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The Compensation Fund
167 Thabo Sehume Street
Pretoria
0157

Attention: Mr William Mogashoa

Email: William.mogashoa@labour.gov.za
Harry.maphologela@labour.gov.za

Dear Sirs,

SAICA SUBMISSION ON THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES AMENDMENT BILL

The South African Institute of Chartered Accountants (SAICA) is the home of chartered accountants in South Africa – we currently have over 44,000 members from various constituencies, including members in public practice ($\pm 30\%$), members in business ($\pm 50\%$), in the public sector ($\pm 5\%$), education ($\pm 2\%$) and other members ($\pm 13\%$). In meeting our objectives, our long-term professional interests are always in line with the public interest and responsible leadership. SAICA is currently the only professional accountancy organisation that has been accredited by the Audit Regulator in South Africa, the Independent Regulatory Board for Auditors (IRBA).

We welcome the opportunity to comment on the Compensation for Occupational Injuries and Diseases Amendment Bill.

Please do not hesitate to contact us should you wish to discuss any of our comments. You are welcome to contact Juanita Steenekamp (juanitas@saica.co.za) or Viola Sigauke (Violas@saica.co.za).

Yours sincerely,

Viola Sigauke (CA(SA))
Project Manager: Governance

Juanita Steenekamp (CA (SA))
Project Director – Governance and Non-IFRS Reporting



General comment

Definition of employee – SAICA members previously raised issues with regards to the employment of foreigners. Requests were received on whether a company or close corporation that employs foreigners with refugee status or work permits must also register these employees with the Commission as they do not have a passport or identify number. We would request that clarification on this be considered as well as whether these employees could claim compensation.

Amendment of Section 73

36. Section 73 of the principal Act is hereby amended –

(a) by the addition of the following subsections:

“(3) Notwithstanding the provision of subsection (2) the medical practitioner may after the claim has been finalised or the period referred to in subsection (1) has lapsed, apply for reopening of the claim of further medical costs.

(4) Cession or relinquishment of medical claim void, - any provision of an agreement existing at the commencement of this Act or concluded there after in terms of which a service provider cedes or purports to cede or relinquishes or purports to relinquish any rights to medical claim (sic) in terms of this Act, shall be void.

Cession of claims is a common law principle which has been used in South Africa in various commercial areas. This has not just been used by the medical profession.

The South African Society of Physiotherapy has published guidelines on Cession of Accounts and Debt Collection, revised February 2015. In the Guideline it is stated that it would appear that the HPCSA is not against the cession of book debts to financial institutions, but that practitioners would remain personally and professional responsible and accountable to the HPCSA and their patients in respect of such accounts.

Registered credit providers, banks and other institutions regularly cede debtors books or claims in their normal business relationships. This cession assist in regularising cash flows and in some cases lessening the administrative and collection burden of these debtors.

The proposal also states that current agreements will be void which create a legal conundrum as medical service providers and these credit providers have entered into agreements which might now no longer be valid. This would create other legal issues such as facilities being withdrawn and medical service providers being in breach of their contract.

The Compensation Fund representatives mentioned at the roadshows that were held during November / December 2018 that claims will be paid quicker and therefore the third parties are no



longer required. The Compensation Fund seems to be of the impression that the cession of debtor's books came about due to their inability to pay claims faster and more efficiently and therefore they now want these cessions to be removed based on their planning to pay claims faster.

The cession of debtors books did not come about only due to the Fund's inability to pay claims within a reasonable period but in some cases it is a business decision where medical service providers have ceded the claims as part of their business model as the debtors' books are in many cases the largest liquid asset that the medical practitioner has when applying for finance.

In the past the Compensation Fund has only paid service providers in excess of 180 days of the service being provided. Smaller practices cannot continue to survive on fees that are only paid in excess of 6 months after the service was provided and the Fund's promise to pay faster will not assist in current agreements as well as where the decision to cede the claims was part of a business decision.

There are many medical service provider clients which operate within this segment who have freely chosen to finance their businesses through the cession of the debtors' book and who are now going to be prejudiced by this amendment, which we do not believe it to be fair.

While we acknowledge the Fund's endeavours to decrease their payment turnaround time we do not believe that it is their decision to determine how a medical service provider operates or funds his / her / their private practice. In a similar vein, we have many medical service provider clients, who factor and cede their medical aid accounts, which include accounts for schemes like Discovery Health and Bonitas, which pay well within 30 days.

SAICA is completely in agreement that a "benefit" from the Compensation Fund in terms of COIDA should not be capable of being ceded i.e. the injured workers' should be protected and receive the benefits to which they are legally entitled, irrespective if they were assisted to submit and receive their compensation claim or not.

It should also be noted that a medical service provider is not a beneficiary of COIDA or the Compensation Fund and is in fact rendering private medical services to a patient in terms of a contract of service, which in terms of a law (COIDA), the Compensation Fund has agreed to stand-in as the insurer / payor taking into account legislated tariffs. The patient (injured worker) remains the beneficiary of the services and receives the "benefits" associated with COIDA. The medical service provider is in no way a beneficiary of COIDA but rather or in effect an outsourced provider of services (medical) for the Fund.

As this has only been included as one paragraph in the Bill we are unsure with regards to the objective and purpose to this amendment and what specific problems or challenges the Bill is intending to address. We would encourage the Compensation Commission to first meet with the various role players in this field as well as representatives of the Banking Council of South Africa to discuss the impact the proposal will have and whether there are other unintended consequences that should be considered.