

Presentation to NCOP Health Sector

September 2023

PFMA
2021-22



AUDITOR-GENERAL
SOUTH AFRICA



MISSION

The Auditor-General of South Africa has a constitutional mandate and, as the supreme audit institution of South Africa, exists to strengthen our country's democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence.

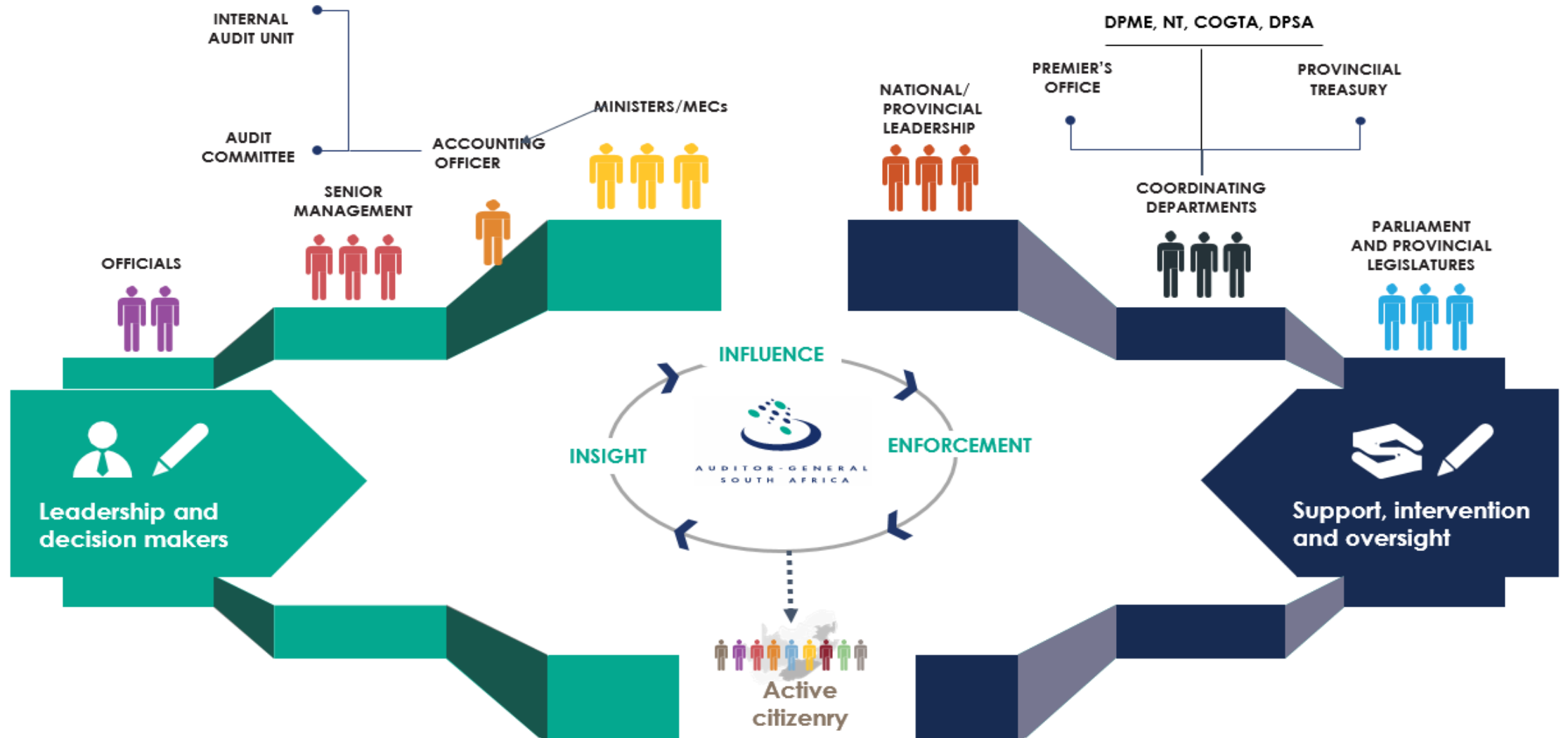


VISION

To be recognised by all our stakeholders as a relevant supreme audit institution that enhances public sector accountability.



