

THE NATIONAL HEALTH AMENDMENT BILL, 2008

DRAFT BILL

To amend the National Health Act, 2003, so as to provide for some definitions; the appointment of the Facilitator; functions of the Facilitator; negotiations on prices; appointment of inspectors; contracts with other persons to assist the Facilitator; the Pricing Tribunal; limitation of liability; the protection of unauthorised access to information; the short title and the commencement of the Act; and matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of the National Health Act, 2003 (Act 61 of 2003).

1. The National Health Act, 2003 is hereby amended by the insertion after chapter 10 of the following chapter:

“Chapter 10A

Definitions

89A In this chapter-

- (a) “*fees*” include tariffs and prices;
- (b) “*health care providers*” include health establishments and health professionals;
- (c) *prescribed minimum benefits* mean prescribed minimum benefits as provided for in the regulations made in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998) published under GN R570 of 5 June 2000 as amended;
- (d) “*services*” include hospitality services, consumables; medical devices; health technology and any other health product that is provided at a fee.

Objects of Chapter

89B The objects of this chapter are generally, but not limited, to-

- (a) appointment of the Facilitator for Health Pricing;
 - (b) improve transparency in the determination of costs and prices;
 - (c) ensure the removal of conflicts in the current price setting framework;
 - (d) ensure accountability for the cost of health care;
 - (e) ensure that health care providers prevent unjustified cost escalations;
 - (f) ensure the removal of unfair, collusive and undesirable business practices;
- and

- (g) generally, ensure the affordability of health care

Appointment and functions of the Facilitator

89C (1) The Minister shall appoint a suitably qualified person as a Facilitator for Health Pricing (“the Facilitator”).

(2) The Facilitator must-

- (a) annually invite stakeholders contemplated in section 90(1)(u) to negotiate on health pricing of health services to arrive at schedules of fees;
- (b) be the facilitator of such negotiations and chair the proceedings;
- (c) hear and resolve disputes in relation to pricing;
- (d) deal with complaints about pricing conduct between medical funders, health service providers and suppliers;
- (e) record the schedules of fees agreed to individually or collectively at such negotiations;
- (f) in instances where the stakeholders contemplated in paragraph (a) are unable to agree on schedule of fees, to make recommendations to the stakeholders for consideration on possible schedules of fees;
- (g) advise the Minister on the compilation and publication of information, reports and statistics about health pricing.

(3) In facilitating the negotiations contemplated in subsection (1), the Facilitator must ensure that the negotiations-

- (a) are as far as practicably possible, conducted in a transparent and open manner;
- (b) improve transparency on costs that form the basis for prices; and
- (c) result in the reduction of prices where costs have been reduced.

(4) The Facilitator may-

- (a) require any stakeholder to furnish the Facilitator with any specified information to assist the Facilitator in carrying out his or her functions;
- (b) enquire into any matter relating to the application of this Chapter and report to the Minister;

(5) Any person who-

- (a) refuses to furnish the Facilitator with any information that is specifically requested in writing by the Facilitator; or
- (b) hinders the Facilitator in his or her work, commits an offence.

(6) The Minister may make rules relating to-

- (i) the process by which negotiations are initiated;
- (ii) practice and procedure for negotiations proceedings;
- (iii) participation by any person having an interest in the negotiations;
- (iv) the right of any association or representative group to make representations on behalf of any stakeholder;
- (v) forms;
- (vi) information required and disclosure of information;
- (vii) time periods;
- (viii) conflict of interest;
- (ix) collusive practices;
- (x) perverse incentives;
- (xi) undesirable business practices;
- (viii) any other matter incidental to the achievement of the objects of this chapter.

(7) The rules made in terms of paragraph (1) shall be published by the Minister in the Gazette and shall take effect on the day of publication and no rule that has not been published shall have any force;

Determination of Schedule of fees

89D (1) In an instance where negotiating parties cannot agree on schedule of fees as contemplated in section 89C(2)(e), the Facilitator shall refer the matter to the Tribunal for the final determination of the schedule of fees.

(2) In making the final determination as contemplated in subsection (1), the Tribunal shall take into account representations by all interested stakeholders on the determination concerned including those of the specific parties to the negotiations and the Facilitator.

(3) Once the Tribunal has made a determination on the schedule of fees, such schedule of fees must be published by the Minister and the schedule of fees so published becomes effective on the date of publication.

(4) The schedules of fees agreed to in terms of section 89C(2)(e) shall also be published by the Minister.

(5) No person shall charge a fee higher than the fee published in terms of this section if such fee relates to prescribed minimum benefits.

(6) Any person who contravenes subsection (5) commits an offence.

