



# FRAUD, WASTE & ABUSE SUMMIT



28 FEBRUARY - 1 MARCH 2019

SANDTON CONVENTION CENTRE

## Industry Charter to address Healthcare Fraud, Waste and Abuse

in the private healthcare funding industry

entered into voluntarily between all participating stakeholders

including but not limited to regulators, healthcare funders, administrators, industry representative bodies and professional societies and associations

Partnership towards curbing fraud, waste and abuse.

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## ***Preamble***

**Whereas** on 19 and 20 October 2018 the South African Government held the first Presidential Health Summit which included many interested Parties from both the public and private healthcare sectors;

**And Whereas** there was an acknowledgment that private healthcare has surplus hospital bed capacity when compared to the overburdened State healthcare services, but however remains unaffordable to most of the population of South Africa;

**And Whereas** the objectives of the Presidential Health Summit included the need to strengthen co-ordination between all interested stakeholders to deal with corruption, waste and abuse to improve cost effectiveness, accountability and transparency in the health system;

**And Whereas** there was a firm commitment from all stakeholders who participated in the Health Summit to work towards achieving quality and affordable Universal Health-Coverage (UHC) for all citizens, irrespective of their age, health status or financial position;

**And Whereas** in order to achieve UHC for all, there are three fundamental requirements that are critical to establishing a strong National Health Insurance model: namely Access, Quality and Affordability;

**And Whereas** the rising cost of healthcare is one element that must be contained to ensure continued access and financial sustainability for future generations, and the private healthcare industry recognises the important role it plays in making this possible;

**And Whereas** there are concerns about the seriousness of threats posed by healthcare Fraud, Waste and Abuse (FWA) to the stability of the healthcare industry, undermining the values of democracy, ethical values and justice, and jeopardising sustainable development and the rule of law;

**Now therefore**, to give effect to the commitments made at the Health Summit, and to ensure the long-term sustainability of the health system, the Council for Medical Schemes has brought together industry stakeholders to address the challenge of Fraud, Waste and Abuse that contributes materially to rising healthcare expenditure that is unjustifiable and presents a material impediment to the successful implementation of a sustainable and inclusive National Health Insurance system;

## Chapter I

### General Provisions

#### *Article 1. Objectives*

1. The principal objective of this Charter is to reach a common understanding and purpose between the Parties to actively strive towards improving the quality and reducing the cost of private healthcare through combatting FWA;
2. To promote and strengthen measures to prevent and combat healthcare FWA more efficiently and effectively;
3. To promote, facilitate and support cooperation and technical assistance in the detection and prevention of healthcare FWA; and
4. To promote integrity, accountability and proper management of medical scheme affairs.

#### *Article 2. Definitions*

For the purposes of this Charter:

5. The *Department of Health* is the executive department of the South African government that is assigned to health matters. The mission of the National Department of Health is to improve health status through the prevention of illness, disease and the promotion of healthy lifestyles, and to consistently improve the healthcare delivery system by focusing on access, equity, efficiency, quality and sustainability;
6. The *Council for Medical Schemes* (CMS) is a statutory body established by the Medical Schemes Act (No. 131 of 1998) to provide regulatory supervision of medical schemes.
7. *Regulatory Body* (also regulatory authority, regulatory agency or regulator) is a public authority or government agency responsible for exercising autonomous authority over some area of human activity in a regulatory or supervisory capacity. In the medical industry in South Africa, this includes but is not limited to, the South African Nursing Council (SANC), Healthcare Professions of South Africa (HPCSA), Allied health professions, and the South African Pharmacy Council (SAPC), and where appropriate the Minister of Health;
8. *Medical Schemes, Brokers, Administrators and Managed Care Organisations* are all entities that fall under the jurisdiction of the CMS and are subject to the provisions of the Medical Schemes Act;
9. *Industry Representative Bodies* are non-profit organisations that represent the common interests of their collective membership, including the *Healthcare Funders Association (HFA)* and the *Board*

*of Healthcare Funders of Southern Africa (BHF);*

10. *Professional Societies and Associations* include any representative body that consists of a group of healthcare providers or suppliers who have sufficient mutual interests to drive a common objective and purpose on behalf of their constituents, usually within their specific discipline, field of expertise, products supplied, or services rendered;
11. *Law enforcement agencies* include the **South African Police Service** (SAPS) responsible for investigating crime and security throughout the country; the National Prosecution Authority (NPA) which has the power to institute criminal proceedings on behalf of the State; the **Special Investigating Unit** (SIU) which is the state's preferred and trusted forensic investigation and litigation agency, the **Hawks**, South Africa's Directorate for Priority Crime Investigation (DPCI) which targets organised crime, economic crime, corruption, and other serious crimes referred to it by the President or the South African Police Service (SAPS);
12. The above will be collectively referred to as "Stakeholders".