We all have a role to play in the accountability ecosystem



Medico-legal claims



Planning

- The 2019-2024 Medium Term Strategic Framework (MTSF) which is the second 5-year implementation plan for the NDP includes an outcome relating to universal health coverage for all South Africans to be achieved by 2030.
- The NDP intervention for the rising amounts on medico-legal claims was to develop a comprehensive policy and legislative framework to mitigate the risks related to medical litigation
- The target set was that government wants to see contingent liability of medico-legal cases reduced by 80% (**under R18 billion**) in 2024 from the baseline of **R70 billion** in 2018.

Observations:

Sector

- The balance of medico-legal claims should be read in conjunction with the findings raised on contingent liability in the audit reports.
- The total amount of medico legal claims as at 31 March 2023, is approximately **R77 billion*** (**10% more than the baseline in 2018**). Unfortunately, over the years, the balance has increased significantly above the baseline, rather than the planned/intended reduction.
- The sector is currently at 110% of the target, with one year remaining in the MTSF.

NDoH

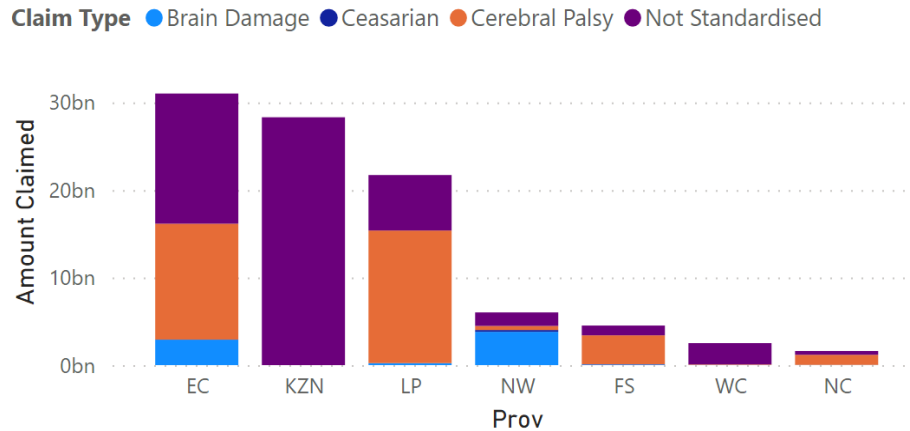
- NDoH appointed a service provider to develop and implement a case management system (CMS) to assist with management of medico legal claims.
- The NDoH also undertook the process to develop a policy and legal framework to manage medico legal claims in South Africa on behalf of all the Provincial Departments of Health. The South African Law Reform Commission is in the process of finalising the draft discussion paper.

