Organization	Solutionist Thinkers Group NPO reg. 232-079 NPO
Attention:	Section 59 Investigation Panel
Subject	Section 59 Legal Submission
Date	25 June 2023
Contact person	Ms. Nomaefese Gatsheni – 061 582 6735 Mr. Mputana Kutu – 079 748 6554 (Deputy chairperson)
Email address	admin@solutionistthinkers.com www.solutionistthinkers.com

The Secretariat : Section 59 Investigation Report

Mr. SJ. Thema

Block A, Eco Glades 2

Office Park, 420

Witch-Hazel Avenue

23 June 2023

RE: UPDATED NOTICE OF SECTION 59 INVESTIGATION – LEGAL SUBMISSION VERTUAL HEARING

Good afternoon Adv. Ngcukaitobi and the panel, and all the stakeholders present.

1. Executive Summary

Solutionist Thinkers Group is a registered NPO with a mission to provide effective solutions to the challenges faced by private healthcare system. The organization came into a spotlight in 2019 after reporting racial profiling of Black and Indian healthcare

practitioners by medical aids and administrators. Solutionist Thinkers Group managed to invite all healthcare associations to join our struggle in speaking out against racism and discrimination using unfair procedural audits. The organisation represents 260 non White medical and healthcare practitioners of different disciplines.

Apart from Section 59 investigation, Solutionist Thinkers Group remained committed to its ultimate goal of liberating Black and Indian healthcare practitioners from systematic racism and discrimination that had undermined our member's rights to dignity and respect, ethical principles, financial development, and the constitutional rights of their patients to access a quality healthcare.

My name is Nomaefese Gatsheni, a chairperson of Solutionist Thinkers Group, and I will be presenting our legal submission.

Solutionst Thinkers Group takes this opportunity to appreciate the ground work achieved in the Interim Report and the update thereof. We further furnish the panel with progress and new matters arising to the panel's attention:

2. **Introduction**

In this submission, we aim to shed light on these crucial issues and advocate for a more balanced and inclusive approach in the private healthcare industry. By raising pertinent questions and challenging the current dynamics, we hope to foster a constructive dialogue that leads to positive change within the private healthcare industry inclusive of CMS and the schemes. Ultimately, the goal is to ensure that the CMS fulfils its mandate of protecting the best interests of scheme members while fostering a fair and transparent healthcare system that benefits all stakeholders involved. As the regulatory body, CMS cannot protect the members best interest while neglecting the members needs which we are.

The healthcare industry plays a vital role in society, ensuring the well-being of beneficiaries of the medical schemes and maintaining a balanced economy. In pursuit of

efficient healthcare delivery, it is crucial to address wasteful expenditure committed by the schemes and eliminate racial biases within the system. Solutionist Thinkers Group still believes that the starting point to address racial discrimination will begin when CMS, the schemes and administrators put into consideration the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) (Act No. 4 of 2000): which seeks to promote equality, prevent unfair discrimination, and provide remedies for victims of discrimination. This Act prohibits both direct and indirect discrimination, including discrimination based on race, gender, religion, and other protected characteristics.

3. **Intentional racial profiling of black healthcare practitioners**

Solutionist Thinkers Group strongly believes that there is **intentional racial profiling of black healthcare** providers by schemes such as Discovery, Medscheme, and GEMS. The purpose behind this profiling was to hinder the growth and expansion of black healthcare practices. The schemes are well aware of the demographics of South Africa, which include a large number of middle-class to poverty-stricken areas predominantly inhabited by black people. The schemes deliberately targeted black healthcare providers in order to increase their own financial gains.

In summary of Dr. Kimmie's paragraph 485, which acknowledges that efforts to reduce fraudulent and wasteful activities (FWA) within medical schemes are important. It emphasizes the responsibility of schemes and administrators to prevent FWA and manage financial risks effectively through detection and prevention systems.

However, he raises concerns about the evidence presented regarding the cost of FWA, suggesting that some figures may have been exaggerated or overstated.

The statement also highlights the need to eradicate FWA without compromising the dignity and equality of Black healthcare providers. It acknowledges that risk management systems may not be perfect but emphasizes that the significant and disproportionate impact of FWA on Black people's quality of life and dignity necessitated an investigation.

Dr. Kimmie further notes that the unfair treatment of Black healthcare providers by Medscheme, GEMS, and Discovery has been systemic and ongoing. He points out that the risk ratios, which indicate disparities in treatment, were consistently significant over the years, but started to decrease when the spotlight was put on the risk management systems. The statement concludes that the discriminatory effects on Black practitioners amount to unfair discrimination and emphasizes the legal and human consequences of such discrimination. It also highlights the obligation of businesses to address systemic discrimination and prevent the perpetuation of unfairness and segregation from the past.

