



CIRCULAR

Reference Terms of Reference for the Section 59 Investigation Panel
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Circular 45 of 2019: Terms of Reference for the Section 59 Investigation Panel

The Council for Medical Schemes hereby publishes the Terms of Reference for the Section 59 Investigation Panel.

The investigation, called the Section 59 Investigation, follows allegations by members of the National Health Care Professionals Association (NHCPA) that they were being unfairly treated and their claims withheld by medical aid schemes based on race and ethnicity.

The panel will be chaired by Advocate Ngcukaitobi and his team of advocates, Adila Hassim and Kerry Williams. Advocate Ngcukaitobi is an advocate of the High Court and was recently nominated for Senior Counsel status by the Johannesburg Bar. Advocate Adila Hassim is an advocate of the High Court who practises in various areas of the law with a focus on constitutional Law and Kerry Williams is an advocate of the High Court with who has advised extensively on health care matters over the last 15 years.

SUBMISSIONS

The Section 59 Investigating panel will receive written submissions from interested parties until 19 July 2019, extended from 30 June 2019. Interviews and public hearings will be conducted from 29 July 2019 to September 2019, and the final report will be delivered by the Investigating Panel on 1 November 2019.

Any interested persons including juristic persons, entities, institutions and organs of State are invited to make written submissions to the panel by no later than 19 July to cmsinvestigation@medicalschemes.com.

The terms of reference follow on the next page.

Yours sincerely,

Ms Grace Khoza
GM: Stakeholder Relations
Council for Medical Schemes

Terms of Reference – Investigation Panel

1. WHEREAS during May 2019 there were public allegations regarding medical schemes and their administrators including:

(i) targeting Black and Indian health care practitioners (“practitioners”) in relation to conducting practice audits;

(ii) forcing Black and Indian practitioners to enter into settlement agreements for the payment of large monetary amounts where alleged fraud or other illegal conduct is suspected;

(iii) generally engaging in racial profiling in the manner in which such medical schemes and their administrators are making use of section 59 of the Medical Schemes Act, 1998 (“the Act”);

(iv) illegally refusing to pay Black and Indian practitioners for services rendered to patients;

(v) causing Black and Indian owned health care practices to close down their practices, as a result of unlawfully withholding payments, and as a result reducing access to healthcare. (These are referred to as “the allegations”.)

2. WHEREAS as a result a multi-disciplinary Steering Committee was established, which supported the establishment of an independent investigation to conduct and enquiry into the above allegations.

3. WHEREAS the Council for Medical Schemes (“the CMS”) has the obligation to respect, protect, fulfill and promote the rights in the Constitution of the Republic of South Africa, 1996, and implement the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000.

4. WHEREAS the CMS has the power to protect the interests of members at all times; make recommendations to the Minister of Health (“the Minister”) on the quality of health care services provided for by medical schemes; investigate complaints and settle disputes in relation to the affairs of medical schemes as provided for in the Act; and advise the Minister on any matter concerning medical schemes.

5. WHEREAS the CMS also has the power to enter into any agreement with any person for the performance of any specific act or function or the rendering of any service; and determine the terms and conditions of service of any person appointed by the CMS.

6. THEREFORE the CMS has appointed an independent Investigation Panel, constituted by three advocates¹, in terms of Act to perform the following services and functions:

(i) Investigate complaints (“the Complaints”) and allegations received by the CMS relating to section 59 of the Act and Regulation 5 and 6 of the Regulation;

(ii) Make recommendations to the CMS in relation to addressing the Complaints and allegations;

¹ Tembeka Ngcukaitobi (chair); Adila Hassim; Kerry Williams.

- (iii) Identify any trends emerging from the Complaints and allegations which may require further legal or policy interventions;
- (iv) Make recommendations to the CMS in relation to appropriate further administrative, legal or policy interventions that may be required;
- (v) Make recommendations to the CMS in relation to appropriate amendments to legislation and regulations that may be required.

6. THE INVESTIGATION PANEL will act in accordance with the Constitution, the Equality Act, and inter alia sections 7(d) and (g), 43 and 47 of the Act. It will observe the principles of natural and open justice. The Investigation Panel shall function as an inquisitorial body and not as an adjudicative body.

7. ANY INTERESTED PERSONS including juristic persons, entities, institutions and organs of State are invited to make written submissions to the Investigation Panel in relation to all or specific items of the Terms of Reference, by no later than 19 July 2019. Written submissions must be concise and succinct, and must be furnished under cover of a brief summary. So far as facts are sought to be placed before the Investigation Panel, such facts must be attested to by affidavit.

8. It is envisaged that:

- (i) The Investigation Panel will conduct its investigation through a combination of public hearings and private interviews;
- (ii) The Investigation Panel will conduct interviews with any relevant party that may assist the Investigation Panel in fulfilling its mandate. Parties will only be questioned by members of the Investigation Panel;
- (iii) All interviews will be recorded so that there is a full record of the proceedings; Persons interviewed publicly or privately by the Panel will be provided with details of any complaints or allegations made against them in advance of the interview;
- (iv) Persons against whom written allegations or complaints are made will have an opportunity to make written representations in relation to such allegations or complaints;

- (v) Engage a range of experts to assist the Investigation Panel in performing its services and functions;
- (vi) Request further information from any relevant party that may assist the Investigation Panel in fulfilling its mandate. Such information may include documents, correspondence and data which will inform a better understanding of the issues raised by complainants and those implicated;
- (vii) Upon receipt of written submissions, the Investigation Panel may require a deponent or any person to appear before it to be interviewed on specified aspects of the Terms of Reference. The Investigation Panel may issue directions with regard to such oral evidence.
- (viii) The investigation is a public process. However, upon request and if reasonably necessary, the Investigation Panel may protect the identity of persons furnishing information or protect particular confidential information.

9. The intention is that the Investigation Panel will complete its work within 4 months in accordance with the following indicative time frames:

- (i) Written submission from interested parties are due by the 19 July 2019;
- (ii) The interviews and public hearings will be conducted from July to September 2019;
- (iii) The final report will be delivered by the Investigation Panel on 1 November 2019.

THE REGISTRAR/CHAIR OF COUNCIL