*balances still being confirmed in the provinces

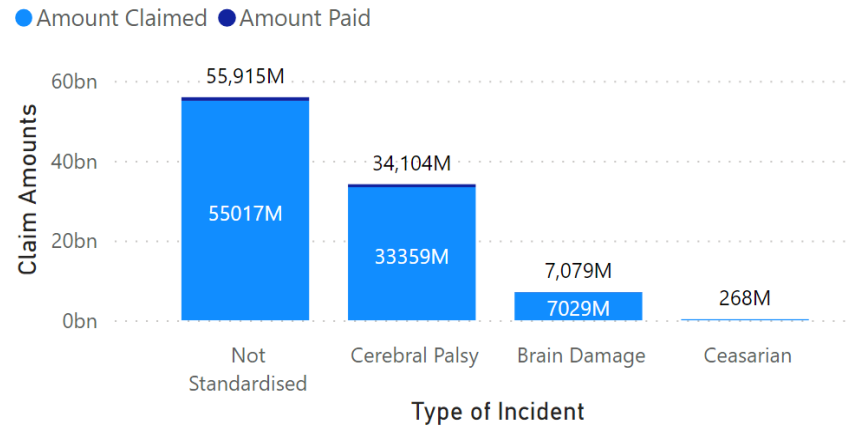


Overview: Claims

Claims by Province



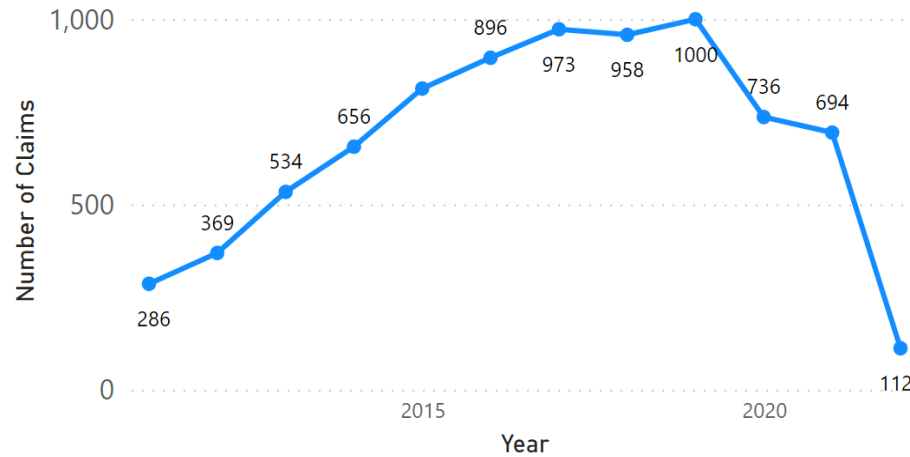
Summary of Claimed and Paid Amounts



Analyse Claims to identify:

- 1) Type of Claims by Province
- 2) Amount claimed by Type
- 3) Period with most claims by Volume and Value

