



AUDITOR - GENERAL
SOUTH AFRICA

MEDICO-LEGAL CLAIMS (HEALTH SECTOR):

Standing Committee
on Public Accounts

08 November 2023

*Briefing document on the
medico-legal claims
affecting the health sector*

2022-23

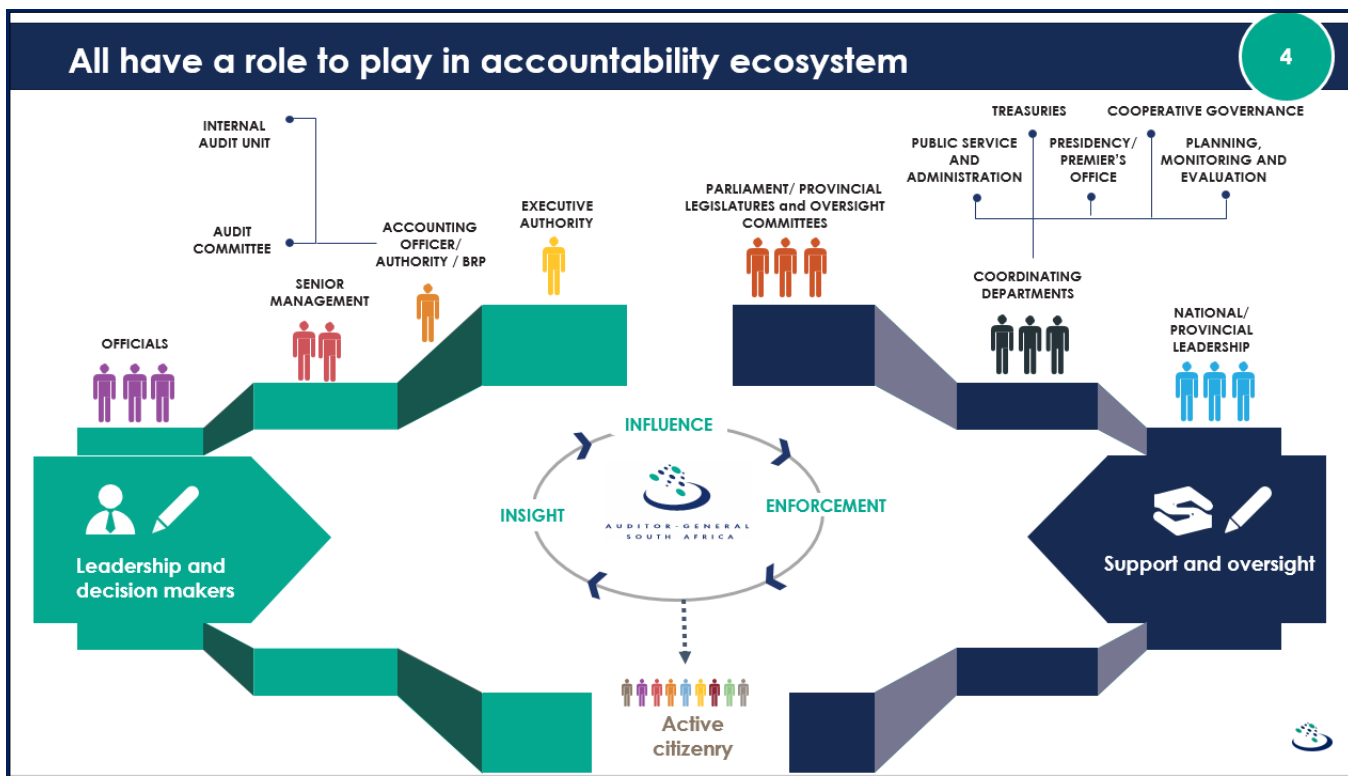
- 1. Reputation promise of the Auditor-General of South Africa 3
- 2. Shifting the public sector culture through the accountability ecosystem 3
- 3. Introduction 4
- 4. Executive summary 4
- 5. Key observations for the 2021-22 financial year 7
- 6. Some observations from data analytics 13
- 7. Focus area and finding for the 2022-23 financial year 15
- 8. Recommendations/ Comments from PC & NCoP 20



1. Reputation promise of the Auditor-General of South Africa

The Auditor-General of South Africa (AGSA) has a constitutional mandate and, as the Supreme Audit Institution (SAI) 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.

2. Shifting the public sector culture through the accountability ecosystem



- The accountability ecosystem is the network of stakeholders that have a mandate and/or responsibility, whether legislative or moral, to drive, deepen and/or insist on public sector accountability.
- A more active and engaged accountability ecosystem would add to the much-needed effort of shifting public sector culture and would alleviate the overreliance on the AGSA to assume responsibility for improving audit outcomes and enforcing consequences.
- Shifting the public sector culture towards one that is characterised by performance, accountability, transparency and integrity can only be accomplished if all role players in the broader accountability ecosystem fulfil their respective responsibilities and mandates.
- Given the nature of the AGSA's mandate, by the time we audit the financial statements of auditees and report on adverse findings, multiple failures have already occurred along the

accountability value chain. After our audits, other steps are required to complete the accountability cycle.