### *Article 3. Scope of application*

This Charter shall apply, in accordance with its terms, to the prevention, investigation and prosecution of healthcare FWA.

This Charter is in no way intended to replace or supplement existing South African legislation. If there is any conflict between this Charter and the Constitution of the Republic of South Africa, the Medical Schemes Act or any other relevant Statute, then the provisions of such legislation shall continue to apply. The clause containing such conflict will also immediately be removed from this Charter.

## **Chapter II**

### **General provisions**

#### ***Principles***

13. The objectives of this Charter can be achieved through a firm commitment to continuous engagement between all stakeholders and the regulatory will to affect much needed change. It will require:

- 13.1 A recognition that healthcare cannot be subject solely to normal free market principles and in certain instances, the progressively increasing gap between the actual *Cost* of healthcare versus the current *Price* of Healthcare needs to be addressed;

- 13.2 A commitment from Parties to create a funding environment that enables medical schemes to move from a Fee-for-Service reimbursement (pay for production) model towards a shared value care model, focusing on rewarding: Progressive expansion of (clinically appropriate) access; quality measurement and progressive quality improvement; as well as cost efficiency.
- 13.3 Innovative and focused solutions that are aimed at removing the unnecessary wasteful and abusive claiming practices that prevent affordable premiums for most South Africans;
- 13.4 A commitment to develop clear and binding best practice policies on the ethical and moral obligations of a healthcare practitioner, pharmaceutical company, pharmacy or health facility and any other supplier of healthcare services or products when it comes to servicing a patient and billing for such service, through industry wide collaboration;

These principles are not exhaustive and at all times the Parties to this Charter must be guided by the values of fairness, equality and transparency.

### ***Signatories***

14. The private healthcare industry consists of a multitude of different stakeholders. This Charter is intended to be a living document that is open to any industry stakeholder who wishes to contribute to reducing FWA in private healthcare. For purposes of the inaugural FWA Summit to be hosted by CMS, the following signatories have been invited to pledge their commitment to reaching the Charter Objectives:

- 14.1 National Department of Health (NDoH);
- 14.2 Council for Medical Schemes (CMS);
- 14.3 Healthcare Professions Council of South Africa (HPCSA);
- 14.4 Pharmacy Council of South Africa (PCSA);
- 14.5 Board of Healthcare Funders (BHF);
- 14.6 Healthcare Funders Association (HFA);

- 14.7 Medical Schemes registered with the Council for Medical Schemes;
- 14.8 Brokers, Managed Care Organisations and Administrators registered with the Council for Medical Schemes;
- 14.9 Law Enforcement Agencies;
- 14.10 Professional Societies and Associations on behalf of their members.

**Effective Date**

15. The Effective Date of this Charter will be ..... 2019.

**Duties of Stakeholders**

16. In order to bring effect to the primary Objective of this Charter, it is important to set out the duties and obligations of the respective signatories thereby translating the collective intention into individual action:

**16.1 Regulators**

16.1.1 The Regulators are responsible for performing their duties and exercising their powers in terms of their respective legislative mandates in a way that encourages honesty, integrity and ethical behaviour;

16.1.2 They commit to strengthening the working relationship between themselves, and with all regulated parties, through regular engagements and feedback sessions;

16.1.3 The Regulators will strive to identify and resolve any jurisdictional gaps or overlaps that may exist between their respective statutory areas of oversight, to ensure policy certainty on matters involving FWA;

16.1.4 Regulators will ensure that stakeholders exercise principles of good corporate governance and have adequate FWA risk management controls in place to detect, deter, prevent and report on healthcare FWA;

- 16.1.5 In order to fight FWA, the regulator Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system;
- 16.1.6 They will ensure that adequate and appropriate sanctions and remedies are in place for persons who commit fraud and/or abusive claimers, so that there are immediate consequences to those who are manipulating the claims payment process for their financial benefit;
- 16.1.7 Regulators will draft and promote applicable industry guidelines, and if/when necessary, review and draft appropriate amendments to anti-fraud regulations and/or legislation aimed at supporting and empowering medical schemes to curb healthcare FWA;
- 16.1.8 They will provide the necessary guidance and direction to their applicable jurisdictions when it comes to matters of FWA, but act within the scope of relevant legislation and their legislated mandates.
- 16.2. ***Medical Schemes, Managed Care Organisations (MCOs) and Administrators***
- 16.2.1 Medical Schemes must always act in the best interests of their members, by exercising fairness and balancing the needs of the individual member against that of the collective membership;
- 16.2.2. Medical Schemes, MCOs and the Administrators commit to having adequate FWA risk management controls in place, including the necessary resources and systems to detect, investigate and prevent FWA;
- 16.2.3 Schemes, MCOs and Administrators agree to ensure that they will always act in a fair, transparent and objective manner when dealing with matters of FWA, and that they will act within the law at all times;
- 16.2.4 Schemes, MCOs and Administrators shall pro-actively participate in industry initiatives meant to curb FWA including exchanging of relevant information in instances where it is required to facilitate cooperation for the purpose of detecting or preventing healthcare FWA. Such information exchange, if/when feasible and appropriate, shall be subject to