Volume Claims by Year

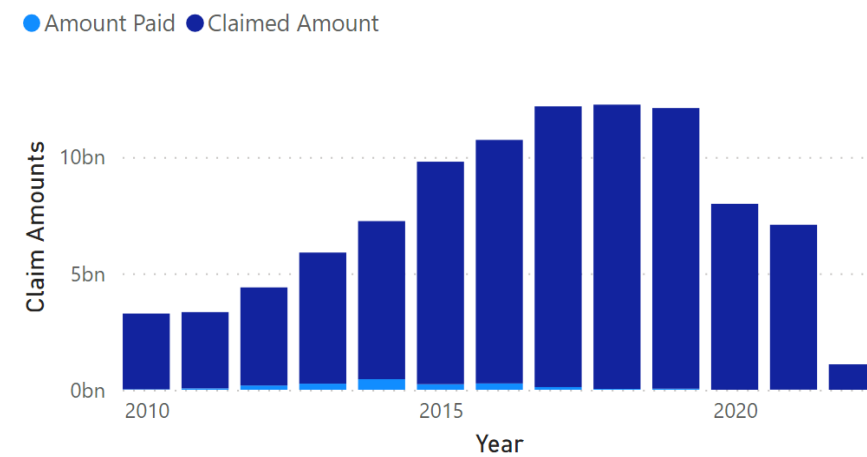


Prov
All

Year
All

Incident Ty...
All

Value of Claims by Year

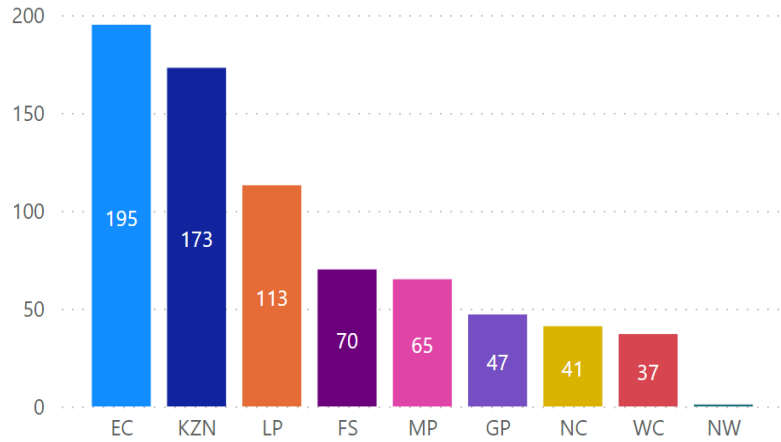


Observations

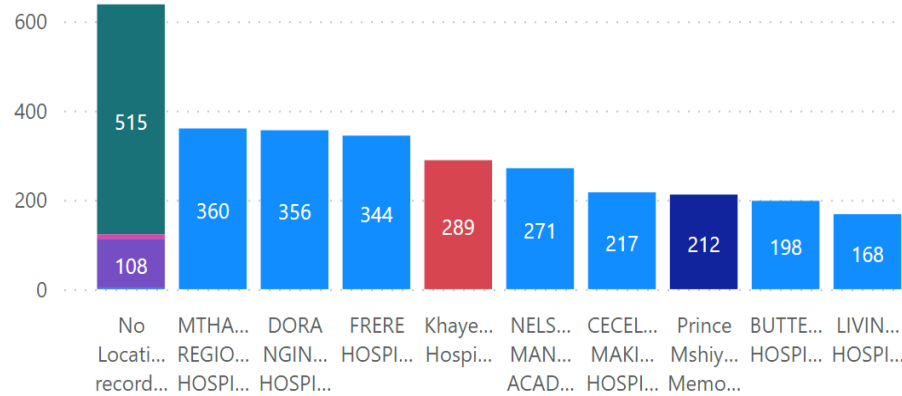
- Most cases of Cerebral Palsy are not standardised (not specific which contributed to poor quality of information available to the sector leadership for the management of claims and decision making processes)
- Possible root causes - could the issue be the competence of staff capturing the information or lack of staff to capture the information?
- Reduction of claims over the past 2 years (3 year claim period).

Overview: Locations

Locations by Province



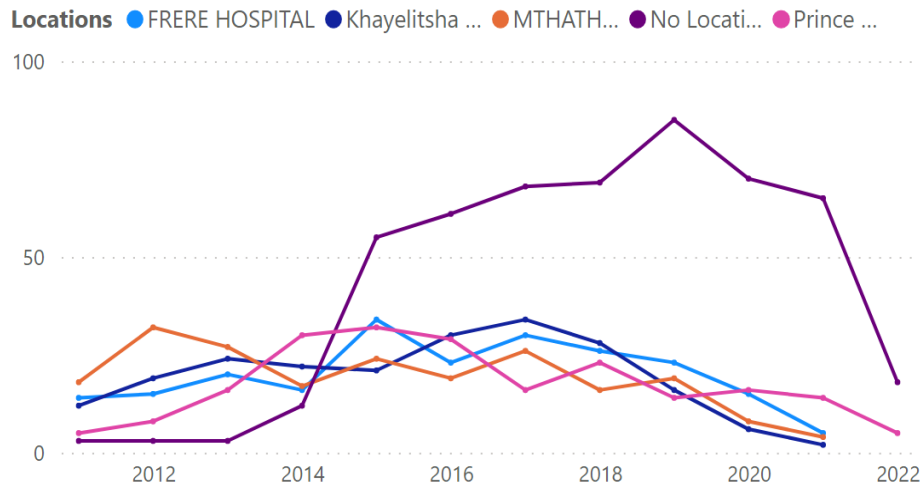
Instances by Location



Analyse Locations to identify:

- 1) Provinces with highest number of locations
- 2) Specific locations with most claims (High risk)
- 3) Periods at each location when the most claims originated.

Instances by Year



Prov

All

Year

All

Institutions / Locations

All

Locations	Number of Instances
Addington Hospital	1
Amajuba Memorial Hospital	13
Bernice Samuel Hospital	7
Charlestown Clinic	1
Inkosi Albert Luthuli Central Hospital	18
Kwaguga Polyclinic	1
Pelonomi Hospital	1
3 Military Hospital	1
A Mandla Clinic	1
ABERDEEN HOSPITAL	2
Abraham Esau Hospital	1
Addington Hospital	106
Total	1079

Observations:

- No locations were recorded in the data from NW, which may lead to inconsistent and poor quality data for the management of claims. Indicative of the state of the actual records that are required to support the claims during the court processes?
- Bulk of the cases are from EC, consistent with other messages and challenges on service delivery (What are the drivers for these high cases?)

Our audit focus:

Evaluate the **two indicators** included in the NDoH APP relating to medico-legal claims.

Confirm that there were **no budget overruns** for the medico-legal claims project.