4. Reimbursement

We further submit to the panel that the impression created by some schemes that it is impossible to reimburse Black healthcare providers who had been unfairly targeted and subjected to clawbacks, is false and misleading. It is clear that these financial institutions are mathematically strong and they are in a great position to recalculate how much they have miscalculated over the past years. We submit that the panel make a recommendation on the question of reimbursement of practices who suffered from unfair clawed backs. In addition, a recommendation to stipulate the time-frame of reimbursement.

5. **Refer to the Section 59 Interim Report page 69:**

Discovery alleged that Solutionist Thinkers Group failed to substantiate their allegations of racial profiling of Black healthcare providers. In response, it was noted that Discovery failed to demonstrate the audits conducted on our White counterparts and the auditing process conducted on this specific group. Solutionist Thinkers presented evidence of black providers who were victims of all sorts of discrimination, verbal witness was presented on the first day of inquiry, letters of unfair audits, indirect and blocked practices were presented in this panel, proofs of entrapment and a significant number of providers who were coerced into signing Agreements of Debt (AOD). Additionally, Solutionist Thinkers submitted cases of doctors who tragically took their own lives following the implementation of Discovery's AOD.

6. **Claw-backs, Unfair Audits, and Illegal audits, predominantly affected black providers.**

The schemes were fully aware that their actions, **including claw-backs, unfair audits, and illegal audits, predominantly affected black providers.** They should have questioned their algorithms that generated racially biased data. Disagreeing with their claims that the racial bias and discrimination were unintentional, Solutionist Thinkers points to a statement made by Dr. Broomburg, former CEO of DH, during a national television interview in 2019. Dr. Broomburg's analogy comparing the software capturing more Blacks than Whites to a study on lung cancer and smokers strongly indicates intentional racial profiling. It implies that being Black automatically implies a higher likelihood of engaging in fraudulent activities. This blatant explanation by Dr. Broomburg supports Solutionist Thinkers' argument that they were **intentionally subjected to intentional racial profiling.**

7. **Persistence of power imbalances and procedural unfairness within the healthcare system**

Furthermore, the interim report acknowledges that this form of unfairness constitutes unfair racial discrimination, as recognized by the South African Constitution. The report highlights the **persistence of power imbalances and procedural unfairness within the healthcare system**. It emphasizes that Section 33 of the constitution, as codified by the Promotion of Administrative Justice Act 3 of 2000, is being neglected, disregarding the principle of "innocent until proven guilty beyond reasonable doubt."

8. Despite the progress made by the Interim report, healthcare practitioners continue to face demands for information dating back beyond 90 days, requiring audits spanning up to three years or two years. Medscheme have moved from better to worse in the past two years with auditors that are brutal and ruthless towards our members leaving no room for negotiation or engagement. On a second note we acknowledge GEMS willingness to improve its system, they have stopped conducting unfair audits against

healthcare providers, and GEMS is more willing to work with providers since the release of the interim report.

9. Unveiling Questions on the CMS as a Regulatory Body

The Council for Medical Schemes (CMS) holds a crucial mandate in safeguarding the best interests of members within healthcare schemes by regulating all stakeholders involved in administering quality healthcare services. As we delve into this submission, we aim to shed light on major questions surrounding the CMS as a regulatory body. While it is essential to acknowledge the CMS's role in promoting accountability and transparency, we also critically examine whether this regulatory vehicle is truly driving smoothly, considering the full impact caused by all stakeholders involved.

10. Bias exhibited by a neutral body

One of the key concerns lies in the perceived bias exhibited by a neutral body, such as the CMS, in its regulatory approach. We uncover instances where the CMS has pointed fingers at one party while seemingly turning a blind eye to other contributing parties in the mismanagement of funds, instances of fraud, waste, abuse, corruption, and racketeering. This bias, which has primarily targeted healthcare providers, raises significant questions about the fairness and effectiveness of the CMS's oversight.

11. CMS be held accountable for this skewed bias

It is crucial for the CMS to address and be held accountable for this skewed bias, as it has far-reaching consequences, particularly in the form of racial profiling of black healthcare providers. By disproportionately focusing on one group, the CMS perpetuates an unjust narrative that undermines the trust and confidence in the private healthcare system. We assert the importance of dismantling these biases and ensuring that regulatory efforts are equitable, comprehensive, and encompass all stakeholders involved in the provision of healthcare services.

12. The Importance of Definitional Clarity in Addressing Irregular Claims

Despite a **lack of FWA definitions** and the challenge of "one size fits all kind of definition", CMS expressed a grave concern of the impact of FWA committed by healthcare providers on schemes and their members, failing to include FWA committed by the schemes. Noting the extent of the problem and the loss sustained by schemes due to irregular claims as significant. The Interim report pointed out that there is no certainty as to the actual monetary loss, and estimates vary considerably. The statement highlights the impact of fraudulent activities, specifically fraudulent claims, on medical schemes and their members. It states that the loss incurred by schemes due to irregular claims is significant, although the exact monetary loss is uncertain and estimates vary. The evidence suggests that between 1% to 15% of healthcare expenditure is lost to fraudulent activities annually. The panel received evidence that fraudulent claims may cost a scheme approximately R22-28 billion per year, which is equivalent to around 25% of all premiums paid by South Africa's 8.8 million medical aid members. Despite inconsistent information on the exact percentage and quantum of loss caused by fraud, the panel acknowledged that this problem has a serious impact.

