that there are **extensive laws** in place to protect against and/or penalise acts of **fraud or corruption**, suggests that this particular amendment is **overbroad and unnecessary** in its reach
- **no evidence** to suggest that the existing anti-fraud and anti-corruption **legal framework is insufficient to protect the Compensation Fund from fraud** on the part of Claims Administrators and Service Providers (should there be any)
- simply because Claims Administrators and Service Providers are removed from the claims processing process, and that medical service providers will now be forced to submit and process their own claims with the Compensation Fund, does not mean that fraud will inevitably be eliminated
- the very **rationale** of this amendment as stated in the **SEAIS is not achieved by this amendment**
- absence of Claims Administrators and Service Providers, who are able to purchase accounts from medical service providers will likely **result in significantly higher instances of non-compliant submissions**

Prohibition on Cession of Claims

PROBLEMATIC

- Clause 43 of the COIDA Bill is at risk of breaching the principle of legality (and by extension the rule of law)
 - section 1(c) of the Constitution of the Republic of South Africa, 1996 (“**Constitution**”) lists: "Supremacy of the constitution and the **rule of law**", as one of these founding values
 - rule of law includes the principles of **legality**



Amendments contained in clause 43 of the COIDA Bill are unconstitutional as they are irrational and therefore conflict with the principles of legality

HASA Submission

INSTEAD OF ELIMINATING WHAT WORKS

(Claims Administrators and Service Providers) for medical service providers across the healthcare sector and has been effective in the delivery of much needed medical aid to patients throughout the country, the Department of Employment

LABOUR SHOULD FOCUS ON FIXING WHAT DOESN'T WORK

i.e. the Compensation Fund's claims and administrative capabilities and its ability to pay claims efficiently, and on time

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Inclusion of Domestic Workers

Amendment welcomed

- HASA welcomes this proposed amendment

Concerns

- Have concerns about the transitioning of this requirement into the **COIDA** framework

No transitional provisions

- There are **no transitional provisions** contained in the COIDA Bill that would lend support to **ensuring that domestic workers are, from that date of their inclusion in the COIDA Bill, able to access adequate healthcare services for occupational injuries and diseases under COIDA**
- This could **threaten** the very **rationality** of this amendment

Domestic workers to be equipped

- In order to ensure that this **amendment** is capable of **realising its purpose**, the Compensation Fund will need to ensure that **before this amendment takes effect**, both **employers and domestic workers** are **equipped and knowledgeable** on how to **comply** with the new requirements under the COIDA (should this amendment be adopted),

Reduce existing backlogs

- A positive obligation needs to be placed on the Commissioner to put in place measures to reduce existing backlogs in claims

HASA Submission

It would be **irrational** (and therefore contrary to the principle of legality) to allow the amendment that brings domestic workers within the scope of COIDA to **take effect in the absence of the following milestones being met:**

Educational campaigns and programmes are run or put in place by the Department of Education and Labour to educate employers of domestic workers on their **role, obligations and responsibilities under the COIDA** (should this amendment be adopted), how to **comply with these requirements**, as well as the **consequences** of non-compliance

Educational Campaigns and Programmes

The Department of Employment and Labour has **issued guidelines on the registration process**, what is required of employers, how employers can comply with their obligations under the COIDA, the rights of domestic workers, how claims are processed, what forms to complete and submit (amongst other things)

Guidelines on Registration Process

Registration drives are arranged i.e. promotional campaigns to encourage employers of domestic workers to register with the Compensation Fund

Registration Drives

A functional and resourced call centre is established to provide on-going support to employers

Resource Call Centre

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Inclusion of Rehabilitation

- The COIDA Bill contemplates the inclusion of Chapter VIIA “Rehabilitation and Reintegration” into the COIDA
- From the proposed amendments to the COIDA with respect to rehabilitation, **it is clear that:**
 - **funds** may be **paid out of the Compensation Fund** for rehabilitation;
 - an **employer’s assessment** will take into **account costs for rehabilitation**; and
 - the **Compensation Fund, a Licensee or an employer** may provide **facilities, services or benefits** aimed at **rehabilitating** employees suffering from occupational injuries and diseases.
- However, what **remains unclear** from these amendments is:
 - **when** (or under what circumstances) will the **Compensation Fund or a Licensee provide rehabilitation**; and
 - **to whom and in respect of what will compensation be paid for rehabilitation** – employees or service providers?
- Due to the **lack of detail** attendant to the amendments relating to rehabilitation in the COIDA Bill, it is difficult to ascertain the impact of this amendment and puts these amendments at risk of **contravening the rule of law**
- It does, however, appear that there will be **some level of claims processing in relation to rehabilitation**. It would be **irrational to introduce** a new category in respect of which claims can be made under COIDA (i.e. rehabilitation) into the ambit of COIDA, which would in effect further **exacerbate backlogs** and delay payment periods for claims, without simultaneously **imposing a positive obligation on the Commissioner to put in place effective measures to reduce existing backlogs**

HASA Submission



It would appear that there will be **some level of claims processing in relation to rehabilitation** - it would be **irrational to introduce** a new category in respect of which claims can be made under COIDA (i.e. rehabilitation) into the ambit of COIDA, which would in effect further **exacerbate backlogs** and delay payment periods for claims, without simultaneously **imposing a positive obligation on the Commissioner to put in place effective measures to reduce existing backlogs.**

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● **"Medical Associations" to be defined**

Definition of “Medical Associations”



The term “**Medical Associations**” has **not been defined** in the COIDA Bill, and as such, its meaning remains unclear. Importantly it remains unclear if these “Medical Associations” will include hospital groups. This is of particular import to HASA and its members, who respectfully submit that hospital groups should have a right to be consulted directly with respect to medical aid tariffs, particularly with respect to private sector patients.

Accordingly, HASA respectfully submits that it be clarified, by way of **definition**, if the term “Medical Associations” **extends to and includes hospital groups** (in addition to doctor groups and allied groups) within its ambit. **Alternatively**, HASA requests that the provisions of section 76 and 79 of the COIDA be extended to private hospital groups, and in particular that **private hospital groups be conferred rights to be consulted directly for purposes of determining tariff fees for medical aid.**



Questions?



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Thank you!