PRELIMENARY REPORT ON THE ALLEGATIONS OF EXPLOITATION & RACISM SUFFERED BY HEALTHCARE PROFESSIONALS WHEN DEALING WITH MEDICAL AID SCHEMES

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KEY FINDINGS:

1. Concerns regarding restricted ability to service patients properly because of unreliable payments from medical aid schemes.
2. Hostile relationship between medical schemes and healthcare professionals presents a potential risk for the success of NHI.
3. Authorization for treatment & procedures is erratic and undermines clinical protocols & standards.
    a. Concerns with the experience of medical advisors
    b. Clinical protocols and decision matrices used by medical aid schemes
4. Outdated scope of work for professions used by medical schemes.
5. Coding Committee dysfunctionality.
6. Patient information confidentiality transgressions during investigations by medical schemes
7. Interruption to continuity of care subsequent to confiscation of patient health records by medical schemes
8. Health Professionals Council is not fulfilling its role with regard to protecting patient information
9. Regulatory Framework for auditing/investigating healthcare professionals is not defined and thus enables abuse by the schemes
10. Legal basis of with-holding funds while conducting investigating is not mutually understood.
11. The process for selecting Designated Service Providers is biased and not transparent
12. Racial Profiling in the Victimization of Healthcare Professionals by Medical Schemes.
13. Absence of a dedicated body to regulate the relationship between medical aid schemes and healthcare professionals.

1. BACKGROUND

1.1 Pursuant to a matter of alleged unfair treatment of healthcare professionals by medical schemes which was initially raised in the KZN ANCPL Health Subcommittee, an urgent meeting was convened on Thursday, 7th March 2019, at the Nelson R. Mandela School of Medicine, in the Steve Biko Lecture Theatre. In line with the ANCPL's commitment to service all professionals, the invitation to this meeting was extended to all healthcare professionals, whether members of the ANC or not.

1,2 The representatives and individual professionals who attended the meeting spanned across a wide range of healthcare professionals, including specialists, dieticians, physiotherapists, pharmacists, laboratory technologists, general practioners, dentists and speech therapists. In the main, representatives of healthcare associations and forums were in attendance on behalf of their members to assess the value of this session considering that similar attempts had been initiated in the past but yielded little results.

1.3 In our planning for this initial meeting, we also invited the Council for Medical Schemes (CMS) and the Health Professionals Council of South Africa (HPCSA). Mr Sbonelo Cele attended on behalf of CMS, however, Dr Munyadziwa Kwinda from HPCSA was unable to attend due to prior commitments in the Eastern Cape. He, however, indicated his commitment to engage with the outcomes of the meeting that related to his purview.

1.4 Subsequent to the initial meeting, several public and private engagements occurred have over the past two months which, inter alia included direct meetings with medical schemes, and in particular their forensic divisions, Health Dialogues of the ANC, behind the scenes working session internally within the ANCPL and in consultation with relevant associations or forums.

1.5 This report is a summary of all these various engagements that have occurred over the last two months, and provides recommendations of actions to be taken to address the concerns raised by healthcare professionals. The tone and wording used, is a reflection of the sentiments expressed during the engagements.

2. Synopsis of Concerns

2.1 Concerns regarding restricted ability to service patients properly because of unreliable payments from medical aid schemes: Because of the, increasingly occurring, arbitrary investigations and with-holding of funds, more and more healthcare professionals, are preferring to request cash upfront from their patients in order to avoid having to deal with some of the unscrupulous behaviour from medical schemes. In certain instances, a group of healthcare professionals within a particular region have "blacklisted" a medical scheme and opt to decline seeing patients belonging to that scheme unless they pay cash. This places undue burden on the patients because, despite having invested in a medical insurance, they are still required to have emergency funds whenever they are ill. This undermines the very essence of medical aid and leaves patients in a difficult situation, but healthcare professionals are left with no choice.

2.2 The hostile relationship between medical schemes and healthcare professionals presents a potential risk for the success of NHI. The main reason healthcare professionals were vehemently opposed to the potential awarding of a national government tender to Discovery for managing NHI services in Gauteng and KwaZulu-Natal across 5 disciplines (Oncology, Psychiatry, School Health, Primary Healthcare, Obstetrics and Gynaecology), was precisely because healthcare professionals have been severely abused by medical schemes and were not willing to subject themselves to further exploitation.

2.3 Authorization for Treatment is Erratic and Undermines Clinical Protocols & Standards

2.3.1 Experience of Medical Advisors: Without casting aspersions on the individual professionals, medical schemes often employ medical officers who are few years fresh from community serve, who due to limited exposure in the field, do not command a diverse range of insight into nuances and intricacies across all disciplines. As a result, medical schemes operate a perverted authorization environment where a senior clinician or specialist has to request approvals for treatments from a junior who might not even qualified in specific discipline in question.