- *Improvement in sound financial management to enhance the lives of citizens does not only reside within the domain and responsibility of the accounting officer or authority and the auditors. It depends on the entire accountability ecosystem to enable a culture of accountability in a sustainable and meaningful way.*

3. Introduction

The office of the Auditor-General South Africa (AGSA) was requested by the Standing Committee on Public Accounts (SCOPA) to brief them on the latest Medico-legal claims. In this document, we reflect on our observations on the medico-legal claims over three (3) years and provide the impact of these claims on the financial health of the health sector. We also reflect on the lived experiences of the citizens of this country.

4. Executive summary

Claims are made against departments through litigation for compensation because of a loss caused by the department. The most common type of claim is medical negligence against provincial health departments. Departments do not normally budget for such claims and those that do often do not budget enough. In addition, deficiencies were identified in the measures implemented by departments to manage and defend medico-legal claims. As a result, all successful claims will be paid from funds earmarked for service delivery, further eroding their ability to be financially sustainable and to deliver on their service delivery commitments.

The former Minister of Health, Honourable A. Motsoaledi convened the medico-legal claim summit in 2015. In this summit, various stakeholders including representatives from the public and private healthcare sectors and legal profession deliberated on the reasons for the escalation in medico-legal claims over the years and identified possible solutions. The wide-ranging challenges and factors that contributed to the escalation in medico-legal claims over the years were analysed and consolidated into three broad areas namely patient safety, management and administration and legal.

Recommendations/ solutions were formulated according to the three broad areas and consolidated into the Medico-legal declaration and national litigation strategy. This declaration was approved by the Minister of Health in 2015.

As the health sector team, we focused only on the management and administration solutions with a specific focus on the following areas.

- Interventions implemented to properly manage, maintain, and safeguard the medical records and their impact on the medico-legal claims.
- Providing insights into the administrative frameworks (policies and/or procedures, coordinating, supervisory and reporting structures) that support the prevention and management of medico-legal cases.

- The existence of the electronic system at facilities, the adequacy of the system to support patient safety incidents (PSI) guidelines and assessing the standardization of information captured.
- The financial management and implementation of the case management project.

Summary overview of the process above:

Medico-legal claims overview- Building on from prior year work

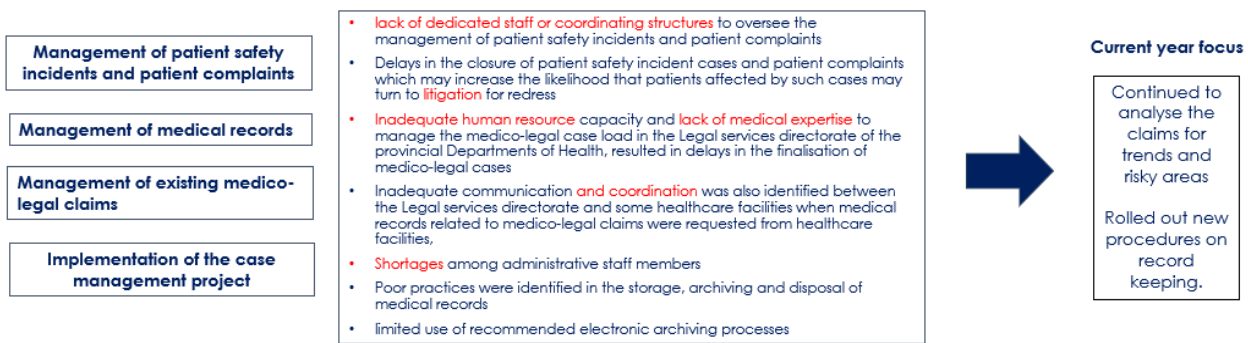
Challenges in the public health facilities

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



Medico-legal claims
Due to poor performance and poor record keeping which result in money being diverted away for being spend on delivering quality and timely health care services to the citizens.

Continued focus areas and some observations



The financial viability of the sector continues to be under severe strain, with current year balance of committed invoices amounting to R17, 8 billion. Settling this balance from the 2023-24 allocation will be detriment to the overall service delivery objectives. The elevated medico-legal claims further aggravates the situation. In the current year R1.45 billion was paid towards these claims.

Our assessment of some of the root causes contributing to the medico legal claims are the gaps identified in management the actual claims. We noted in capacity challenges relating to human resources (both in number and expertise) as well as process/systems to management the claims. Medical records are also poorly managed with certain instances, staff are not trained to manage the actual records often resulting in missing records. This contributes to the number of cases the sector has lost as the departments could not defend themselves due to missing medical records.

Often times in the health environment safety incidents are unavoidable, however facilities needs to ensure that process on how to manage patient safety incidents and patient complaints are established and implemented. In some of the facilities, we noted instances where incidents are either not recorded as prescribed, or recorded incidents not dealt with timeously. This is often due to lack of dedicated staff to deal with safety incidents and complaints. Dealing with incidents and complaints effectively has the potential of preventing a medio-legal claim.

