PSG Employee Benefits Linking your healthcare options

NEWSFLASH

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'Health is like money, we never have a true idea of its value until we lose it'

Josh Billings

PSG Konsult Corporate 'PSGK Corporate' is part of the PSG Konsult Group - one of the largest independent financial services providers in South Africa today and focused on serving the SME, institutional and public sector markets.

NHI Nowhere near ready for Roll-Out

THE patchy progress of the government's National Health Insurance (NHI) pilot project is hardly surprising. The aim of a pilot project is, after all, to test the waters to establish where the strengths and weaknesses of a new system might lie. So, the fact that a third of the 11 districts involved in the experiment had barely spent half of their allocated budgets a year after the project was launched means little in itself. The slow spending merely highlights weaknesses in the public health system that are already well-known, specifically the dire shortage of skills. This is reflected not only in the underspending, and the fact that only a third of the 556 primary healthcare facilities that were assessed in the pilot districts were ready to start contracting service s from private sector general practitioners (GPs), as a government-commissioned review of the project pointed out to Parliament earlier this week. It is also reflected in the districts that overspent - for instance, Pixley ka Seme in the Northern Cape spent 114 percent of its budget yet scored the lowest out of all of the district hospitals assessed, with only half of its healthcare facilities meeting departmental standards. The parliamentary portfolio committee on health expressed surprise that a district could use up its entire conditional grant - and more - without refurbishing a single hospital. And well they might. The appointment of district health authorities, which form part of the NHI pilot plan, may have helped reinforce the rickety management structures and shortage of qualified and experienced managers that plagues the public health system in SA. But not one of the pilots has managed to do this yet, and only four of the districts have appointed project managers. Wits University health economist Prof Alex van der Heever says that even if the authorities and project managers were appointed on time and a concerted effort was made to find people with the right skills, the projects would not be much use as pilots because they are not testing other crucial requirements of a universal healthcare system, especially the governance model that will be followed, where appropriately qualified medical personnel will be found, and how private and public health services will be integrated. Health director-general Precious Matsoso told the committee her department was struggling to attract medical professionals - one district hospital that forms part of the pilot programme has less than a third of the required number of doctors and nurses - and anaesthetists were in especially short supply. This, too, is nothing new, although the refurbishment of state facilities and general improvement of working conditions was supposed to help remedy the problem. However, it relates to another key obstacle to a successful NHI roll-out the integration of private and public health facilities. About 300 GPs in private practice have been contracted to work with the NHI projects, but only 125

NHI Nowhere near ready for Roll Out (Contd.)

can be placed because so few of the facilities are ready to accommodate them. This would not have been an issue if the model allowed for contracted GPs to see state patients at their own rooms, but this was inexplicably ruled out from the start. The roll-out of the NHI proper was supposed to begin next year, but this is clearly a pipe dream - the critical issues outlined above will have to be addressed first, and Matsoso indicated that the funding model will be piloted only next year. What form that may take is anybody's guess. The Actuarial Society of SA has estimated, based on present private sector spending patterns, that NHI will cost as much as R336bn to implement, and the government's tardiness in releasing its white paper would indicate that affordability is an obstacle that is not going to be easy to get around.

Source: *Editorial Comment: Business Day, 26 July 2013*

Hospital Exemption Clauses: Enforceable or not?

You have been the unfortunate victim of the negligence of a hospital employee. As a result, you have suffered personal injury and are now faced with major future medical bills. You approach the hospital with your claim, only to be made aware that you have signed an exemption of liability clause which indemnifies the hospital in the event of injury or death, including arising from negligence. You realise that all those documents and admission forms that you blindly signed upon arrival, contains a clause that indemnifies the hospital, its employees and agents of all liability for any claim for damages or loss that is caused directly or indirectly.

What does the signing of this clause mean? Is the clause valid and enforceable? Can you not under any circumstances institute a valid claim against the hospital?

Until recently, the answers to these questions were not in favour of the health care user. A decade ago our Supreme Court of Appeal held that these clauses were fully enforceable, often leaving the health care user in a very unfortunate position. Health care users often do not read or comprehend the fine print and those that do note the exemption clauses, may on occasion find themselves in an uneven bargaining position where they have no choice but to accept the clause. Exemption clauses were held only to be unenforceable in cases of proven gross negligence.