2.3.2 Clinical Protocols and Decision Matrices used by Medical Schemes: This is further compounded by algorithms and decision matrices used by medical schemes that either deviate from sound clinical protocols used by healthcare professionals in day-to-day treatment of patients, or completely disregard regulations set-up by the HPCSA for certain scenarios and clinical cases. Healthcare Professionals are of the view that the HPCSA has not assisted in this regard to protect the integrity of the various professions under its authority and has also not enforced its own regulations over medical schemes.

2.4 Outdated Scope of Work for Professions: Certain professionals, in particular Medical Technologists, raised a sharp concern regarding the approved scope of their work that medical schemes use for decision making. There is a view that medical schemes are not keeping abreast with developments in each profession and as such, end up using outdated parameters to define the scope practice, which frustrates healthcare professionals when seeking approval for procedures with which the medical schemes have not familiarized themselves.

2.5 Coding Committee Dysfunctionality: The collapse or inefficiency of the Coding Committee that sits within the National Department of Health has created an impetus for the medical schemes to make decision regarding billing codes on their own without any oversight authority of an independent third party. Furthermore, there is flawed standardization of billing codes that do not recognize the level of expertise of the professional offering the service or conducting the procedure which lead to unfair remuneration on the side specialists and senior professionals. The coding does not take into consideration the improved insight and quality of care associated with the level of expertise of the professional attending to the patient. Specialists and general practitioners are forced to use the same billing code, despite differences in their skills set and the level of knowledge offered to the patient.

2.6 Patient Information Confidentiality Transgressions: Medical Schemes demand sharing of patient information with random individuals who do not have a professional or medico-legal obligation to uphold patient information confidentiality. Healthcare professionals view this as a gross violation of patient privacy, which not only presents a risk for their professions, but also undermines patient data security. Considering that the primary relationship of the medical schemes is with their members, who sign-off membership contract conditions,

and thus the schemes must request access to patient files via their members and not strong-arm healthcare professionals through threats of with-holding payments.

2.7 Interruption to Continuity of Care: Medical Schemes show no regard for the value of patient healthcare records history in the safety and quality of care offered to patients. When medical aids confiscate the files for their arbitrary audits, they leave the healthcare professional and the patient with the burden of having to start from scratch and recollect significant events in the medical history.

2.8 The Health Professionals Council Is Not Fulfilling Its Role with Regard to Protecting Patient Information: National Health Act, Section 14 states that information relating to a health service user's health status, treatment or stay in a health establishment may only be disclosed with the user's written consent, or in compliance with a court order or a law, or if non-disclosure represents "a serious threat to public health". Files relating to administration should be kept separately from the patient's medical records. Wherever possible, records used for financial audit by a third party, such as a medical scheme, should be anonymized and provided in accordance with the guidance issued by the HPCSA in its booklet, Confidentiality: Protecting and Providing Information. Disclosure of information should be limited to the relevant parts of the record. The HPCSA has released two conflicting directives, one instructing healthcare professionals to seek patient consent before submitting patient information to medical schemes, and the other instructing healthcare professionals that it is not necessary to acquire patient records.

2.9 Regulatory Framework for Auditing Healthcare Professionals Not Defined: Medical Schemes conduct practice audits arbitrarily with no mutually understood framework of the process followed to initiate the audit, and guide it during implementation to conclusion. Medical Schemes do as they desire and healthcare professionals have to comply because of the direct threat to their livelihood. The methodology followed to conduct the investigation is also not mutually understood by all stakeholders and the sampling used leads to statistically flawed extrapolations and conclusions. This results in bizarre decisions that are not matched by the available evidence, pointing to a

potential case of bullying by medical schemes. This bullying includes forcing healthcare professionals to sign Acknowledgements of Debt as an admission of guilt. Healthcare professionals have also observed increase targeting of their practices the more branches they run.

2.10 Legality of With-holding Current and Future Funds While Conducting Investigating: Healthcare professionals expressed serious frustrations with this practice which is conducted by medical scheme because it has a negative impact on cash flow and impairs their practices' ability to cover operational costs and pay staff wages timeously. Clarity is sought from CMS and HPCSA by healthcare professionals with regard to the legality of this practice. Further reference was made to a case taken to the Gauteng High Court by Durban specialist with the assistance of Advocate Dennis Sibuyi. The proposal is to investigate the precedent set by this case in dealing with the issue of withheld funds.

As a matter of fact, a specific request was made to Medscheme to clarify the legal basis within which they with-hold funds due to healthcare professionals, and after a two-week delayed, the ANCPL received a barrage of documents, which, when analyzed in their entirety, were found to be wanting in providing a specific response to the issue raised. They all explained, thoroughly, the framework for deducting funds from a services provider who, for one reason or the other, has been over-paid, but were completely silent, to the point of being mute, on any legal basis for with-holding funds while conducting investigations, which has led us to believe that the practice of with-holding funds is gross extortion and is conducted outside the parameters of any legal prescript.

