

COIDA amendment will negatively impact access to quality healthcare for injured workers and medical service providers

Injured Workers' Action Group (IWAG)

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BACKGROUND

COIDA and the Compensation Fund – protecting workers injured on duty

The Compensation for Occupational Injuries and Diseases (COID) Act, No. 130 of 1993 “provides for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases”.

The Compensation Fund is a critical component of the South African Government's social security framework, which is responsible for the welfare of the country's most vulnerable citizens. In terms of the COID Act, employers must register with the Compensation Fund and pay an annual levy to the Fund (based on a percentage of annual salary and wages paid, and the risks associated with the type of work being done). The COID Act entitles employees who are injured on duty to access necessary specialised private medical care, including private hospitals, doctors, physiotherapists, chiropractors, etc. The medical service provider (MSP) caring for the injured worker is prohibited from claiming from the employer and/or the employee if it is a valid injury on duty (IOD), and may only claim the fee for services rendered from the Compensation Fund (and in accordance with annually Government-gazetted tariffs and regulations).

INCLUSION OF DOMESTIC WORKERS

On 19 November 2020, in a landmark judgment, the Constitutional Court ruled that employees who performed domestic work in the home of their employer and who suffered an injury or occupational disease while on duty would be included as beneficiaries of the Fund. Prior to this judgment, domestic workers were excluded from the provisions and benefits of the Fund. The Amendment Bill includes provisions to give effect to the Court's ruling in respect of domestic workers.

Approximately 400 000 employers in South Africa contribute R8.5 billion annually towards the Fund, which is mandated by law to cover the medical, rehabilitation and disability expenses of the country's IOD workers as well as disability payments, funeral and fatality benefits.

On average, more than 500 workers in South Africa are injured on duty every working day. In addition to these claims, there are claims for total temporary disablement (TTD), which refers to workers who are off sick for more than three days, as well as workers who are permanently disabled (permanent disablement or PD).

Employers can claim 75% of the injured worker's salary/wage, paid while on sick leave, back from the Compensation Fund.

All medical services rendered to injured workers are delivered in good faith by the medical fraternity as most services are delivered in a trauma environment long before a new IOD claim has been registered or accepted by the Compensation Fund. Only after a protracted process of registering an employer on the Compensation Fund's online system, logging a new IOD incident online, waiting for a claim to be registered by the Compensation Fund, and waiting for the claim to be adjudicated (several months later), can an MSP submit his/her invoice(s) to the Compensation Fund for services rendered.

CURRENT STATE OF THE COMPENSATION FUND

While the Compensation Fund has assets of over R60 billion, and more than R26 billion in reserves, both employers and MSPs find it extremely difficult to access the Fund's systems. It is widely recognised that the Fund is dysfunctional. In October 2019, in an effort to simplify and expedite its claims process, the Fund replaced its previous IT system with a new SAP-based IT system called CompEasy, at a cost of R285 million. This is the fifth IT system that the Fund has invested hundreds of millions in over the past 20 years. However, the new system is equally dysfunctional, continuing the delays in the registration and adjudication of claims, and payments to MSPs. The failure of the Fund's new system is such that, in a recent IWAG survey of employers, only 31% were able to successfully report an IOD incident.

THIRD-PARTY ADMINISTRATORS

Not only is its IT system, the backbone of its claims process, unworkable, but if MSPs do manage to successfully lodge a claim, they often wait up to two years for payment. Consequently, MSPs have, for more than 20 years, used the services of third-party administrators to help them navigate the Fund's complex and defective systems to secure payment for medical services rendered to injured workers. These third parties play a critical role in ensuring medical service providers are paid timeously for their invoices, while removing the cumbersome and time-consuming administrative, financial and legal burden on healthcare professionals, so that they are able to focus on their primary role of caring for patients. Third-party administrators also play a critical role in streamlining

the process for the Fund, both by adding a layer of governance through the pre-vetting of claims and alleviating significant administrative burden for the Fund.

Workplace-acquired COVID-19 cases are adding pressure on the Fund. However, even before the advent of COVID-19, the Fund was failing miserably to register and adjudicate claims as well as to process and pay medical invoices. IWAG believes one cannot underestimate the far-reaching devastation that the Fund's failure continues to cause for the lives and livelihoods of the injured, mostly blue-collar workers of this country and their families.