A formalised medical record system is vital for preventing medico-legal claims by maintaining accurate, secure, and compliant patient records. It reduces the risk of legal disputes, supports accountability, and safeguards against errors and omissions in healthcare documentation. National Department of Health entered a three-year contract with a service provider to develop a case management system to keep records of medico-legal claims, however, only the Free State province has used the case management system and feedback from two other provinces indicated that they were unable to use the system due to access not being granted to user departments.



Examples of the impact on availability of funds for quality healthcare to all:

Eastern Cape

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

Gauteng

Increase contingent liabilities. GP settled claims amounting to app R369,7 million in CY. Funds were shifted from goods and services to pay medico-legal claims. Legal claims constitute app. 40% of next year's annual appropriation.

KwaZulu Natal

There were app. 2 360 active medico-legal claims to the value of app. R16b. This puts the department under immense pressure, as payments for these claims were not budgeted for and any payments made, are from the department's voted funds. During the 2021-22 financial year, the department paid app. R352million in medico-legal cases.

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.



The key messages reflected in this report are similar to the messages in the prior years which indicates slow progress to implement recommendations and commitments made. We call on all role players in the accountability ecosystem of the health sector to play their part in ensuring the health sector makes improvements and thereby improving the lives of the citizens.

5. Key observations for the 2021 -22 financial year

5.1. Management of Medico-legal claims in the provinces

Objective

The objective of the sub-focus area was to determine whether:

- Each province developed and implemented strategies, policies, and procedures to guide the management of medico-legal claims.
- Coordinating, supervising, and reporting officials and structures were appointed and effective in overseeing the management of medico-legal claims in the provinces.

Observations

5.1.1. Inadequate human resource capacity and lack of medical expertise to manage the medico-legal case load in the Legal services directorate

At six of the provincial health departments (EC, FS, GP, LP, MP, NC), there were staff shortages related to the availability of legal officers, while two provinces (FS, MP) also indicated a lack of medical expertise in their teams to ensure effective management of the medico-legal claims. This contributed to delays in the finalisation of medico-legal cases, which may lead to increased liability costs for the department.

5.1.2. Ineffective systems between the provincial departments and the healthcare facilities to coordinate the request and submission of medical records related to medico-legal cases

In all nine provinces, the Legal services directorates contacted health facilities that were involved in medico-legal claims directly to request the medical records related to the medico-legal cases. At four (4) of the provincial directorates (Eastern Cape, Free State, Mpumalanga, Northern Cape), delays were at times experienced in the submission of the requested medical records from the healthcare facilities to the Legal services directorate or the healthcare facilities were unable to provide the required medical records.

This could be because of shortcomings in the effective management and safeguarding of medical records at the healthcare facilities, which resulted in medical records being damaged, lost, or stolen, leaving the healthcare facilities unable to provide the necessary documentation required by the department. This may lead to an increase in the medico-legal claims as cases may not be defensible in court.

Recommendations and commitment

The department was advised to review the human resource requirements and organogram of the legal services and the relevant provincial policies and procedures. Additionally, the needs assessment should be performed to determine the human resource requirements for the management of medico-legal claims at the provincial level. For enhanced accountability for the management of medico-legal cases and the coordination of requests for medical records from the healthcare facilities, clear delegations need to be in place for staff members who must monitor, coordinate, and report the requests for medical records.

Clear delegations need to be in place for staff members who must coordinate and respond to the requests to ensure enhanced accountability for the management of medical records at healthcare facilities and the submission of requested medical records to the Legal services directorate.

Management agreed to the audit findings and made commitments to implement the recommendations.

5.2. Management of medical records

Objective

The objective of the sub-focus area was to determine whether:

- The availability and implementation of policies and procedures for the management of medical records
- Human resources for the management of medical records
- Filing, retrieval and tracking systems for medical records
- Storage and safeguarding of medical records
- Archiving and disposal of medical records

Observations

5.2.1 Lack of human resources to manage medical records

At 18 of the 27 healthcare facilities that were visited across the nine provinces, shortages were reported among administrative staff members responsible for the management of medical records. This had a negative effect on the management of medical records. Posts in the affected areas had vacancy rates above 10% and these posts were not filled due to financial constraints.

5.2.2 Staff members who were responsible for the management of medical records did not receive training

Administrative staff at six (6) of the facilities visited did not receive training in the management of medical records. As a result, some of the administrative clerks responsible for the management of medical records were not familiar with the content of the respective provincial policies and procedures and did not always perform their daily tasks in line with these prescripts.

5.2.3 Medical records were not always filed in a systematic or orderly manner

At 15 of the 27 healthcare facilities visited, the medical records were either misfiled or were not always filed in a systematic or orderly manner as a result of limited infrastructure or shortages in the responsible administrative staff. As a result, delays occurred when medical records needed to be retrieved from the filing system for use and/or medical records became missing or lost at the healthcare facilities.

5.2.4 Medical records that were issued from the filing system were not always tracked in an efficient and effective manner.