However, with the enactment of the Consumer Protection Act, a potential new avenue of relief has been created for health care users as the Act requires a fresh look at some of the unreasonable consequences of these blanket exemption clauses.

The Consumer Protection Act states that a supplier (in this context, the hospital) may not require a consumer (the patient) to:

- waive any rights;
- assume any obligations; or
- waive any liability of the supplier

on terms that are unfair, unreasonable or unjust, or impose any such terms as a condition of entering into a transaction.

Furthermore, the Act prohibits a supplier to make a transaction or agreement subject to any term or condition if it directly or indirectly purports to avoid a supplier's obligation or duty in terms of the Act. The Act places a duty on the supplier to perform services in a manner and quality that persons are generally entitled to expect.

This means that the hospital cannot require you to waive liability or your rights in circumstances where such waiver would be unfair, unreasonable or unjust. The Act goes further to describe when an agreement, term or condition (such as an exemption clause) would be unfair, unreasonable or unjust.

This will be the case if –

- It is excessively one-sided in favour of any person other than the consumer;
- The terms of the transaction or agreement are so adverse to the consumer as to be inequitable;
- The consumer relied upon a false, misleading or deceptive representation or a statement of opinion provided by or on behalf of the supplier, to the detriment of the consumer; or

Hospital Exemption Clauses: Enforceable or not? (Contd.)

- The transaction or agreement was subject to a notice, term or condition, and –
    - The term, condition or notice is unfair, unreasonable, unjust or unconscionable; or
    - The fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer in a manner that satisfied the applicable requirements.

In our scenario, the clause in the agreement that you signed could be prohibited or declared invalid in terms of the Consumer Protection Act, provided the above conditions are met. The court has the power to declare such a clause unconscionable, unjust, unreasonable or unfair and may further make an order to compensate the consumer for losses or expenses.

The Act also requires that all clauses such as exemption clauses be written in plain and understandable language and the supplier is obliged to draw your attention to such clause before you sign it, as well as give you an adequate opportunity to receive and comprehend the provision.

The Act does not prohibit the use of exemption clauses and such clauses will still be encountered and be enforceable in everyday life. However, the Consumer Protection Act now regulates the use of these clauses and restricts their blanket application and the protection they afford by requiring these clauses to be reasonable under the circumstances.

Accordingly, if you have suffered injury due to the negligence of health care providers, consult with your attorney as soon as possible to assist you with the following:

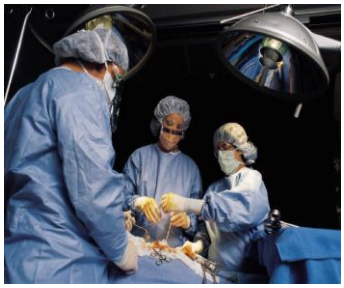
- Obtain copies of your medical records by way of prescribed procedure for access to information.
- Determine whether an exemption clauses was signed, and if so, whether the exemption clause was correctly pointed out, and whether the clause in itself is unfair, unreasonable or unjust.
- In the event of the clause potentially being unfair, unreasonable or unjust, to advise you on the merits of pursuing a claim for injury or damages.

Make sure that you seek legal advice as soon as possible and remember that the date of the incident is very important. A claim must under normal circumstances be instituted within three years. However, as the effects of your injury may only be discovered at a much later stage, the three year period can in certain circumstances be extended. Additionally, the Consumer Protection Act in certain instances does not apply retrospectively and if the contract was signed before 1 April 2011, the exemption clause might still be enforceable. Finally, bear in mind that even after the exemption clause has been declared invalid, the negligence of the health care provider must be proven to succeed with a successful claim, and the advice of your legal professional as to the merits of your case will be important to determine whether you have a valid claim.

