# NATIONAL ASSEMBLY

**FOR WRITTEN REPLY**

**QUESTION NO. 95**

**DATE OF PUBLICATION IN INTERNAL QUESTION PAPER: 12 FEBRUARY 2020**

**(INTERNAL QUESTION PAPER NO. 01)**

**Mrs M O Clarke (DA) to ask the Minister of Health:**

What (a) number of claims of negligence have been submitted against his department in each province in the past two financial years, (b) are the details of each claim, (c) number of these claims have been paid out and (d) was the monetary value of each claim?

###### NW107E

**REPLY:**

The National Department is supporting and overseeing the Provinces in the handling of medico-legal cases. In this regard, the common approach is the public health defence with regard to future medical treatment. This is to ensure that future medical expenses must not be paid in monetary value but in kind by providing future medical treatment in public health facilities. This approach has been dealt with in the case of Zulu. The Zulu Case was confirmed by Judge Keightley in the Gauteng Local Division of the High Court in which the Court developed the common law by allowing that MEC for Health in Gauteng to provide services (future medical treatment) at Charlotte Maxeke Academic Hospital instead of paying a lump sum of money.

Furthermore, the State Liability Amendment Bill, 2018 is being revived to expressly provide for theprovision of services (future medical treatment) at public facilities. In this regard, there are Gazetted health facilities in the implementation of the Bill.

The South Africa Law Reform Commission (SALRC) is also conducting an investigation into law reform in the field of medico-legal litigation in terms of Project 141. The Issue Paper was issued in May 2017 with due date of comments to 30 September 2017 which recommended the amendment to the State Liability Act. The SALRC is currently busy with the Discussion Paper.

Mediation is also being encouraged to Provinces as one of the intervention measures and aimed at the reduction of the legal costs and lengthy and costly court processes.

Further intervention relates to forensic investigations of suspicions cases. The investigations project commenced in December 2019 with a focus on identified cases in KZN and recently in EC; as well as investigations of the top law firms participating in the medico-legal cases at provincial leave. In addition, the services of the newly established Health Anti-Corruption Forum will be utilized. Partnership with the Special Investigating Unit (SIU) is also being forged as it is already a case in the Eastern Cape Province.

**Provinces**: As per the table below:

1. number of claims of negligence have been submitted against the National Department and in each province in the past two financial years,
2. details of each claim have been summarised in the third column in the table below per province;
3. number of the claims paid out per province;
4. total monetary value of claims per province.

|  |
| --- |
| **2017-18 FINANCIAL YEAR** |
| **NAME OF THE PROVINCE** | **NUMBER OF MEDICO- LEGAL CLAIMS SUBMITTED (including letters of demand)** | **SUMMARY DETAILS OF EACH CLAIM** | **MEDICO- LEGAL CLAIMS ACTUAL PAYMENTS**  | **TOTAL AMOUNT OF CONTINGENT LIABILITY MEDICO- LEGAL CLAIMS** **(not paid)** |
| **No of claims** | **Total Amount paid** |
| Eastern Cape | 524 | Cerebral Palsy; Surgical | 59  | R427 706 138.84  | R7 741 496 122.24 |
| Free State | 52 | Cerebral Palsy, Wrong diagnosis / medication, Surgical complications | 5 | R 14 150 000.00 | R 584 222 853.00 |
| Gauteng | 386 | Cerebral Palsy; surgical  | 74 | R 243 250 339.32 | R 3 660 646 406.20 |
| Kwazulu- Natal | 402 | Obstetrics & Gynaecology; SurgicalOncology; Urology; Ophthalmology | 151  | R 134 436 666.80 | R 2 978 441 462.30 |
| Limpopo | 275 | Cerebral Palsy; Obstetrics & Gynaecology Orthopaedic Other Surgical | 9 | R 17 550.000.00 | R 2 880 271 000.00 |
| Mpumalanga | 80 | Maternity casesOrthopaedic cases Mental Health care user case | 25 | R 25 947 455.00 | R 1 025 412 726.00 |
| Northern Cape | 23 | Cerebral Palsy; Surgical | 0 | 0 | R 315 855 194.00 |
| North West | 77 | Maternity cases; Orthopaedic cases  | 10 | R 34 633 128.60 | R 601 176 148.00 |
| Western Cape[[1]](#endnote-1) | 92 | Obstetrics, surgical, neurosurgery | 50 | R86 873 630.75 | R614 857 118.09 |
| **TOTALS** | **1911** |  | **384** | **R 984 547 359.31** | **R 20 402 379 029.83** |

|  |
| --- |
| **2018-19 FINANCIAL YEAR** |
| **NAME OF THE PROVINCE** | **NUMBER OF MEDICO- LEGAL CLAIMS SUBMITTED (including letters of demand)** | **SUMMARY DETAILS OF EACH CLAIM** | **MEDICO- LEGAL CLAIMS ACTUAL PAYMENTS**  | **TOTAL AMOUNT OF CONTINGENT LIABILITY MEDICO- LEGAL CLAIMS** **(not paid)** |
| **No of claims** | **Total Amount paid** |
| Eastern Cape | 459 | Cerebral Palsy; Surgical | 87 | R 797 120 477. 00 | R 6 673 891 443.79 |
| Free State | 67 | Cerebral Palsy, Wrong diagnosis / medication, Surgical complications | 7 | R 10 400 258.25 | R 873 494 171.00 |
| Gauteng | 120 | Cerebral Palsy; surgical | 70  | R 378 983 765.88 | R 1 357 938 619,11 |
| Kwazulu- Natal | 446 | Obstetrics & Gynaecology; Surgical Oncology; Urology; Ophthalmology | 86 | R 444 129 604.90 | R 2 636 105 361. 09 |
| Limpopo | 254 | Cerebral Palsy; Obstetrics & Gynaecology Orthopaedic Other Surgical | 6 | R 9 800 000.00 | R 2 329 815 300.00 |
| Mpumalanga | 132 | Maternity casesOrthopaedic cases  | 18 | R 25 597 039.12 | R 2 170 079 941.43 |
| Northern Cape | 19 | Cerebral Palsy; Surgical | 2 | R 3 600 000.00 | R 176 438 110.00 |
| North West | 92 | Maternity cases; Orthopaedic cases  | 7 | R 34 027 549.00 | R 513 958 416.73 |
| Western Cape | 46 | Obstetrics, ophthalmology, neurosurgery | 32 | R 60 971 721.70 | R 2 536 987 682.49 |
| **TOTALS** | **1 635** |  | **315** | **R 1 764 630 415.85** | **R19 268 709 045.64** |

1. As at March 2019, the Contingent liability submitted by provinces was at R100 billion over a period of ten years. There is currently a cleaning up process of the data and the amount to ensure that the contingent liability is only for medico-legal cases and does not include all litigation matters such as RAF; Procurement matters; non-payment of invoices due to disputes or budget issues etc. As at June 2019, the reduced amount was R68b and this is an ongoing process.

END [↑](#endnote-ref-1)