At 17 of the 27 healthcare facilities visited (EC, FS, KZN, LP, MP, NC, NW), the movement of medical records was not tracked in an efficient and effective manner to monitor the return of medical records to the filing or storage areas once it has been issued and used. Tools to track the records once they have been issued were not effectively utilised and/or the staff responsible for returning the records to the storage areas did not execute these duties in a timely manner. This placed the medical records at risk of becoming missing, lost, or stolen from these healthcare facilities.

5.2.5 Medical records became lost, missing, or stolen from healthcare facilities.

Incidences of medical records being reported as missing or lost were recorded at 15 of the 27 healthcare facilities visited. Some of the medical records that were recorded as missing at the healthcare facilities had been requested by the legal services directorates or by private lawyers in relation to medico-legal claims and the healthcare facilities were unable to provide the records. Some healthcare facilities also recorded an increase in patient complaints related to missing medical records at the facilities.

5.2.6 Medical records were not stored under optimal conditions

Insufficient storage space and poor storage practices for active and/or archived medical records were identified across all the provinces and at 25 of the 27 healthcare facilities visited. These included shortcomings in the measures to ensure access control to medical records storage areas.

Poor storage practices were also identified in the storage of the medical records that were related to medico-legal claims, PSI cases and/or complaints at nine (9) of the healthcare facilities. These poor storage practices put active and/or archived medical records at risk of theft or loss as well as internal or external deterioration.

Examples of poor storage practices



Picture 1: Insufficient space and shelving result in active medical records being stored in disorderly manner. (EC: St Patrick's Hospital)



Picture 2: Active records stored in boxes on the passage floor. (KZN: Prince Mshiyeni Memorial Hospital)



Picture 3: Active medical records stored in disorderly manner, in boxes on the floor (LP: Tshilidzini Hospital)



Picture 4: Archived medical records stored in disorderly manner (MP: Themba Hospital)



5.2.7 Non-adherence to the procedures for the archiving of eligible medical records

At 12 of the healthcare facilities visited, the processes to identify medical records that were eligible to be removed from the storage areas and archived, were not always implemented or done in a timely manner. Sixteen of the 27 healthcare facilities visited, also indicated that medical records were not permanently saved through electronic archiving methods. As a result, the storage areas for active medical records became overloaded and no or limited storage space was created for new medical records.

5.2.8 Disposal of eligible dormant medical records was not done

Dormant medical records that were eligible for disposal were not identified and disposed of at 21 of the 27 healthcare facilities visited. It was indicated that administrative staff shortages, lack of support from some district authorities and lack of training of responsible staff contributed to the shortcomings in the implementation of the provincial policies and procedures.

When eligible medical records are not disposed of in an effective manner, the available storage space for active and archived medical records becomes overloaded, which contributes to poor storage practices and the risks of internal and external damage to medical records.

Recommendations and commitment

The department was advised to prioritize the recruitment and filling of staff members who will be responsible for the management of medical records at the facilities. Additionally, a comprehensive training needs analysis must be undertaken to determine the training needs of the staff members responsible for the management of medical records. Once the needs are identified, these needs should be submitted to the relevant department in the hospital for inclusion in the Workplace skills plan.

The department needs to compile an annual training plan, whereby the training needs of staff members in the health facilities in the district are captured. This includes the training needs of staff members in the medical records sections at these health facilities. Based on available funding and training needs, staff should be sent for regular external training on good records management practices. The department needs to actively track the movement of all the medical records, recover all the removed medical records from the clinical areas and follow up on all the missing medical records. The department is to instil an effective culture of discipline when prescripts are implemented consistently by the staff members and adhered to daily.

Monitoring of the staff's adherence to the prescripts and where required, including holding the staff accountable when instances of non-compliance are noted is paramount. The department is to also review the infrastructure requirements in line with the healthcare facilities' need to store medical records. If there is a need for additional infrastructure to store the medical records, the departments should plan accordingly, including the assessment of the storage conditions of the active and archived medical records.

Annual clean-up of the storage areas needs to be scheduled and planned in advance and these plans need to be implemented. This will allow the healthcare facility managers to make the necessary arrangements, for example, the scheduling of staff to assist with the clean-up and the timely appointment of a service provider that could dispose of eligible medical records in a safe and secure manner. Additionally, the provision of support and guidance to the healthcare facilities with regard to the archiving and disposal of eligible medical records was encouraged by the department. Management agreed to the audit findings and made commitments to implement the recommendations.



5.3. Management of patient safety incidents (PSIs)

Objective

The objective of the sub-focus area was to determine whether:

- Each province developed and implemented strategies, policies and procedures to guide the management of patient safety incidents
- Coordinating, supervising, and reporting officials and structures were appointed and effective in overseeing the management of patient safety incidents in the provinces

Audit findings

5.3.1. Lack of dedicated staff and/or coordinating structures to oversee the management of PSIs and complaints at healthcare facilities

At 13 of the 27 facilities visited, there was a lack of dedicated staff and/or coordinating, reporting and supervisory committees were not established or effective to oversee the management of patient safety incidents and complaints at the healthcare facilities. The lack of dedicated staff or oversight structures contributed to the ineffective management of the PSIs and complaints at the healthcare facilities.