Source: Oosthuizen, Marais & Pretorius Inc. Newsletter 6-2013 Posted on 25 June 2013

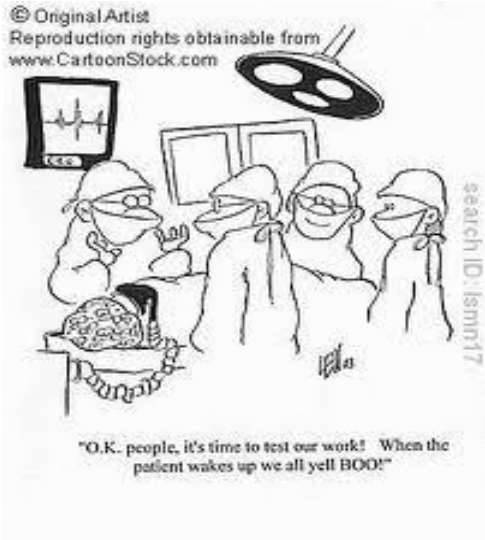
Sick South Africans Bleed Medical Aids Dry

A 60-YEAR-old man spent 156 days on a hospital ventilator at a cost to the Discovery Health Medical Scheme of more than R3.5-million. A 70-year-old patient's use of assisted-breathing machines cost the scheme R3.2-million for 118 days of treatment. About 10 percent of the members of medical aid schemes account for half of the schemes' annual costs, according to Discovery. Ventilation is one of the highest costs to medical aids. Other high costs include those for the treatment of heart problems, for cancer drugs, for intensive care for infants, and for Caesarian sections. A growing concern is that the number of people that cost schemes R500 000 or more has grown. Jonathan Broomberg, CEO of Discovery Health, said that in 2002, 13 of every 10 000 claimants were claiming more than R500 000. By 2012, this had increased to 28 of every 10 000 claimants, an increase of about 115 percent. He said there was a steep increase in the number of high-cost patients, which adversely affected the scheme's ability to keep contribution increases to a minimum. Six of the 70 000 people on Resolution Health's books have claimed more than R500 000 this year, according to principal officer Mark Arnold. Because only a few members use most of the benefits, the young and healthy often feel that medical aids offer poor value for money. Graham Anderson, principal officer of Profmed, said more people were being treated in hospital. A study by Econex, a research consultancy, last year



Sick South Africans bleed medical aids dry (Contd.)

increased use of hospitals was leading to rising medical costs. South Africa has a huge disease burden - the highest number of people living with HIV in the world, and a growing number of people with lifestyle diseases such as heart disease, stroke and diabetes, said Anderson. The biggest costs to medical aids are: Cancer drugs: Resolution Health's Mark Arnold said of the R4.5-million a month his scheme spent on medication, R1-million was for cancer medicines; Caesarian sections: These accounted for most of the admissions to hospital for Discovery last year; High blood pressure is the most common chronic disease among members of Resolution Health and Discovery; and, Hospitalisation: Medical aids spend more on hospital costs than on GPs, specialists, drugs, or dentists.



The top costs to Discovery last year

Heart and lung transplants cost on average R1.7-million a patient; long-term ventilation, which cost an average of R641 670; kidney and pancreas transplants - R515 901; major operations on premature babies - R506 181; and hospital stays of premature babies - R320 606

Monthly cost drivers

In March, Caesarian sections were the most common reason for hospital admissions of Discovery members - 2 797

Chronic conditions most paid out for

244 826 have high blood pressure; 135 830 have high cholesterol; 79 745 have asthma; 57 166 have Type 2 diabetes; 28 711 have HIV; 23 057 have Type 1 diabetes; 20 327 have bipolar mood disorder or other psychiatric condition; 23 34 have chronic renal failure; and, 999 have multiple sclerosis.

Source: Katharine Child: The Times, 4 July 2013

Nelson Mandela International Day – 18 July

Nhluvuko Risk Administration, the administrator responsible for the gap, health insurance and family protector products marketed via PSG Employee Benefits, devoted their time on the 18th July (Mandela Day) by providing a meal and snacks to St Theresa's Home for the orphaned and vulnerable boys which was greatly appreciated.

GM, Jonie Swanepoel and NRA team with their donation

Jonie Swanepoel and Service Manager, Arlene George with some of the boys from St Theresa's Home boys holding NRA's donation

Contact your PSG Employee Benefits advisor for more information on any of the topics contained in this newsflash