applicable confidentiality and intellectual property (IP) protection provisions;

16.2.5 Administrators, MCOs and Medical Schemes shall prepare an Industry Code of Good Practice for regulatory input and approval, that will govern their conduct when it comes to dealing with matters of FWA;

16.2.6 Medical Schemes, MCOs and Administrators will formulate policies and procedures to deal with any over-charging and over-servicing practices in a consistent manner; and to ensure that sanctions are not applied to any healthcare provider, supplier or member on arbitrary grounds;

16.2.7 Medical Schemes, MCOs and Administrators undertake that their engagements with recognised representative health professional societies on managed care interventions, including clinical funding protocols and value-based reimbursement models, will be guided by the principles of clinical soundness, cost-effectiveness and affordability; in the interest of sustainable patient care.

### 16.3. ***Industry Representative Organisations***

16.3.1 Non-profit organisations that represent a specific membership with aligned interests play an important role in facilitating engagement at an industry level on matters of general application and relevance;

16.3.2 The Representative bodies that represent the interests of private healthcare stakeholders, on both the funding and services side of the industry, commit to proactively create opportunities and platforms for industry engagement to occur;

16.3.3 They shall invest reasonable time and resourcing into educating and informing their membership on matters of FWA;

16.3.4 Representative bodies shall engage with the relevant Regulators on a regular and structured basis, sharing the feedback they received from their membership and working on ideas and solutions that require regulatory support, oversight or approval.

16.4. ***Professional Societies and Associations***

- 16.4.1 It is acknowledged that the healthcare service provider community is fragmented, with a wide variety of different vested interests and views;
- 16.4.2 The Professional Societies and Associations that represent these interests are therefore crucial to successfully communicating issues of FWA, and in getting the buy-in of healthcare service providers in supporting efforts to curb FWA;
- 16.4.3 Professional Societies and Associations that are signatories to this Charter confirm that they shall have a zero-tolerance approach towards instances of FWA, and that they agree to ensure that all healthcare services are appropriate and should be as cost-effective as possible without compromising on quality;
- 16.4.4 Representatives of the service providers commit to educating their members on issues of FWA, including reminding them of their ethical duty not to over-charge or over-service patients;
- 16.4.5 The Professional Societies and Associations will support medical schemes and administrators with clinical advice and best practice benchmarking, based on evidence-based clinical guidelines, if requested for assistance at any time;
- 16.4.6 These Associations shall also support the formulation of policies and guidelines that are aimed at addressing FWA committed by their members;
- 16.4.7 They commit to assisting Regulators and medical schemes towards moving to a member-centric Fee-for-Value model of healthcare treatment and reimbursement, with the aim to eliminate the inherent conflicts of interest that arise from the current Fee-for-Service funding model.

**Enforceability of the Charter**

17. Participation in this Charter shall be voluntary. However, by signing the Charter, the signatories undertake to adhere to the principles and duties contained therein. Acting in contravention of the principles and duties contained in this Charter shall lead to the removal of the affected signatory, subject to the consent of the other signatories on a two-thirds basis; and they shall not be afforded the benefits and assistance which emanate from the Charter when involved in a matter concerning FWA;

The Council for Medical Schemes shall be the custodian of the Charter and shall be responsible for updating and removing Signatories who are not aligning themselves with the Charter as and when required, following a consultative process with the other Signatories of the Charter. They shall also be responsible for facilitating an industry review of this Charter at least once every two (2) years.

**Undertaking of Signatories**

We, the Signatories to this Industry Charter to address Fraud, Waste and Abuse in private healthcare, hereby acknowledge our responsibility to contribute to bringing Universal Health Coverage to all the citizens of South Africa. We commit to honouring the duties imposed on our organisations within this Charter, and to consistently strive to do all within our powers to progressively improve the quality and reduce the cost of healthcare in South Africa.

Signed on this the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_

Signed

Name: .....

Organisation: .....

\_\_\_\_\_

Signed

Name: .....

Organisation: .....