



## PMB workshop – Libcare

### The Human Rights Perspective

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# The Legal Framework for PMBs

- + Constitution
- + Medical Schemes Act
- + Regulations
- + National Health Act

# Constitution

## + Preamble

- + Heal the divisions of the past and establish a society based on democratic values, social justice and human rights.
- + Improve the quality of life of all citizens and free the potential of each person.

## Constitution (2)

+ Supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

# Right to Health

- + Section 27 of the Constitution
- + (1) everyone has the right to health care services
- + (2) state must take reasonable legislative and other measures, within available resources, to progressively realise right
- + (3) no one may be refused emergency medical treatment

# National Health Act

- + Gives content to S 27.
- + Recognises the socio-economic injustices, imbalances and inequities of health services of the past.
- + Promotes spirit of co-operation and shared responsibility among public and private sectors.
- + Striving for a more equitable health system

## Why is this relevant to the private medical scheme sector?

- + State obligation to make legal framework for fair and equitable health care in private sector.
- + MSA establishes regulator and sets standards for medical schemes to ensure right to health realised in private sector.

## Why is this relevant to the private health sector? (2)

- + MSA establishes PMBs as minimum health care services to be provided in private sector.
- + Reg 8(1) “pay in full, without co-payment or deductibles”.
- + Establishes complaints mechanisms so that beneficiaries can enforce right to health.



## Private sector responsibility for right to health

- + Compliance with the law – pay in full in every case and protect the right to health of beneficiaries.
- + S 8(2) Bill of Rights binds corporate entities taking account of nature of the right and nature of duty imposed.
- + Certainly duty not to interfere with access to health services – more?

## Private sector responsibility for right to health (2)

- + S 27(3) application to private sector
- + Nature of the right – immediate, sudden, serious, future disability, life at stake.
- + Nature of the duty – may not refuse treatment, not dependent on ability to pay, stabilise (HASA guidelines determine EMT condition, stabilise and don't consider ability to pay)

## Private sector responsibility for right to health (3)

- + But unclear elements of duty –
- + Who pays for treatment?
  - + Patient
  - + State reimbursement
- + What is obligation to provide EMT services / provide access to existing services.
- + Requires legislative clarity.

## PMBs Rights concerns

- + Interpretation of Reg 8(1) – BHF case shows industry practice that limits beneficiaries' access to health.
- + BHF interpretation undermines meaning and purpose of PMBs.
- + Evidence of devastating effect on medical schemes of 'blank cheque'? CMS says no evidence and no basis for BHF interpretation.

## PMBs Rights concerns (2)

- + Co-payments require families to cut other necessary expenses, incur debt, utilise retirement/savings, pay additional insurance (gap cover).
- + Co-payments for efficiency purposes (Reg 8(4)) are questionable; doesn't fit with rationale to increase efficiency of schemes for benefit of all beneficiaries.

## PMBs Rights concerns (3)

- + Formularies – lack of transparency and
- + Public sector as standard for PMB cover.
- + General waiting periods for emergencies – no rationale unlike other PMBs; particular nature of the right.

## Pricing of health care services

- + High prices underlie issues such as non-payment of PMBs, improperly imposing co-payments, lack of transparency on formularies.
- + State obligation to address prices when prices are barrier to access.
- + A range of processes underway – HPCSA ethical tariffs, market inquiry, piloting NHI.

## What is required now?

- + Clarification of Reg 8(1)
- + Review of PMBs biannually
- + Review of PMB framework that in practice limits access
- + Strengthen complaints system (CMS)
- + Greater accountability of schemes



Thanks

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