5.3.2. Ineffective processes in the recording, reporting and resolution of patient safety incidents

Patient safety incidents that were identified at healthcare facilities were not always recorded onto the electronic Ideal facility monitoring system in accordance with the relevant policies and procedures. At seven (7) of the 27 healthcare facilities visited, PSIs were not always recorded, or the PSI registers in the Ideal facility monitoring system contained errors or incomplete records. It was indicated that staff shortages, lack of knowledge or inadequate training of the responsible staff and/or challenges with information technology contributed to the poor practices in the recording of PSIs at the facilities.

The closure rates for PSIs did not always meet the targets that were set in the strategy documents or the Annual performance plans of the provincial Departments of Health. Closure rates that were below the provincial target were identified at seven (7) facilities in three (3) of the provincial departments. Delays were also reported in the number of working days required to conclude some of the PSI cases at 14 of the healthcare facilities visited.

In these cases, the PSIs were not concluded within the prescribed period of 60 working days. It was indicated that the delayed and inadequate responses to PSIs were as a result of a lack of dedicated staff or various challenges experienced in accessing the electronic Ideal facility monitoring system. The staff members involved in the investigation of PSIs at facilities had limited time availability which led to delays in the finalisation of the investigations.

Recommendations and commitment

The department was advised to have formal committees established to supervise, manage, and report on PSIs and patient complaints at the facility. The work of these committees should be captured in formal meeting minutes.

The department was advised to review the staff requirements and organogram in line with the services rendered by them. As part of the review, a comprehensive needs analysis should be performed to determine the staffing requirements for the management of PSIs. As far as possible, appointments should be finalised and dedicated staff should be made available to ensure the effective coordination, recording, monitoring and reporting of all PSI cases at the healthcare facilities. The department should implement a comprehensive training needs analysis to determine the training requirements of all the staff in the management of PSI cases and then ensure its implementation. Training should address all aspects of the management processes including ensuring that investigations are concluded in a timely manner. A review of the information technology requirement in line with the services rendered is required.

The department should monitor the staff members' adherence to the requirements and where required, hold the staff accountable when instances of non-adherence are noted. This could have a negative impact on the management of medical records and could also affect the tracing of the medical records.

Management agreed to the audit findings and made commitments to implement the recommendations.

5.4. Management of patient complaints

Objective

The objective of the sub-focus area was to determine whether:

- Each province developed and implemented strategies, policies and procedures to guide the management of complaints
- Coordinating, supervising, and reporting officials and structures were appointed and effective in overseeing the management of complaints in the provinces

Audit findings

5.4.1. Ineffective processes to enable complaints from members of the public

At five (5) of the healthcare facilities visited, the prescribed processes to ensure that members of the public are enabled to lodge their -complaints, were not always effectively implemented. Complaint boxes were not available or were not opened in a timely manner, guidance posters or pamphlets were not available or contained incorrect information and/or limited access points were made available where members of the public could lodge their complaints. It was indicated that a shortage of staff to manage complaints at the healthcare facilities contributed to these shortcomings.

5.4.2. Delays in the closure of patient complaints

At 17 of the 27 healthcare facilities visited, delays were reported in the number of working days required to conclude on some of the patient complaints. Delays in the time taken to resolve complaints increase the likelihood that members of the public who believe that their complaints were not being managed effectively or to their satisfaction, may turn to litigation for redress. It was indicated that some healthcare facilities did not have dedicated staff to assist with the management of complaints and that challenges with information technology resulted in staff members not having access to the electronic Ideal facility monitoring system.