Inspectors

89E (1) The Director-General may appoint any suitably qualified person as an inspector for the purpose of this Chapter.

(2) An inspector shall be provided with a certificate of appointment signed by the Director-General stating that the person has been appointed as an inspector in terms of this Chapter.

(3) The inspector must be in possession of the certificate of appointment when performing functions in terms of this Chapter and must show it to any person affected by the performance of the inspector's functions.

(4) An inspector may-

- (a) enter into premises where business is conducted in terms of this Act;
- (b) search such premises;
- (c) examine any article or document that is found in those premises that has a bearing on what is being investigated;
- (d) request information about any article or document from the owner or the person in control of those premises or from any person who has control over the document or article or any person who may have control on the information;
- (e) take extracts from, or make copies of any book or documents that are in the premises that have a bearing on the investigation;
- (f) use any computer system on the premises, or require assistance of any person on the premises to use that computer system to search any data in that computer system; reproduce any record from that date; and seize any output from that computer for examination and copying; and
- (g) attach and if necessary, remove from the premises for examination and safekeeping, anything has a bearing on the investigation.
- (h) be accompanied and assisted by a police officer when performing his functions.

(5) Sections 84, 85 and 86 apply with the necessary changes required by context to an inspector performing functions in terms of this Chapter.

(6) Any person who hinders an inspector in the performance of the inspector's functions commits an offence.

The Tribunal

89F (1) The Minister shall upon the commencement of this Act (the National Health Amendment Act, 2008) establish the Health Pricing Tribunal ("the Tribunal").

(2) The Tribunal shall consist of a chairperson and not less than 3 but not more than 5 other members appointed by the Minister on a full time or part time

basis on the Minister's initiative or in response to a call for nominations which must be published by the Minister in the Gazette.

(3) The chairperson and other members of the Tribunal must-

- (a) be South African citizens and ordinarily resident in the Republic;
and
- (b) be suitably qualified and experienced in law, health, health economics, commerce or public health or administration.

(4) The chairperson and members of the Tribunal-

- (a) are appointed for a period of five years which may be renewed for a further period of five years; and
- (b) may be removed from the Tribunal on account of such member's-
 - (i) serious misconduct;
 - (ii) permanent incapacity; or
 - (iii) engagement in an activity that undermines the integrity of the Tribunal.

(5) The Tribunal adjudicates on matters referred to it by the Facilitator or any person aggrieved by the decision of the Facilitator and who has a material interest in any such matter.

Tribunal Proceedings

89G (1) The Tribunal shall determine the rules relating to procedures of its hearings.

(2) The hearings of the Tribunal-

- (a) shall be conducted in public and in accordance with the principles of natural justice;
- (b) may be conducted informally or in an inquisitorial manner;

(c) may be held in chambers or by means of telephone or video conference if its Chairperson deems it to be in the interest of justice to do so and it is expedient to do so.

(d) may, at the direction of its Chairperson, exclude members of the public or certain members of the public if-

(i) the evidence led constitutes confidential information;

(ii) the proper conduct of the hearing requires it; or

(iii) there is a justifiable reason in civil proceedings in the High Court.

(3) The order of the Tribunal must be in writing and accompanied by reasons thereof.

(4) The Tribunal must afford participants and the public access to records of its proceedings.

(5) The Chairperson of the Tribunal shall have the following powers:

(a) direct or summon any person to appear before the Tribunal;

(b) question any person under oath or affirmation;

(c) order any person to answer questions subject to laws applicable to witness privileges in criminal law;

(d) summon or order any person to produce a book, document information or item necessary for the purposes of the hearing;

(e) give direction prohibiting the publication of evidence led during the hearing;

(f) accept oral submissions or information.

(6) The Tribunal may make the following orders:

(a) interdicts against certain acts;

(b) ordering a party to reimburse or supply services to the other party;

- (c) imposition of administrative penalties in relation to collusive practices; perverse incentives or undesirable business practices or failure to comply with its orders;
- (d) prohibition of certain practices;
- (e) declaring agreements or parts thereof invalid;
- (f) any other order that is just and equitable; or
- (g) costs, wherein-
 - (i) each party may bear its costs;
 - (ii) they may be awarded to the applicant if a finding is made against the respondent; or
 - (iii) they may be awarded to the respondent if a finding is made against the applicant.

(7) The Tribunal's order-

- (a) is enforceable as a High Court order;
- (b) may be varied by the Tribunal if the order is ambiguous or was made erroneously or as a result of a common mistake of the parties.

(8) The standard of proof at the Tribunal's hearing is the balance of probabilities.

(9) A matter may only be referred to the Tribunal in instances where a period of three years has not expired from the date when the cause of action in respect of that matter arose.