Confirm that there was **adequate contract management** on the medico-legal claims project.

Observations

- NDoH **did not meet the targets relating to medico-legal** claims set for the 2021-22 reporting period. This could indicate that efforts to curb the medico-legal claims are slow.
- NDoH procured four (4) service providers to assist with the medico-legal claims projects. The scope of the service provider included conducting forensic investigations on top law firms that are litigating against the provinces on the medico-legal matters and forensic investigations on the medico-legal matters as provided by the provincial department.
- Only two (2) service providers performed work related to medico-legal claims during the year under review. The national department budgeted **R39 million** for the medico legal claims project for 2021-22 and also received **R64 million** from provinces as advances towards medico-legal claim. As at 31 March 2022, a total amount of **R93.8 million** had been paid towards the medico-legal project.
- Based on reports from service providers, it appears that the sector is **benefiting from the medico-legal claims project**. In some instances the expert's reports indicated a successful negotiation for **lesser settlements on the medico-legal claims resulting to some savings to the department**.

Indicator	Comments on observations"
A policy and legal framework gazette to manage medico-legal claims in South Africa developed	Policy and legal framework was not gazetted. The South African Law Reform Commission (SALRC) published the Discussion paper on the medico-legal claims project 141 to come up with the legal framework to manage medico-legal claims in South Africa.
Case management System used to manage new medico legal claims in seven (7) provinces.	<p>The NDoH entered into a 3-year contract with a service provider for the <u>development of the case management system</u> to assist with medico-legal matters. The roll out of the system was going to be completed in 8 provinces (WC excluded) by March 2020. As at 31 March 2022 the system had been rolled out to 4 provinces, however it was only used by one province.</p> <p>There was lack of governance structures over ICT projects, which led to inadequate project planning and poor project governance, which resulted in ICT projects being implemented haphazardly. There was no feasibility study conducted for the case management system to determine viability of the project.</p> <p>This resulted in the case management system being rolled out in some province but not used for its intended purpose. In addition, the department derived minimal value from expenditure on support and maintenance of the case management system as the system was only implemented in one province.</p>



Alternative systems in provinces

Province	Alternative system utilised	Name of system
KwaZulu-Natal	No	N/A - Making use of spreadsheet
Northern Cape	No	N/A - Making use of spreadsheet
Eastern Cape	Yes	eLiability system
Free State	No	No
Gauteng	No	No
Limpopo	Yes	Patient Safety Incident Reporting and Learning Systems (RLS)
Mpumalanga	Yes	Litigation Management & Internally developed case management system
North-West	No	N/A - Making use of spreadsheet

Impact

- ❖ Lack of systems to support the management of patient safety records. However, PSI guide does not enforce use of systems.
- ❖ Use of manual processes impact on the credibility of the information relating to medico-legal claims. Lack of systems to support the management of medico-legal claims.
- ❖ Management does not have a consistent, cohesive source of information for the management of medico legal claims, impacting on the sector’s ability for timely and strategic decision making for the effective management of claims.

Financial impact to date

- **Total of R1,2million has been paid to date to CMS** for roll out in all provinces. Only KZN, FS, NC and NW - data imported into the system. Access not granted to users.
- Total of R210 000 was paid for support for all systems however only one (FS) province is utilizing the system.
- There is possible fruitless and wasteful expenditure amounting to R170 000 for roll out not fully utilized.





Challenges in public health facilities

- Unnecessary loss of life due to medical negligence
- Serious harm due to medical negligence
- Poor record management
- Lack of sufficient resources in the public



Medico-legal claims

Due to poor performance and poor record-keeping, money is being diverted away from being spent on improving and delivering quality and timely health care services to the citizens.