HOW THE CLAIMS PROCESS WORKS

1. An employee is injured while performing his/her duties at work. Given that the employer contributes to the Compensation Fund, the employee is able to access the necessary specialised private medical care, including private hospitals, doctors, physiotherapists, chiropractors, etc.
2. The MSP caring for the injured worker must then claim the fee for services rendered directly from the Compensation Fund. However, because of the substantial administrative burden, complexity of claims, the defective state of the Fund's IT systems, and delayed payments, many MSPs choose to cede their claims to third-party administrators in return for immediate payment. The administrators levy a fee against the invoice in exchange for taking over the administrative duties associated with claims resolution.
3. Once the third-party administrators are satisfied that the claims comply with all the rules and regulations mandated by the Government-gazetted tariffs and regulations applicable at the time of delivering the service, they then settle the MSP's claims immediately. This allows MSPs to sustain the cash flow needed for working capital.
4. Third-party administrators assist many employers or MSPs to register themselves and to report the incident on the Fund's IT system. The Fund then registers the claim and issues a claim number, after which the Fund embarks on an adjudication process to verify the legitimacy and validity of the claim.
5. MSPs are obliged to submit their medical reports in prescribed format to the Fund only after a claim number has been issued.
6. Only after a protracted period are MSPs informed that a claim has been accepted by the Fund and that they can submit their invoices to be evaluated for services rendered months ago in good faith.
7. Then follows a further period of securing reimbursement and, where necessary, pursuing any legal actions that may be required to secure payment from the Fund.

COIDA AMENDMENT BILL

On Sunday 17 January 2021, the Parliamentary Portfolio Committee on Employment and Labour issued a public call for submissions on the proposed Compensation for Occupational Diseases and Injuries Act (COIDA) Amendment Bill [B21-2020]. While it is encouraging that, under the Bill, domestic workers will be included as beneficiaries for the first time, the Bill also contains a proposed Amendment (Section 43) that will have a catastrophic impact on injured workers, and the doctors, surgeons, private hospitals, physiotherapists and other healthcare professionals that provide their treatment.

Specifically, Section 73 of the principal Act is amended by the addition of the following sub-section, which appears as Section 43 (4) of the Amendment Bill: "any provision of any

agreement existing at the commencement of this Act, or concluded thereafter, in terms of which a service provider cedes or purports to cede, or relinquishes or purports to relinquish, any rights to medical claim in terms of this Act, shall be void."

Section 43 thus prohibits the cession of medical invoices by MSPs to any financial institutions and third-party administrators as collateral for much-needed working capital, equipment finance or other operation lending. This means that MSPs will no longer be pre-funded by third-party administrators and will, if Section 43 is promulgated, have to wait up to two years for their medical accounts to be settled by the Fund, impacting both cash flow and working capital. For those MSPs not utilising a third-party administrator, it also means that commercial banks will no longer be allowed to accept a medical practice's debtors book as collateral for an overdraft facility to fund cash flow for working capital. This has a significant impact on their ability to sustain their practices, which will have the unintended consequence of disincentivising them from treating IOD patients.

The Injured Workers' Action Group (IWAG) believes it is incomprehensible that the Department of Employment and Labour would seek to remove a key part of the Fund's value chain that is actually working. IWAG spokesperson, Mr Tim Hughes, says, "We cannot see any justification for the introduction of Section 43. Neither the Minister nor the Department of Employment and Labour, much less the Compensation Fund, have provided any reasonable rationale for the amendment. Given that MSPs, who treat IOD patients in good faith, will not be able to cede their invoices to financial institutions or third-party administrators for early payment or access to overdrafts, there is a real risk that their practices will be forced into financial distress or collapse if Section 43 is adopted."

"More concerning is that, because of the financial risk, the introduction of Section 43 will discourage many healthcare providers from treating workers who are injured on duty, thereby significantly reducing the pool of care and placing additional pressure on an already strained public healthcare system. Consequently, IWAG is calling for the removal of Section 43 from the Amendment Bill."