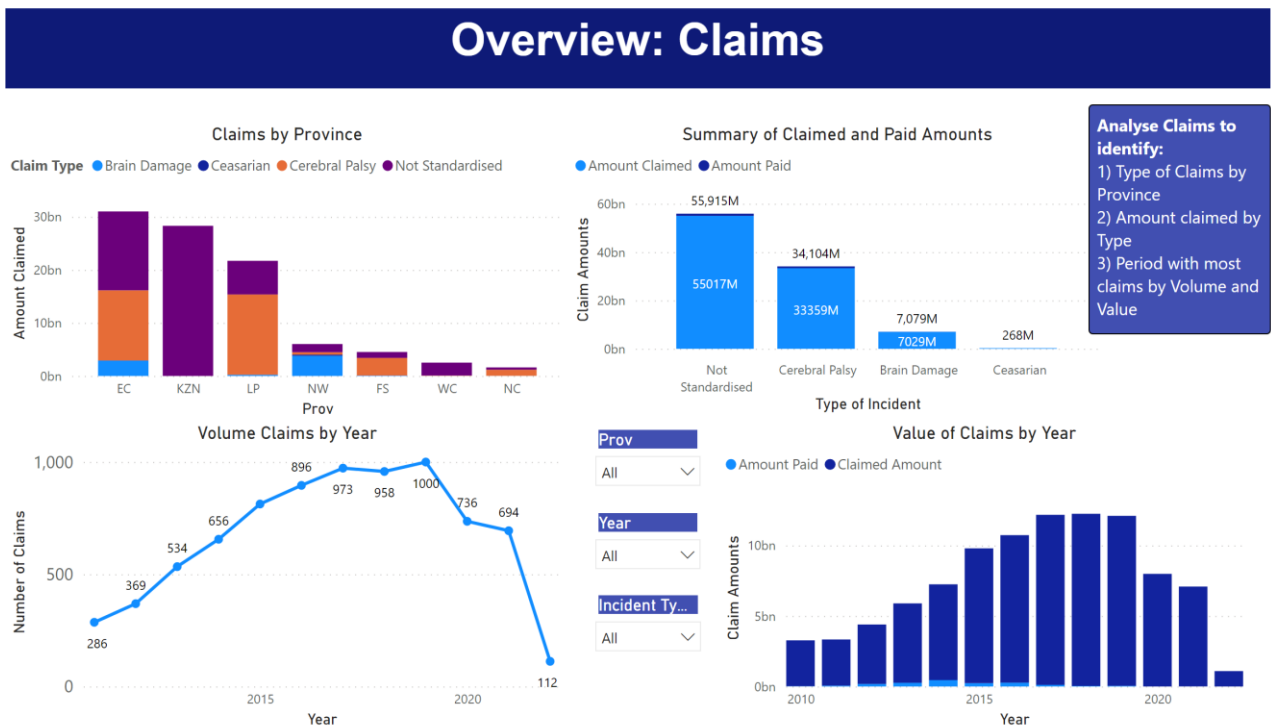
Recommendations and commitment

The department should review the staff requirements and organograms in line with the services rendered by them. As part of the review, a comprehensive needs analysis should be performed to determine the staffing requirements for the management of PSIs. As far as possible, appointments should be finalised and dedicated staff should be made available to ensure the effective coordination, recording, monitoring and reporting of all PSI cases at the healthcare facilities. A review of the information technology requirement in line with the services rendered is required. Monitoring of staff members' adherence to the requirements is encouraged and where required, the department should hold the staff accountable when instances of non-adherence are noted.

Management agreed to the audit findings and made commitments to implement the recommendations.

6. Some observations from data analytics

An analysis of claims and paid by the sector as included below, indicated negligence by medical staff (not adhering to norms and standards) as the main root cause for patient injuries which resulted in claims being instituted against the sector. Some cases were conceded by the sector because medical records could not be provided. This was because of shortcomings in the management of medico-legal claims and management of medical records.



- Eastern Cape, Kwa-Zulu Natal and Limpopo are leading the sector with regards to the value of the claims. Overall, there were data limitations which led to inconsistent and poor quality of data for these claims.



- Various types of claims were made across provinces, ranging from: brain damage, caesarean, and cerebral palsy to non-standardised claims. KwaZulu Natal province, followed by Eastern Cape had the highest number of claims that were non-standardised. Limpopo, followed by Eastern Cape had the highest number of claims that were Cerebral Palsy, whilst North-West, followed by Eastern Cape had the highest number of claims that were related to Brain damage. The Eastern Cape had the largest number of locations (197) that attributed to the claims being lodged.
- No locations were recorded in the data from the North-West, whilst the province had the highest number of brain damage claims, which may lead to inconsistent and poor-quality data for the management of claims.

Departmental policies and procedures on the management of medico-legal claims were developed and implemented in all nine provinces. However, there were shortcomings in the measures implemented by management. We noted that in cases where the merit of the claim is acknowledged/conceded to by the department, the department would rather settle the claim out of court than have it judged in court, thereby saving the costs that would be incurred in legal fees had the case gone to court.

Analysis of examples of nine claims paid by three provinces (2021/22)

This analysis indicated negligence by medical staff (not adhering to norms and standards) as the main root cause for patient injuries which results in claims being instituted against the sector.

Province	Case	Out-of-court settlement or Court order	Amount paid	Facility	Comment/ Observations from documents
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

The analysis also indicated that some of the cases were conceded by the sector because medical records could not be provided. This was because of shortcomings in the management of medico-legal claims and management of medical records.

Inadequate record management significantly contributes to the success or loss of a case and challenges relating to record keeping were unfortunately still reported in some provinces, mainly due to **inadequate filing** processes.

Five provinces include medico legal claims in their budgets and four do not include medico legal claims in their budget. The impact is the same irrespective of whether a province budget for medico legal claims or not, i.e., money that should be used for service delivery is used to pay medico legal claims. The budget set aside for medico legal claims could be used for service delivery and the other provinces utilises money shifted from goods and services to pay for the claims.

7. Focus area and finding for the 2022-23 financial year

7.1. Medium-Term Strategic Framework (MTSF) targets

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 of 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 the 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

- The total amount of medico legal claims as of 31 March 2023, is approximately **R68* billion (4% less 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 372% of the target, with one year remaining in the MTSF period.