2021/22 Focus Areas and Findings

Management of patient safety incidents and patient complaints	Management of medical records	Management of existing medico-legal claims	Implementation of the case management project
<ul style="list-style-type: none"> • lack of dedicated staff or coordinating structures to oversee the management of patient safety incidents and patient complaints • Some of the patient safety incident cases were not closed or the closure of the cases were delayed. Delays were also identified in the closure of patient complaints. • Delays in the closure of patient safety incident cases and patient complaints may increase the likelihood that patients affected by such cases may turn to litigation for redress 	<ul style="list-style-type: none"> • Shortages among administrative staff members • Ineffective medical record tracking systems were implemented to monitor • Medical records were also not always filed in a systematic and orderly manner • Poor practices were identified in the storage, archiving and disposal of medical records • limited use of recommended electronic archiving processes 	<ul style="list-style-type: none"> • Inadequate human resource capacity and lack of medical expertise to manage the medico-legal case load in the Legal services directorate of the provincial Departments of Health, resulted in delays in the finalisation of medico-legal cases • Inadequate communication and coordination was also identified between the Legal services directorate and some healthcare facilities when medical records related to medico-legal claims were requested from healthcare facilities, 	<ul style="list-style-type: none"> • Planned to gazette a policy and legal framework to manage medico-legal claims, not been gazette at year end • Planned to implement a Case Management System (CMS) to streamline case management and reduce contingent liability for March 2022, however only one province has implemented the system. • System does not support the objective of the management of medico-legal claims, therefore the costs incurred on the system could potentially be fruitless and wasteful.



Financial impact of litigation and claims on the health sector

Province	Total number of claims against department	Total value of total claims		Total value of claim payments made	
	2022	2022	2021	2022	2021
Eastern Cape	4 443	R30 784 682 000,00	R38 842 976 000,00	R38 683 221,00	R866 144 480,00
Free State	410	R5 017 151 663,41	R4 525 725 000,00	R7 050 000,00	R584 004,00
Gauteng	3 783	R23 032 525 914,21	R24 326 745 000,00	R349 495 342,99	R392 000 000,00
Kwazulu-Natal	2915	R31 700 653 860,09	R26 230 576 000,00	R265 883 740,85	R92 882 000,00
Limpopo	1 617	R14 291 785 417,00	R12 316 689 000,00	R77 665 591,02	R79 322 359,00
Mpumalanga	991	R9 600 000 000,00	R10 116 520 000,00	R38 747 577,96	R18 632 319,00
Northern Cape	99	R1 564 225 626,46	R1 961 881 000,00	R27 559 513,00	R229 814 000,00
North West	518	R5 958 891 330,00	R5 657 374 000,00	R25 395 446,40	R44 856 000,00
Western Cape	372	R3 356 241 531,46	R151 558 000,00	R63 859 086,60	R31 990 000,00
TOTAL	15 148	125 306 157 343	124 130 044 000	855 656 299	1 756 225 162

As at 31 March 2022, there were 15 148 claims that have reportedly been lodged against the departments and were valued at R125.3 billion (R124,1 billion 2021). 96% of the claims are attributed to medico-legal claims. During the 2021-22 financial year, the departments paid **R855.6 million (R1 756 million)** towards medico-legal claims.

Majority of the provinces budgeted for the claims and in some cases additional funds were requested from relevant treasury to cover the claims. Although there is an increase in the number of claims, there was a decrease in the claims amounts that were paid out in the current year. The reduction of payment is not an indication of a sustainable reduction as it was mainly due to a timing difference between the time the claim is received, and the time the claim is actually paid. Management must therefore utilise the existing processes more effectively to monitor and keep these claims as low as possible.



Plans to curb medico-legal claims

Wednesday, February 26, 2020

The National Treasury has unveiled plans aimed at curbing soaring medical malpractice claims and litigation hovering at R100 billion.

In a Budget Review, the National Treasury said claims had increased rapidly.

"Although in many cases the quality of care is insufficient, the increase in claims is inconsistent with certain indicators of health outcomes in the public sector," the report reads.

It cites, for example, how the overall death rate in public hospitals declined from 5.4% in 2013/14 to 4.6% in 2018/19. Maternal mortality in facilities decreased by 20.5% over the same period.

However, since 2014, contingent liabilities and payments of medico-legal claims in the public sector have increased at an average annual growth rate of 30% and 23% respectively. In 2018/19, medico-legal contingent liabilities reached R99.2 billion, while medico-legal claim payments reached R2 billion.

These payments are affecting the budgets of public facilities and, in turn, the delivery of services," the report states.