Dr Angelique Coetzee, chairperson of the SA Medical Association, says, "SAMA believes that the amendment should be removed from the Bill. The extent of the pressure and burden faced by our country's MSPs has been exposed over the past year as they battle to save lives and treat the millions of patients infected by COVID-19. Many of these patients have been infected while at work, which means their treatment is covered by the provisions of the COIDA Act. It's clear that medical service providers have less time than ever to manage the administrative processes required to secure payment from the Fund. Without third-party administrators, MSPs will need to carve out hours in their frantic days in an attempt to submit claims on a system that just doesn't work."

Ms Pinky Mashiane, president of the United Domestic Workers of South Africa Union (UDWOSA), says, "As domestic workers, we have fought for many years for the right to access quality medical care under the Compensation Fund, and are very pleased that Government is introducing legislation that will make this a reality for our vulnerable and often overlooked sector. However, our inclusion will only have value if the system works. If Government removes the areas of the Fund that actually function, they will effectively be undermining the level of care that domestic workers are being promised, and remove the true benefits of being a beneficiary. It is for this reason that we are opposed to the inclusion of Section 43 of the Amendment Bill."

Hughes says, “While Government must be congratulated for including domestic workers as beneficiaries of the Fund, stakeholders are deeply concerned that the dysfunctional state of the Fund will make it impossible for this most vulnerable segment of our society to receive equitable access to quality care. We believe one cannot underestimate the far-reaching devastation that the Fund’s failure continues to cause for the lives and livelihoods of the injured, mostly blue-collar workers of this country and their families. We therefore call on all affected parties to raise their concerns in a submission to the Parliamentary Portfolio Committee on Employment and Labour.”

It is clear that this amendment will undermine the intention of the Act, which is to provide access to quality healthcare for injured workers, who are some of the most vulnerable citizens in society.

WHY SECTION 43 OF THE COID AMENDMENT BILL IS PROBLEMATIC FOR VULNERABLE WORKERS AND MSPS

No reasonable rationale for amending the Act

- If a government proposes changing a law, it requires a reasonable rationale to do so. Neither the Minister nor the Department of Employment and Labour, much less the Compensation Fund, have provided any reasonable rationale or justification, in any presentation or Memorandum on the Objects to the Act, for the amendment.
- The ban on cessions by MSPs is not addressed in a substantive manner in the Socio-Economic Impact Assessment (SEIA) of the Amendment Bill conducted by Government. IWAG believes this SEIA, which was hastily compiled in two months, contains limited exploration of the unintended consequences of the amendment. Equally concerning is that no stakeholders in the private healthcare sector were canvassed for their input on the proposed Amendment Bill.
- The SEIA contains a vague reference to reducing fraud and corruption by third parties; however, there is no evidence or history of any such activity by third parties. In fact, third parties eliminate the possibility of fraud and corruption in the claims process, evidenced by a 0.04% administrative rejection rate and a 0% fraud rate (statistics as per largest third-party administrator in SA).

A blunt instrument aimed at destroying an element of the Compensation Fund that works

- Intermediaries exist because of the inefficiency and dysfunction of the Fund in carrying out its mandate.
- Third-party cession, debtors as collateral, factoring of invoices, and administration outsourcing are not unique to COID and exist effectively and efficiently within the medical aid industry, private insurance (demarcation products), commercial banks, and private healthcare sub-sectors.
- Instead of eliminating what works for MSPs and IODs, i.e. third-party administrator services, the Department of Employment and Labour should focus on fixing what does not work, i.e. the Fund’s claims and administrative capabilities, and its ability to pay claims efficiently and on time.

Section 43 undermines sustainability of MSPs

- Third-party administrators help to alleviate the burden on MSPs of the extremely cumbersome and time-intensive administration claims process. It is not simply a matter of submitting an invoice. The Fund requires a plethora of supporting documentation to establish the legitimacy of a claim. By taking over this process,

third-party administrators ensure MSPs have more time to focus on their core mandate of saving lives and providing access to quality healthcare to IOD patients.