7.2. The National Department of Health (NDoH) planned interventions

Our focus at NDoH, amongst other procedures, was to evaluate the two indicators included in the NDoH APP relating to medico-legal claims.

None of the indicators included in the NDoH APP were achieved.

Performance indicator	Planned target	Actual reported performance	Reported reason for non-achievement
A policy and legal framework to manage medico-legal claims in South Africa developed	Legislation to manage medico-legal claims in South Africa developed	The South African Law reform Commission is still consolidating inputs to the Discussion Paper which will form the basis for the legislation.	Awaiting the South African Law Reform Commission to finalise its processes on the Discussion Paper to inform the development of a Legislation to manage medico legal claims in the country
A secure case management system was developed and implemented to streamline case management in 8 Provinces.	Case Management system (CMS) implemented (rollout) in the remaining four of eight (4/8) participating provinces, excluding Western Cape	Case Management system implemented (rollout) in the remaining one of four (1/4) participating provinces (Gauteng)	<ul style="list-style-type: none"> • Eastern Cape is addressing interoperability between the provincial system and the national case management system. • Mpumalanga is verifying data before it can be migrated into the Case Management System. • Limpopo required further engagement with NDoH prior to deciding to roll out the system

Observations on the CMS system

- The NDoH entered a 3-year contract with a service provider for the development of the case management system to assist with medico-legal matters.
- The system was planned to be rolled out to 8 provinces with a planned completion date of March 2020. To date, only one province is partially utilising the system (FS) and (LP) opted to no longer participate and requested further engagement.
- There was no feasibility study conducted for the case management system to determine the viability of the project.
- This resulted in the case management system being rolled out in some provinces 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 partially used in one province.
- The provinces are using manual systems, but this is not adequate as seen by the limitations when data is requested. Furthermore, this limits risk identification and the ability for government to act on those risks and the reliability of liabilities is impacted.



Current states or usage of systems at 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	Yes	Partially CMS and Causa Cognita Litigation
Gauteng	No	No
Limpopo	No	N/A - Making use of spreadsheet
Mpumalanga	No	N/A - Making use of spreadsheet
North-West	No	N/A - Making use of spreadsheet

Financial impact to date

- Based on the service level agreement between the NDoH and the service provider, a total amount of up to R3 611 813 will be paid by the NDoH to the service provider for the services described in the SLA.
- Total of R1 826 000 has been paid to date to CMS for roll out in all provinces. The system is implemented in 3 provinces and partially utilised in one province (FS).

Observation of policy legal framework

While the National Department of Health (NDoH) 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 thereafter a legislative process will commence through the drafting of the Bill in line with the recommendations proposed by the SALRC.



7.3. Three-year observation on the medico-legal claims and payments

Province	Total value of medico- legal claims (R'000)			Total value of claim payments made (R'000)		
	2023	2022	2021	2023	2022	2021
Eastern Cape	26 345 655	25 076 798	38 608 606	350 685	38 683	866 144
Free State	5 130 112	4 663 463	4 501 077	9 863	8 831	584
Gauteng	18 152 738	17 542 171	24 494 229	512 203	369 697	392 000
Kwazulu-Natal	7 342 190	13 180 222	25 244 438	162 682	265 884	92 882
Limpopo*	Outstanding	8 334 914	11 939 334	35 500	77 665	72 776
Mpumalanga	7 049 098	7 716 031	9 543 267	163 489	39 640	18 632
Northern Cape	600 611	1 520 424	1 656 795	12 293	59 413	229 814
North West	3 393 104	3 589 144	5 582 950	62 708	18 539	44 856
Western Cape	0	186 532	229 655	143 549	47 642	31 990
Totals	68 013 508	81 809 699	121 800 351	1 452 972	925 994	1 749 678

(*) Audit outstanding

- Total claims against the sector currently amount to R68,01 billion (excluding the Limpopo Department of Health as audit was not signed off at the cut-off date), with the sector having paid R1,42 billion in claims in 2022-23.
- In our previous general reports, we have consistently highlighted the need for the health sector to pay specific attention to medical record-keeping because claims often cannot be successfully defended without these records and need to be paid out. The department is also ordered to pay interest on claims not paid out to beneficiaries by the time ordered by the court. This interest is then a further financial loss for the department.
- The poor record keeping of medical records has still not been attended to by the health departments in four provinces (Eastern Cape, Gauteng, KwaZulu- Natal and Northern Cape). This is because the establishments did not ensure that health records containing prescribed information are created for every user of health services and are maintained at that health establishment.
- In addition to record keeping, other health sector challenges that need attention include staff shortages, ineffective healthcare facilities and lack of implementation of policies and legal frameworks. If these matters are not addressed, they will have a detrimental long-term effect on the sector's ability to deliver swift, good-quality healthcare services, jeopardising the essential building blocks for the NHI.



7.4. Impact/effect on the financial health of the sectors

The financial health of the sector has also been under immense pressure over the years because of the limited budget and poor financial management. The table below depicts the impact of accruals, claims and fruitless and wasteful expenditure on the health sector allocated budget.