2.11 The process for appointing Designated Service Providers is bias and not transparent: A Designated Service Provider (DSP) is a healthcare provider (psychologist, doctor, pharmacist, hospital, etc) that is a medical scheme's first choice when its members need diagnosis, treatment or care for a prescribed minimum benefits (PMB) condition. If a patient chooses not to use the DSP selected by the scheme, they may have to pay a portion of the bill as a co-payment. This could either be a percentage co-payment or the difference between the DSP's tariff and that charged by the provider you went to. This directly influences competition in the market, and the process is managed

entirely by the medical schemes. With no clear explanation or open tender process followed, the selection of DSP's is viewed as extremely biased and used as an instrument to frustrate providers.

2.12 Racial Profiling in the Victimization of Healthcare Professionals by Medical Schemes: While there are complaints across all races, the victimization by medical schemes has been observed to affect African and Indian healthcare professionals mostly, with some losing their practices and homes. When this particular matter was raised at a meeting with one of the schemes, the seating was informed that there is an algorithm used to detect but none of their representatives could explain the algorithm. The algorithm seems to have a predilection towards African and Indian healthcare professionals. This matter remains a very contentious because the victimization has negative economic impact on the targeted professionals and present medical schemes as new instrument for excluding black people from economic participation.

2.13 Absence of a dedicated body to regulate the relationship between medical aid schemes and healthcare professionals: Of the two statutory bodies, CMS and HPCSA, none of them are specifically responsible for oversight of the relationship between payers and healthcare professionals. As a result, medical schemes are left to run the entire relationship as they please and this leave practioners extremely abused.

1. Recommendations

3.1 Unity of Healthcare Professionals When Dealing with Issues of Common Interests: It was agreed that healthcare professionals must pursue these common challenges in a united matter that leverages everyone's skills and available resources. While there maybe difference on other issues, the need to work together on this matter was emphasized as paramount, and a steering committee consisting of representatives all healthcare professionals' forums and associations is proposed in order to consolidate effort and avoid duplications.

3.2 Termination of With-holding of Funds and Immediate Release of All With-held Funds: In welcoming the very bold statement issued by the Minister of Health on the 16th of May, in which he declared that "medical schemes cannot withhold funds due to practitioners", we are requesting the department to issue a formal written directive to medical schemes to cease with this thuggery of extorting healthcare professionals. We demand immediate release of all illegally withheld funds, and complete termination of this practice of withholding funds.

3.3 Moratorium on All Audits: Until there is a mutually-understood and transparent methodology for conducting investigations, we demand that the medical schemes must put this operation on hold. We commit ourselves to a joint working group in partnership with medical schemes and the department of health to develop a set of regulations and protocols that will guide these investigations.

3.4 Consultation with Labour Unions, whose members are the patients that have to face secondary frustrations emanating from the dysfunctional relationship between medical aid schemes and healthcare professionals. Because of the abuse and extortion that healthcare professionals have to face when dealing with medical aid schemes, more and more professionals are opting for cash upfront, and giving patients the necessary documentation to claim from their medical aids. This puts a serious burden on the patients who often do not have disposable income that can be used on urgent medical bills, but healthcare professionals have to protect themselves.

The involvement of the unions will give the necessary muscle to compel medical schemes to create a fair operating environment. Furthermore, in instances where unions own the medical aid, we will be engaging them to provider better oversight on the fund managers they use who are the real frustration in this relationship. In line with this improved over-sight we will be launching a campaign to ensure that more and more members attend the Annual General Meetings of the medical schemes so that the patients themselves drive the transformation agenda of medical schemes.

3.5 Approach the Office Health Ombudsman, Competition Commission, Public Protector, Parliamentary Committee on Health, the Department of Health, Health Professionals Council, Council for Medical Schemes: The ANCPL has been mandated to lead a process of preparing several communiques to the listed entities to request them to address specific matters which relate to their scope of work. The preparation of all the necessary documentation and engagements will incorporate in put from all health professionals' forums and association. This should

include a hosting summit for healthcare professionals with all these relevant stakeholders and establish an independent commission to investigate CMS and medical schemes.

3.6 Drive A Dedicate National Agenda to Radically Transform and Regulate Medical Schemes in manner that protect both patients and healthcare professionals, including demanding more transparency in the selection of Designated Service Providers. In line with the ANC manifesto that commits to **"create space for new emerging companies by ending monopolies and behaviour that stifles competition",** we intend to promote the entrance of new transformed players in the medical scheme sector who understand and appreciate the need to treat both patients and practioners fairly. The transformation agenda will include the establishment of a regulatory body to supervise the relationship between payers and providers.

3.7 Pursue Litigation in instances where associations or individuals prefer follow a judicial process, and further investigate the application of the case pursued by Advocate Dennis Sibuyi on the matter of with-holding funds, we will support and galvanize for such action.

End of Report.

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