- Access to early finance (factoring) and resolution of claims by third-party administrators also supports MSPs’ financial sustainability, and their ability to continue to provide treatment to injured workers. MSPs need invoices to be paid timeously to secure the cash flow needed to run their practices, pay staff, and service other overhead costs associated with their practices.
- The dysfunctionality of the Fund means that claimants often need to resort to legal action to resolve payments. By ceding their claims to third-party administrators, MSPs are also relieved of the time consuming, resource intensive and expensive legal process often required to secure payment from the Fund. All engagements, follow-up interventions and legal processes are managed by the third-party administrators once the claim is ceded to them and factored by them.
- The amendments would result in the MSPs’ practices being unable to raise capital on the strength of the growing outstanding COID debtors’ book, despite an ongoing requirement for working capital to fund operational or other requirements.
- It is important to note that all fees payable by MSPs to third parties, whether for administration or factoring services rendered, does not increase the cost of medical treatment to the Compensation Fund by even one cent, as it is paid out of the normal gazetted tariffs and not over and above the gazetted tariffs.

Amendment will undermine ability of IOD patients to access quality healthcare and treatment

- The transfer of the administrative and financial risk back to MSPs will discourage many healthcare providers from treating IOD patients, thereby significantly reducing the pool of care, and placing additional pressure on an already strained public healthcare system, which is struggling with the additional burden of the COVID-19 pandemic.
- This will impact the care that IOD patients receive, and effectively undermine the purpose and objective of the COID Act, i.e. to get injured workers back to work.
- Ultimately, intermediaries are there to protect vulnerable employees’ ability and their right to treatment for injuries sustained at work. This amendment will effectively remove third parties and pass the burden of risk from the Fund to MSPs and, ultimately, to vulnerable workers.

Increase burden on legal system, both for MSPs and the State

- Third-party administrators are able to expedite and minimise the costs of legal claims against the Fund, as they manage numerous claims at once.
- Without them taking on this role, MSPs would be isolated in their claims, having to fight the Fund in court for individual claims, taking up many hours of valuable consulting and treatment time, creating substantial legal bills, and placing greater strain on our already overburdened legal system.

Domestic workers

- The belated but important inclusion of over one million domestic workers as beneficiaries of the Fund is good news, but it is unclear as to how the levy payment, assessment and payments processes will work.

- The current processes and procedures of the Fund are not suitable to manage the domestic sector and employers need the correct information and representation.
- What is clear is that it will increase the pool of IOD patients needing medical care from MSPs.
- If the amendment is promulgated, MSPs, who will have a greater number of IOD patients to treat, will have less time to do so, as their administrative burden will also increase through the prohibition of cessations.
- Given the dysfunctionality of the Fund's administrative, management and technical systems, MSPs treating these patients will inevitably wait many months, if not years, for payment from the Fund. This places significant financial pressure on MSPs, placing their practices at risk.
- It also has the unintended consequence of disincentivising MSPs from treating these patients as the burden of risk increases. Injured workers cannot wait for a claim to be approved before going for medical treatment, nor can the MSPs wait months and years before their invoices are paid.
- Domestic workers injured on duty will have no choice but to continue to use public health services, which, as we know, are struggling.

Is it possible that the real reason for Section 43 is to eliminate a party that holds the Fund to account?

- Over the years, third-party administrators have been forced to take the Fund to court to settle outstanding claims, which the Fund consistently loses. This has contributed to a difficult relationship between the parties.

- Legal challenges are important as they create pressure on the Fund to fulfil its constitutional mandate and legal obligations. Without this pressure, there is a chance that the Fund could become even more dysfunctional, depriving MSPs of funds for services rendered and undermining IOD patients' legal rights to care.

The comment period for the proposed COIDA Amendment Bill is open until 19 February 2021. Submissions should be directed to the Portfolio Committee on Employment and Labour, for the attention of Mr Zolani Sakasa.

Send your submission to zsakasa@parliament.gov.za

ABOUT IWAG

The Injured Workers' Action Group (IWAG) objective is to advocate for the efficient and effective functioning of the Compensation Fund. The Fund is a critical component of the South African Government's social security framework, which is responsible for the welfare of the country's most vulnerable citizens.

Members of IWAG include the SA Medical and Dental Practitioners Association, SA Private Ambulance and Emergency Services Association, Occupational Therapy Association, SA Society of Physiotherapy, the United Domestic Workers of South Africa union (UDWOSA) and entities that facilitate payments by the fund to practitioners and worker bodies.

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