13. **Addressing Bias in Healthcare Expenditure: The Need for Fair Resolution**

The FWA summit in 2019 also highlighted high rise of factors that are contributory to FWA by the schemes. Amongst other concerns, distribution of non-healthcare expenditure by the schemes, trends in non-healthcare expenditure, non-healthcare pabpa (2018 prices) – Open vs Restricted schemes with highest PO fees, schemes with highest trustee remuneration, solvency trends, administrator market share, inpatient hospital admissions.

The conclusions of the 2019 summit presented a major concern and a need for CMS to inspect the schemes expenditure. I struggled to understand the definition of FWA as it is only directed to healthcare practitioners.

Refer to the pointers indicated above CMS need to give a correct definition of FWA for the waste, corruption and abuse of the member's funds committed by the schemes.

It was very easy to define FWA committed by Black and Indian healthcare practitioners to an extent of setting them out of the system by all sorts of torture ranging from extortion, entrapment, blocked payments, indirect payments, writing defaming letters to their patients without following Section 59 as stipulated that claims shall be validated within 90 days of submission, or criminal procedure Act 51 of 1977 when they suspect fraudulent activities. Section 35(3) of the Bill of rights guarantees for everyone the right to a fair trial, which includes to be presumed innocent at the trial until proven guilty beyond reasonable doubts.

The premise to decide that Black and Indian healthcare practitioners are always outliers than their White counter parts using unfair algorithms had been proven by Dr. Kimmie's expert analysis with severe racial bias with far reaching consequences on Black and Indian healthcare practitioners.

Two experts that were appointed by the panel Dr. Kimmie and Adv. Trengov SC who is a constitutional expert came up with similar findings of unfair racial discrimination. To-date, CMS still failed to address these matters.

Dr. Kimmie mentioned in his findings that medical schemes used a data base from BHF with algorithms which were designed by the past apartheid government which had two systems of their data-base that specifies European surnames and non- Europeans surnames.

Discovery admitted of using this algorithms to identify outliers. This finding concluded that there is racial bias which was found systematic discrimination against Blacks and Indians.

GEMS refused to explain anything on their algorithms, hence GEMS and BHF blocked the release of the interim report. Their relationship during this time remained questionable, still CMS had no interest to interfere in such a stance.

14. CMS remained silent

There are eight reports about GEMS highlighting serious crimes including money laundering, racketeering, organised crimes, conflict of interest, director delinquency, financial misstatements, and the use of lawyers and auditors to manipulate the financial statements and any reports related to performance. Despite having information within its records, CMS remained silent regarding the fraudulent activities committed by schemes.

Considering that inaccurate 15% of fraudulent activities that are attributed to black and Indian healthcare providers, the report raised questions about the percentage of fraud committed by schemes, and CMS's efforts to manage the situation. Moreover, concerns arise regarding the allocation of members' medical aid funds after the collection of billions from providers through extortion.

We are putting across to the attention of the panel that we refuse to be used as scape-goat of mismanagement of scheme's fund by schemes and administrators. We are aware that monies extorted from us are used to secure scheme's reserves, or even raising funds to top at JSE share markets. The interim report expresses disappointment that these issues have not been addressed, as they are crucial steps in rectifying definition of FWA.

15. **Incomplete Picture:**

Hopes were held for CMS's intervention during the FWA summit in March 2021 to address the aforementioned concerns. However, it was observed that business proceeded as usual, without meaningful changes. The report also expresses the expectation that issues regarding Section 59 and the validation of claims period, which perpetuate racial bias against the African Child, would be addressed. However, the status quo prevailed. We expected CMS to display this crucial information, and clarify that FWA is not only

committed by the Black healthcare providers, otherwise we will be fighting a losing battle if these issues are not included in the report. By disregarding the wasteful expenditure committed by the schemes, CMS fails to present a complete picture of the challenges faced in the private healthcare industry. To effectively combat wasteful spending, it is imperative to consider all parties involved. Ignoring the schemes' contributions not only skews the analysis but also hinders the development of comprehensive solutions.

16. Conclusion

Definitional clarity is a critical aspect of any effective system, particularly when it comes to addressing irregular claims in the private healthcare industry. However, the lack of clear definitions poses several problems, ranging from a conflation of concepts to uncertainty among providers, schemes, and administrators. This argument highlights the significance of definitional clarity, discussing how it promotes accurate categorization, ensures fairness, and provides certainty in the fight against fraudulent, wasteful, and abusive claims. It is imperative for CMS to establish precise definitions to enhance the accuracy, fairness, and effectiveness of the system, ultimately protecting the integrity of Black healthcare services providers from racial discrimination by the schemes.

Yours sincerely,

Ms. Nomaefese Gatsheni & Solutionist Thinkers Group Exco