
COID AMENDMENT BILL

Clause 43(4) and 43(5)

**CompSol's presentation to the Select Committee on
Trade and Industry, Economic Development, Small
Business Development, Tourism, Employment and
Labour of the National Council of Provinces**

In opposition to the proposed amendment

22 February 2022

Executive Summary – Clause 43(4) and (5)

- Introduction

Fritz Lüttich

- Part 1 – Overview

Fritz Lüttich

- Third-party / Cessionary / Factoring House
- Why opposing

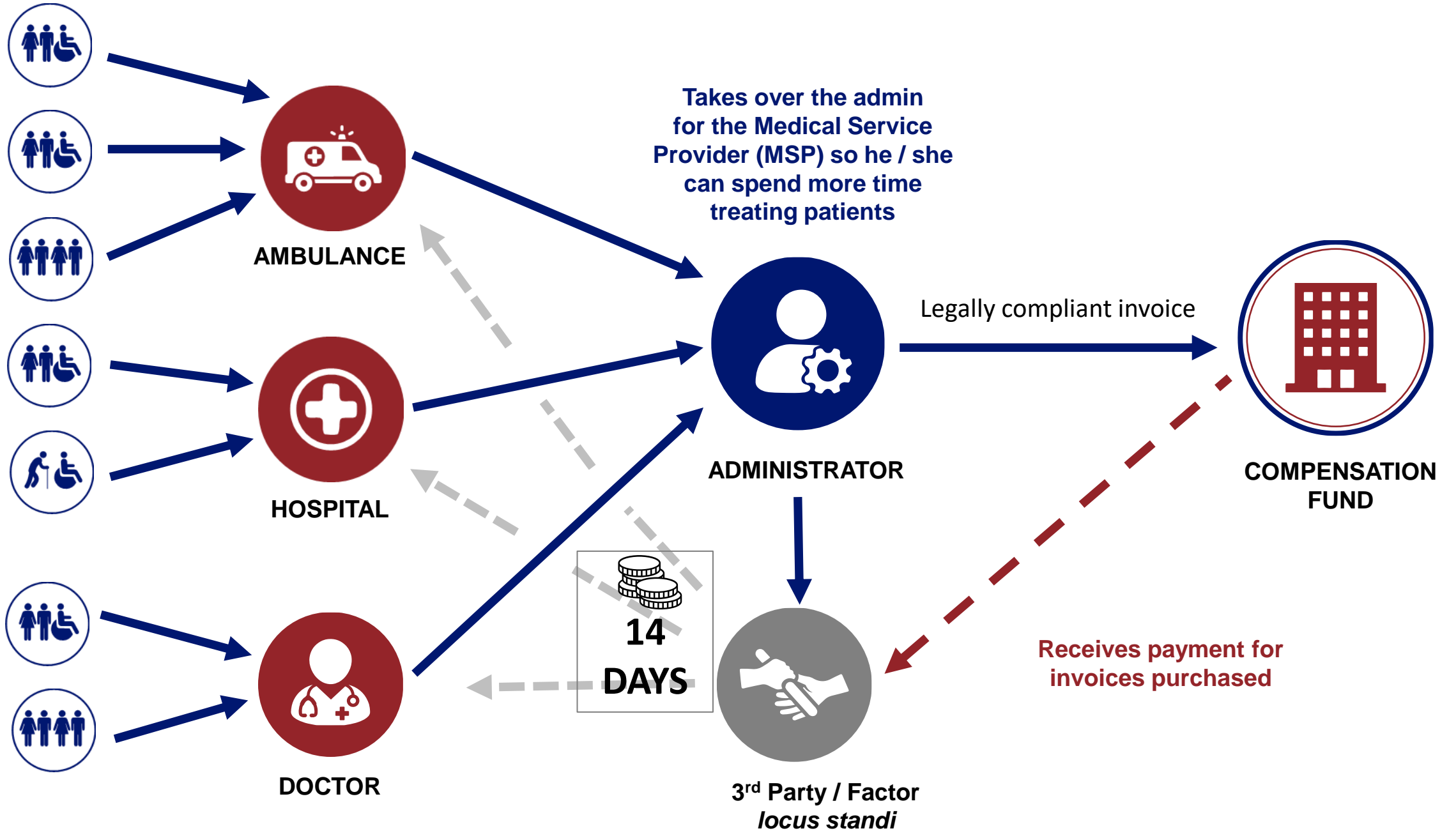
- Part 2 - Legal

MP van der Merwe SC

Quiryn Spruyt

- Legal implications of Clause 43(4) and 43(5)

INJURED EMPLOYEES



CompSol overview

NUMBERS:

- National footprint of **1,863** Medical practices encompassing all **66** medical disciplines, representing more than **5,000** medical professionals.
- MSP's delivered more than **3,4 mil** treatments to almost **800,000** injured workers over the past 5 years.
- Assisted more than **180,000** employers with their IOD's in past 5 years.