Due to large lump-sum payments often awarded in malpractice cases, the effects are unplanned.

The National Treasury said this is a multifaceted problem caused by inadequate quality of care, weak capacity in provincial medico-legal teams, poor administration of medical records, and high profitability for law firms specialising in this area. The report said government now aims to stabilise its liability through a range of interventions and has made progress in several areas.

These include funding reprioritised in the Department of Health's budget to pilot the National Quality Health Improvement Plan in 2020/21.

The department has also contracted law firms with medico-legal expertise to support claim management and provide legal services in some provinces.



MAVERICK CITIZEN

Medico-legal claims remain Eastern Cape's biggest budgetary headache



Eastern Cape

The amounts paid for legal claims are not included as part of the appropriation and funds have to be shifted from other services delivery budget lines in order to pay these claims, which continues to negatively impact the financial sustainability of the department.

Gauteng

Increase contingent liabilities by R1,004billion with total contingent liabilities amounting to R24 billion. GP settled claims amounting to R369,7 million in CY. Funds were shifted from goods and services to pay medico-legal claims. Legal claims constitute 40% of next years annual appropriation

KwaZulu Natal

There were 2 360 active medico-legal claims to the value of R16 062 902 316. This puts the department under immense pressure, as payments for these claims were not budgeted for and are paid from the department's voted funds. During the 2021-22 financial year, the department paid R352 436 817 in medico-legal cases.



Example of claims paid

Province	Case	Out of court settlement or Court order	Amount paid	Facility	Comment
EC	Case 1 // MEC FOR HEALTH	Advised to cede the merits and settle the amount.	Paid R0.3 million instead of R0.5 million	Nelson Mandela Academic and Madwaleni Hospital	Conceded and settled out of court due as no medical record could be found.
EC	Case 2 // MEC FOR HEALTH	Court decided R0.5 million and other costs to follow	Court decided R0.5 million and other costs to follow	Mthatha General Hospital	No supporting documents
EC	Case 3 // MEC FOR HEALTH.	Advised to cede the merits and settle the amount.	To pay R0.8 million instead of R31 million	All Saints Hospital	Conceded and settled out of court due as no medical record could be found.
EC	Case 4 // MEC FOR HEALTH	Advised to cede the merits and settle the amount.	Paid R1.3 million instead of R6.5 million	Nelson Mandela Academic and Madwaleni Hospital	Conceded and settled out of court due as no medical record could be found.
MP	Case 5 vs MEC	Paid R1.8 million instead of R5.1 million through court	Paid R1.8 million instead of R5.1 million through court	Barberton Hospital	Negligence
MP	Case 6 Vs MEC	Advised to cede the merits and settle the amount.	Paid R1 million and other future cost still coming	Themba Hospital	Negligence
MP	Case 7 vs MEC	Advised to cede the merits and settle the amount.	Paid R2 million and other future cost still coming	Amajuba Hospital	Negligence
FS	Case 8 vs MEC	Advised to cede the merits and settle the amount.	Paid R6 million instead of R21.5 million	Boitumelo Regional Hospital	Negligence
FS	Case 9	Advised to cede the merits and settle the amount.	Paid R0.3 million instead of 2.7 million	Universitas Academic Hospital	Negligence

Of the nine (9) cases included above, the most were also noted to have been out of court settlements, with four (4) due not having adequate supporting evidence.



Key messages going forward: Effective Implementation of action plans

Overall portfolio committee recommendations made in the prior year

- The committee must closely monitor the areas that are contributing the funds be depleted from the sector that could have otherwise been used to procure much needed equipment, expand and maintain infrastructure, increase capacity and skills in the sector. These include the areas of medico-legal claim, fruitless and wasteful expenditure and better management of goods and services processes so that accruals are reduced.
- The oversight committees in the sector must request the sector leadership to provide plans they will implement to not only improve the systems of internal controls relating to financial and performance management disciplines, but also relating to service delivery. This must be supported by proper governance processes.

Key messages still to come on the 2022-23 health sector focus areas:

- Resourcing of primary healthcare
- Follow up on medico-legal claims
- Infrastructure audit
- Province specific messages

Drafting of key messages in these areas are underway. We will engage the committee when these are finalised.



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