

**URGENT**

**Dr Z L Mkhize**

**Minister of Health: National Department of Health**

**Per email:** minister@health.gov.za

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8 April 2020

Dear Minister Mkhize,

**PRINCIPLES FOR AGREEMENTS WITH HOSPITAL GROUPS AND PRIVATE HEALTHCARE SERVICE PROVIDERS IN RESPECT OF COVID-19**

1. We note, with grave concern, the spread of the 2019 novel coronavirus (COVID-19) around the world in a matter of months. We understand that the COVID-19 pandemic has placed considerable strain on health systems globally. It has also placed in stark focus, the need for a coordinated approach to ensuring universal health coverage.
2. We appreciate the efforts made by the Department of Health (“Department”) regarding COVID-19, and we congratulate you on your leadership in this regard. We are especially grateful that you have taken the country into your confidence as new cases have been confirmed and advised us of some of the steps the Department has taken in the face of the unprecedented public health emergency posed by the COVID-19 pandemic. Whilst we recognise the strides taken so far, we believe that our combined efforts would be more effective if there were more transparency and coordination.
3. We appreciate your efforts in ensuring that the constitutional imperative of ensuring that everyone has the right to have access to health care, including reproductive health care, is being fulfilled. We are mindful of your responsibility to regulate and provide uniformity in respect of health services across the nation within one national health system encompassing both public and

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private providers of health services and which provides, in an equitable manner, the population of the Republic with the best possible health services that available resources can afford. These resources should include those available within the private healthcare sector. The promulgation of the COVID-19 Block Exemption for the Healthcare Sector, 2020 Regulations bolster your powers to prescribe mechanisms to enable a co-ordinated relationship between private and public health establishments in the delivery of health services, as contemplated in section 45 of the National Health Act.

4. We recognise that there is an urgent need to facilitate agreement within the various private healthcare goods and services providers (including hospital groups and the doctors that ordinarily contract to the private sector) as well as with the public healthcare sector. This is critical in ensuring that we have, as much as is possible, the necessary capacity to provide access to healthcare for all those infected by COVID-19, especially in respect of isolation and intensive care unit beds.
5. We applaud you and your fellow Cabinet Members for the decisive action you have taken in ensuring that we have a legislative and regulatory framework to provide equitable access to healthcare services for everyone currently in South Africa.
  - 5.1 The COVID-19 Block Exemption for the Healthcare Sector, 2020 Regulations read together with the Constitution of the Republic of South Africa, 1996 and the National Health Act remove any impediments on the envisaged coordination of the national health system, which may have emerged from the provisions of the Competition Act, 89 of 1998. The finding by the Health Market Inquiry that the Minister had failed to regulate the private healthcare sector, can be remedied and must be remedied as a matter of urgency not only to effectively implement National Health Insurance in future but to ensure the appropriate public health response to the COVID-19 national disaster.
  - 5.2 Sub-regulation 5.3 of the Consumer and Customer Protection and National Disaster Management Regulations and Directions, 2020 grant the Minister of Trade and Industry numerous powers which have been effective in promoting access to essential goods and services during the period of the COVID-19 national disaster. One of the critical powers affecting access to health care is the power to issue directions, should it become necessary, to set maximum prices on private medical goods and services relating to the testing, prevention and treatment of the COVID19 and its associated diseases during the national disaster, after consultation with the Minister of Health.

6. We now urge you to take the necessary steps to implement the measures that have been formulated by the laws recently promulgated.
7. We have reached a point where the principles of contracting with the private healthcare sector must be decided in order to be better prepared should the scale of new infections, and those requiring hospitalisation, especially in intensive care units, drastically increase. We can find some guidance (and caution) in the experiences of other countries during this time. We lay this out below, where relevant.
8. We are of the view that the principles according to which contracting decisions are made include that any contracts or agreements must:
  - 8.1. Be constitutionally compliant, transparent and accessible to the public. The private health sector in the United Kingdom, for example, has agreed to a fully transparent approach;
  - 8.2. Ensure that everyone has access to health care services. To achieve this the State must always implement reasonable measures which afford access to a larger number and wider range of people not only as a result of healthcare services associated with the COVID-19 national disaster;
  - 8.3. Ensure that measures designed by the State, including agreements with the private sector, realise the right of access to healthcare services in a comprehensive sense and place those most in need of constitutional protection at the centre of the respective measures. We consider that people who are immunocompromised and those with limited financial means are most vulnerable to COVID-19;
  - 8.4. Ensure that there is equitable access to healthcare services, which requires close cooperation between the public and private healthcare sectors as has been seen in Australia, Ireland, Spain and the United Kingdom. Ireland has gone to the extent of removing the distinction between public and private healthcare service providers for the duration of the COVID-19 pandemic;
  - 8.5. Ensure that all have access to dignified treatment, through the equitable sharing of resources across both the public and private healthcare sectors for the purposes of responding to the COVID-19 pandemic. Australia has adopted a model where some of the personal protective equipment and ventilators in the private healthcare sector have been freed up to the public healthcare sector. In addition, the private healthcare sector has agreed to treating public patients — both those with and without coronavirus; the use of its expanded intensive care capacity; and the accommodation for quarantine and isolation cases;

- 8.6. Explicitly provide for intensive care unit and isolation bed capacity, as it is unlikely that the public healthcare sector alone has sufficient capacity for the needs of the population. Australia has followed a similar approach as approximately one third of their intensive care capacity is in the private healthcare sector;
  - 8.7. Provide value for money for the national health system as a whole and should consider alternative models of reimbursement, as the fee for service model is not feasible in the circumstances. We suggest that a progressive option is one that agrees on a flat rate per patient admitted into private healthcare facilities, that is in line with current public sector costing, including cost of hospital and ICU beds and public sector remuneration rates for health workers. This is in recognition of the fact that the public health emergency we are facing requires our collective efforts and is the responsibility of all groups and individuals involved in health service provision, both public and private, under the leadership of the Department of Health.
9. The need for a centralised and standardised response has been borne out by the approach taken in various other jurisdictions where the coordination of the procurement of medicines and medical equipment has been centralised. The various ministries of health have also provided details on the private healthcare capacity, which is available to the public sector. The centralised coordination of the entire response has made it possible to standardise the care provided in respect of COVID-19 and ensure equitable access between people who use both public and private healthcare. This is a model to be followed.
10. The health ministries of Ireland, Spain and the United Kingdom have accepted the risk of not agreeing up front to the price for the provision of services by the private healthcare sector. This is unfortunate as it could result in these states entering into agreements, which hinder their ability to provide healthcare services unrelated to and following the COVID-19 pandemic. We caution against the approach of obtaining services now but agreeing on the financial implications at a later stage. From the onset, the Department and the private healthcare sector must cost any agreements for the provision of healthcare services and must correctly prioritise public health importance above profit making.
11. In addition to the powers already at your disposal, you may – if it becomes necessary – consult the Minister of Trade and Industry in order to set maximum prices on private medical goods

and services relating to the testing, prevention and treatment of the COVID19 and its associated diseases during the national disaster.

12. We wish to support the Department in its response to COVID-19 and are available for discussion, as needed. We urgently request that details of agreements made and to be made with the private sector be made public; and that the Department's requesting and coordinating the communication contemplated in the COVID-19 Block Exemption for the Healthcare Sector, 2020 be open to the public.

Yours sincerely,

#### SECTION27

Treatment Action Campaign (TAC)

Rural Health Advocacy Project (RHAP)

People's Health Movement SA (PHM-SA)

Sexual and Reproductive Justice Coalition (SRJC)

MSF South Africa

Triangle Project

Cancer Alliance