Contracts with other persons

89H The Director-General may enter into a contract with any person, agency or institution including organs of State to assist the Facilitator with the performance of the Facilitator's functions.

Limitation of liability

89I The Facilitator, Director-General and staff or any person, agency or institution contracted to do the work in terms of this Chapter is not liable for any loss

suffered by any person as a result of any act performed or omitted in good faith in the course of exercising the functions in terms of this Chapter.

Disclosure of information

89J (1) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the Facilitator, staff or any person or any agency or institution contracted to do the work for the Facilitator may not disclose to any person information, knowledge or document that it acquired on a confidential basis or without prejudice in the course of performing its functions except on the order of court.

(2) Any person who contravenes subsection (1) commits an offence.”

2. Short title and commencement

89K This Act is called the National Health Amendment Act, 2008 and shall come into operation on a date fixed by the President by proclamation in the Gazette.

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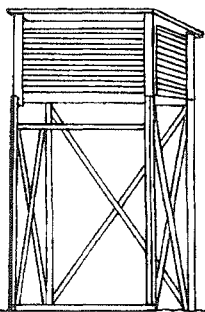
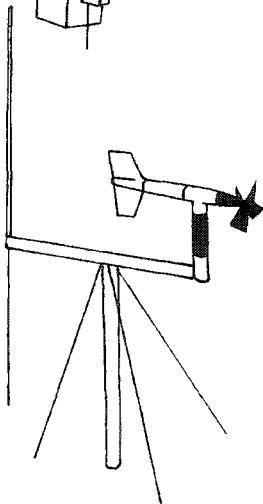
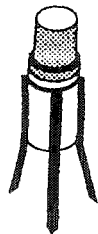
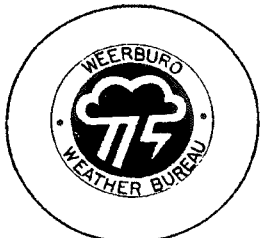
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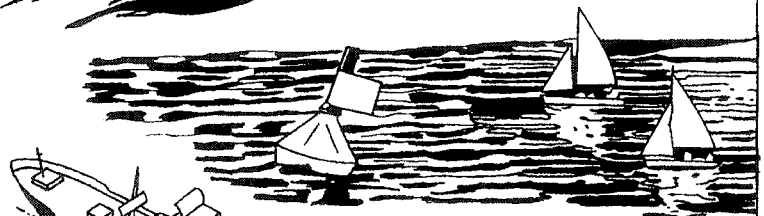
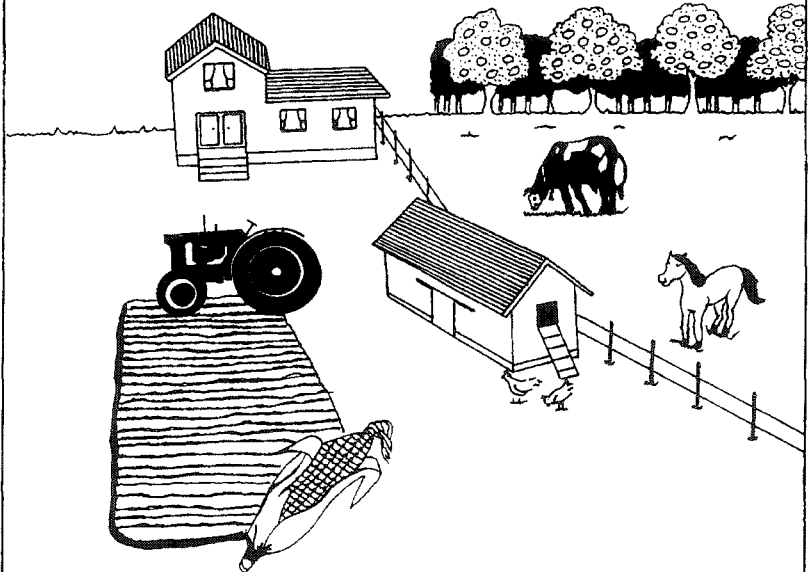
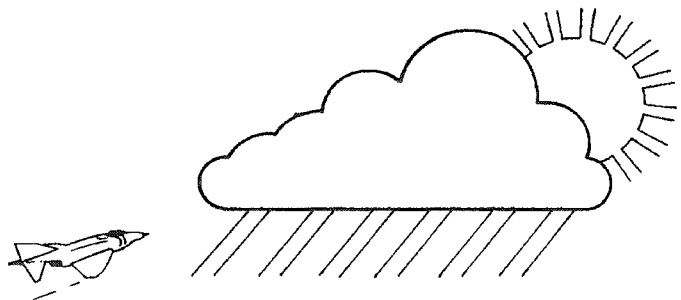
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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
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