



Section 59

Established in terms of Section 7(a)(b)(c)(d), 8(a) and (k) and 9(2) of the Medical Schemes Act, 131 of 1998.

NOTICE 3

23 January 2020

UPDATE: PROVISIONAL WORKING METHODS OF THE PANEL

Adv Tembeka Ngcukaitobi | Adv Kerry Williams | Adv Adila Hassim

Customer Care: 0861 123 267

Block A, Eco Glades 2 Office Park, 420 Witch-Hazel Avenue, Eco Park, Centurion, 0157

cmsinvestigation@medicalschemes.com

www.cmsinvestigation.org.za



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1. The Investigation Panel refers to its Terms of Reference (“**TOR**”) and the Rules of Procedure for the Panel (“**Procedural Rules**”).
2. The Panel further refers to Notices 1 and 2, dated 22 July 2019 and 29 August 2019, setting out the Panel’s working methods and updates thereto.
3. The Panel also further refers to its Statement, dated 19 November 2019 (“**19 November Statement**”), and issued at the beginning of Dr Zaid Kimmie’s evidence on 19 November 2019.
4. The Panel wishes to update its working methods to assist interested and affected parties who engage with and appear before it.
5. Additionally, the Panel has received questions from interested and affected parties which will be answered by virtue of what is set out in this Working Notice 3.

Experts

6. The TORs stated that the Panel may “engage a range of experts to assist the Investigation Panel in performing its services and functions”. The Rules also state that “the Panel may engage experts to assist the Panel in performing its functions” (Rule 7).
7. The Panel has engaged the following three experts:
 - a. Advocate Wim Trengove;
 - b. Professor Melissa Steyn; and
 - c. Dr Zaid Kimmie.
8. Advocate Trengove and Professor Steyn gave oral (opinion) evidence to assist the Panel. The transcripts of their evidence are publicly available.
9. Dr Kimmie assists the Panel in the conduct of its investigation and has provided the Panel with regular feedback on the work he conducts on the Panel’s behalf.

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10. Dr Kimmie has also given oral evidence on the facts he has found, the analysis he conducted as well as his conclusions. The transcripts of his evidence are publicly available and written reports (containing the facts he found, the analysis he conducted and the conclusions he reached) in relation to race discrimination have been shared separately with Discovery Health, Medscheme Holdings and GEMS.
11. Dr Kimmie is an independent expert. He is also acting on behalf of the Panel, which is also independent, to assist the Panel in performing its functions.
12. The Panel has read the Reports and has not formed a final view on the correctness of the facts, the analysis or the conclusions contained in the Report.
13. The Panel will hear from Discovery Health, Medscheme and GEMS, during the hearings from 27-31 January 2020, in relation to the evidence and submissions that have been provided and will formulate its views thereafter.

Further conduct of the Section 59 Investigation

14. The Rules provide that the Panel will provide an interim report to the CMS by 1 November 2019; that parties will be given one month to comment and the Panel will provide the final report three weeks thereafter (Rule 8).
15. It is evident that due to:
 - a. the tremendous response to the call on interested and affected parties to respond to the TORs in July and August 2019 (Working Notice 2, clauses 3 and 10);
 - b. the knock on effect that this tremendous response had on the length of the public hearings; and
 - c. the investigative work that the Panel has conducted through Dr Kimmie, the original time frames for the Section 59 Investigation have had to be extended.
16. The CMS has accordingly extended the time frame for the completion of the Section 59 Investigation.
17. There have thus far been the following three stages to the investigation hearings:

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- a. The first stage involved public hearings for regulatory bodies, professional associations and other and other related health care provider organisations;
 - b. The second stage involved public hearings for specific individual health care providers and health care provider entities.
 - c. The third stage (which overlapped with the aforementioned stages) has allowed for the aforementioned expert investigation and testimony;
18. The fourth and final stage is scheduled to take place from 27-31 January 2020 where the Panel will hold public hearings for the schemes and administrators as well as two private interviews with investigators from Discovery Health and Medscheme.
 19. Thereafter the Panel will draft its interim report which will be released for comment before the launch of its final report in April 2020.
 20. The Panel will not engage with members of the Steering Committee on Fraud, Waste and Abuse (“**the Steering Committee**”) before it issues its interim or final report to the CMS. This would be procedurally unfair as other interested and affected parties will not get a similar opportunity.

Transparency and fairness

21. The 19 November Statement records that a previous request made by Discovery Health, that it have an opportunity to comment on Dr Kimmie’s report and check Dr Kimmie’s facts before he reaches any preliminary findings or conclusions, was denied by the Panel.
22. There has been a new allegation from Medscheme that it was prejudiced (in that its reputation was damaged) and treated unfairly by Dr Kimmie’s testimony due to Medscheme not having an opportunity to comment on Dr Kimmie’s findings before he gave his evidence.

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23. The Panel wishes to reiterate that the work of the Section 59 Investigation Panel is intended to be a public process to ensure transparency. The Panel is independent and is committed to treating all parties fairly.
24. Closed door engagements with those against whom allegations are made would / could lead to allegations of a reasonable apprehension that the Panel is acting unfairly.
25. The schemes and administrators have ample opportunity to address Dr Kimmie's facts, analysis and conclusions in the upcoming hearings.

Ends

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