Province	2023/24 Appropriation	Accruals and Payables not yet recognised	Claims against the Department**	Fruitless and Wasteful**
EC	8 847 009 000	4 764 773 000	26 345 655 000	11 620 000
FS	4 013 623 000	682 362 000	5 130 112 000	231 387 000
GP	22 621 453 000	6 827 872 000	18 152 738 000	266 014 000
KZN	18 419 875 000	1 838 121 000	7 866 847 000	2 700 000
MP	6 971 339 000	825 870 000	7 170 792 000	1 983 000
NAT	3 178 000 000	450 765 000	15 373 000	1 558 000
NC	2 495 858 000	908 471 000	746 781 000	109 020 000
NW	15 219 592 000	959 137 000	3 395 673 000	157 726 000
WC	10 446 562 000	589 529 000	88 731 000	30 000
Total	92 213 311 000	17 846 900 000	68 912 702 000	782 038 000
* % of 2023/23 appropriation		19%	75%	1%

- 19% of the remaining appropriation after deducting transfers, subsidies and compensation of employees, must fund accruals. This amount which relates to unpaid invoices was reported at R17 847 million for the 2022-23 year (2021-22: R16 087 million). This represents funds that would have been utilised in the 2022-23 year for rendering services to the citizens that were committed to settling the 2022-23 expenditure. This means the sector is consistently borrowing from future allocations to fund current year expenses, forcing management to continuously make choices of which activities/services to prioritise and which to suspend, further disadvantaging citizens.
- The delayed payments may attract fruitless and wasteful expenditure as suppliers charge interest on late payments. These payments are affecting the budgets of public facilities and in turn, will have a detrimental effect on the ability of the sector to deliver healthcare services.
- Total claims against the health sector were 75% of the appropriation. If these claims are not managed efficiently as highlighted in the medico-legal claims above, these may result in medical legal claims being paid by the sector, further putting pressure on the available funds for service delivery.

Impact on the financial health/ viability of some provinces:

Doubt whether auditees can continue as going concern



8. Recommendations/ Comments from PC & NCoP

Overall portfolio committee & National Council of Provinces (NCoP) comments/ recommendations

- The sector must follow through with payments made to the claimants to ensure that the funding reaches the claimants.
- Implementation of systems and processes aimed to produce quality reliable information to enable adequate oversight.
- Enhance collaboration with the other committees on the portfolios for the effective, efficient and timely implementation of the Integrated Justice System (IJS).
- PHC facilities must have necessary skilled midwives and availability of necessary medication (as per essential drug list/EDL) and facilities must initiate care of pregnant women.
- The oversight committees in the sector must request the sector leadership to provide plans they will implement to improve the systems of internal controls relating to financial and performance management disciplines and service delivery. This must be supported by proper governance processes.
- The portfolio committee must, through improved collaboration with the National Council of Provinces (NCoP), closely monitor the areas that are contributing the funds be depleted from the sector that could have otherwise been used to procure and/ or maintain much needed equipment and infrastructure and increase capacity and skills in the sector. The areas must include medico-legal claims, fruitless and wasteful expenditure and better management of goods and services processes to reduce the extent of accruals in the sector.

Key root causes

- Lack of resources responsible for the management of medical records at facilities.
- Insufficient storage space and poor storage practices for active and/or archived medical records
- Non-adherence to archiving procedures with no consequence management
- Lack of implementation and utilisation of the CMS system

Recommendations to sector leadership

- Prioritize the recruitment and filling of staff members who will be responsible for the management of medical records and train those dealing with these claims.
- Review the infrastructure requirements in line with the healthcare facilities' need to store medical records. Should there be a need for additional infrastructure to store the medical records, the departments should plan accordingly.
- Monitor staff adherence to archiving procedures and where applicable hold staff accountable for instances of non-compliance.
- Full implementation and utilisation of the CMS system in line with the intended objectives.



SCOPA's messages on assisting to deal with this matter:

- 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 - especially the recruitment and training of staff responsible for the management of medical records. The areas specifically highlighted are medico-legal claims, fruitless and wasteful expenditure and better management of goods and services processes so that accruals are reduced.
- A key driver to this, is to request the sector leadership to report back regularly to the committee on the progress made in implementation of the internal controls relating to record-keeping of patient information. It is further recommended that this report back must be verified by the other assurance providers in the accountability ecosystem, such as the internal audit functions and audit committees of the sector.
- 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 those relating to the improvement of service delivery. This must be supported by proper governance processes, as mentioned above. Proper governance includes Records which must be stored in line with the archiving procedures, which we recommend must also be incorporated as part of regular reporting to the committee, to empower the committee to track whether tangible progress is made in this regard.

Other key messages delivered on the 2022-23 health sector focus areas:

- Resourcing of primary healthcare
- Infrastructure audit
- Province specific messages

Drafting of key messages shared with the Portfolio Committee in October 2023 during the Budget review and recommendations reporting process.