Overview cont...

VOLUMES:

- Factored / pre-funded **> R4 500 000 000** invoices over past 5 years
- We process in excess of **60%** of all medical accounts submitted to the Fund
- Employ **438 staff** – most stationed in the Eastern Cape creating much needed employment

Overview cont...

DEBTORS (Unpaid accounts):

Collectively our MSP's are

owed more than

R556 000 000

in switched but unpaid accounts.

In addition > **R180,000,000** services were already rendered in good faith, not yet submitted as **claims could not be registered** due to CompEasy system problems.

Overview cont...

DEBTORS (Unpaid accounts):

**Average time for the Fund to pay an
invoice**

341 days

Why do we oppose Clause 43(4) and (5)?

PROBLEM STATEMENT:

- Despite repeated outreach, as well as a direct instruction by the **Minister to engage with us**, there has been **NO response** by and engagement with Compensation Fund Commissioner Mr. Vuyo Mafata

Senior Management officials are **unable** to:

- Fix CompEasy problems
- Train staff to prevent incorrect rejections of valid invoices
- Individual MSPs **cannot afford** to wait 341 days for payment nor take costly **LEGAL ACTION**
- No indication is given of what the **criteria** will be for third-parties **to register** with the Compensation Fund.

Why do we oppose Clause 43(4) and (5)?

Stakeholders seek
JUST ADMINISTRATIVE ACTION

A completely NEW MECHANISM (Registration of third-parties) was introduced into the Bill without any opportunity for public comment and with insufficient information as to the requirements.

Practical Considerations

FACTORING process = ZERO COSTS

- **No costs** to Employer, Injured Worker or the Compensation Fund.
- **MSPs carry the full cost** of a commercial factoring agreement.
- The factoring process:
 - **POST patient treatment / account administration**
 - **does not prohibit** any *medico legal* action against MSP's.
 - Is a common **legal financing agreement** between MSP's and a financial institution

SUMMARY

Third-parties are:

Gatekeepers

Aggregators

Part of the solution - not the problem

Need legal access to court

The problem is the chronic dysfunctionality of the Compensation Funds' systems and poorly trained staff

Inclusions of Clause 43(4) and (5) of the Bill
will deepen the problems of the CF

SUMMARY cont...

Workers being denied their rights

Medical service providers withdrawing from IOD medical treatment

Employers not receiving what they pay for

Compensation Fund facing collapse and damaging the economy

END PART 1

Thank you for your time and attention.

Constitutionality and Legality

Constitutionality & Legality

Clause 43(4) and 43(5) :

- × Initially contained a prohibition on cession of medical invoices
- × It was removed following public comment
- × New clause creating new requirement and new restriction on third-parties' rights unilaterally introduced
- × No public comment called for on what is a materially a new threat to rights

Right to fair Administrative Action

- Whilst 43(5) refers to third parties assisting any party involved in COLDIA, including employee, employer, pensioner and medical service provider, the clause resorts under Chapter VIII, which deals only with medical services.
- This raises suspicions on the Commissioner's true motives.

Right to fair Administrative Action

- **No clear sufficient reason** was brought for clause 43(4) and (5) that can rationalize why **third-parties** would be required to register to do business with the Fund
- **Third-parties** are **already required** by law to be registered with and then regulated by the **Debt Collectors Council of South Africa**.
- Case law found that an **appropriate** relationship must be found between :

Rational Public Purpose
VS
Private Harm Caused

- If not, its **arbitrary deprivation and unconstitutional**

Right to fair Administrative Action

Justification of clause 43(4) and (5) i.t.o. sec 36 of Constitution :

- No fraud proven or prosecuted against any of the third-parties
- No public interest proven in any way and limited stakeholder engagement (SEIA and lack of consultation with medical sector)

Right to fair Administrative Action

- **The motivation behind the amended clause is suspicious**
- **No reasons or detail given of intended requirements for registration**
- **No legitimate connection between the purposes identified in the Bill and the registration requirements for third-parties**

OUR PROPOSED SOLUTION

1. Recommend to NCOP that Bill be rejected in terms of Section 75(1)(a)(iii) read with Section 75(1)(c) of the Constitution and referred back to National Assembly;

OR

2. Recommend to NCOP that the Bill be amended in terms of Section 75(1)(a)(ii) read with section 75(1)(c) of the Constitution by removing Clauses 43(4) and 43(5) and referred back to National Assembly.

OUR PROPOSED SOLUTION

(4) Any party claiming medical costs from the Compensation Fund either on behalf of a medical practitioner or in respect of any rights ceded to it by a medical practitioner,
shall be registered with the Council for Debt Collectors and be regulated in accordance with the Debt Collectors Act
(Act 114 of 1998 As Amended)
and **associated Code of Conduct.**

END PART 2

Thank you for your time and attention.