



NATIONAL CONSUMER COMMISSION

## **COMMENTS ON THE HPCSA GUIDELINE TARIFFS**

### **1. INTRODUCTION**

The Health Professions Council of South Africa (HPCSA) is a statutory body, established in terms of the Health Professions Act, 1974. The HPCSA is empowered in terms of section 53 (3)(d) of the Health Professions Act to determine and publish fees to be used as a norm in the determination of complaints of overcharging. The ruling by the High Court to set aside the reference price list (RPL) regulations has resulted in overcharging of patients by health professionals without any proper protection. Various stakeholders have engaged in discussions to explore a process of determining tariffs through multilateral tariff negotiations. This process resulted in the HPCSA Guideline tariffs which are the subject matter of this document.

The purpose of this document is to present the National Consumer Commission's comments on the HPCSA Guideline tariffs. Section 53(3)(d) of the Health Professions Act is in line with section 48(1)(a)(i) of the Consumer Protection Act (CPA) which states that a supplier must not offer to supply, supply or enter into an agreement to supply, any goods or services- (i) At a price that is unfair, unreasonable or unjust.

## **2. HISTORY OF HEALTH TAIFFS IN SOUTH AFRICA**

The Department of Health (DoH) published the National Health Price List (NHRPL) in 2006 and this list was also adopted by HPCSA as the Ethical Tariff. The DoH later changed the NHRPL to reference price list (RPL). The publication of this list was followed by the publication of regulations relating to the obtainment of information and the processes of determination and publication of the NHRPL in 2007. In 2008, the HPCSA took a decision to scrap the Ethical Tariffs with effect from the date of publication Reference Price List (RPL) by the DoH. In 2010, the DoH RPL was reviewed, declared invalid and set aside by the High Court of South Africa (North Gauteng Division, Pretoria).

## **3. SHORTCOMINGS OF THE RPL**

After publication of this RPL and its regulations, the DoH quickly experienced problems regarding the conflicting roles that it was expected to play by various stakeholders. Some medical aid schemes used the RPL as a benchmark for their tariffs, while on the other hand some service providers used it as a cost-based system of administered prices. The biggest problem was with regard to the Competition Commission because the process of the RPL was viewed as a permission to collude in the setting of prices.

From the medical aid point of view, the RPL process ultimately could not achieve satisfactory prices as the costing analysis occurred without consideration of the budget constraints faced by different medical aid schemes and their members. Medical aid schemes consequently strongly objected to the publication of the benchmarks and argued that this would translate into higher fees. Generally, service providers objected going through the costly benchmarking exercise and viewed this exercise as an unnecessary burden.

#### **4. PROPOSED GUIDELINE TARIFFS FOR MEDICAL PRACTITIONERS AND DENTISTS**

In accordance with section 53(3)(d) of the Health Professions Act of 1974, the HPCSA published Guideline Tariffs on its website for public comments. The Guideline Tariffs are effectively the 2006 NHRPL plus 46.66% and the tariffs are effective from the date of the publication on the HPCSA website. According to the Guideline, patients need to take responsibility to familiarize themselves with the options and benefits from their medical aid schemes and the patients must further ask the practitioners what they will be charged upfront. It is also stated that members of the public can lodge complaints on overcharging or inaccurate accounts with the HPCSA for further investigation and determination. The Guideline also states that practitioners may charge more than the fee suggested in the Guideline Tariffs, however the practitioner must explain the difference and the patient must sign the consent form stating that he/she accepts to pay a higher charge. The Guideline Tariffs for 2012 will be reviewed regularly in determining the future Guideline Tariffs.

#### **5. COMMENTS BY THE NCC**

In this section we provide the following comments by the NCC based on what is stated in the Guideline Tariffs.

##### **COMMENT 1:**

**The NCC recommends that more clarity be provided in the Guidelines on the computation of the 46.66%.**

##### **COMMENT 2:**

**The NCC is of the view that it may be contrary to the CPA to expect patients to establish upfront from the practitioner the costs of the services. Section 23 of the CPA places the onus on the suppliers to disclose prices upfront. Furthermore**

**Section 6 of the National Health Act of 2003 states that all health practitioners are required to inform their patients of the cost of the services before the services are rendered.**

**COMMENT 3:**

**HPCSA also mentioned that the Guideline Tariffs for 2012 will be reviewed regularly in determining the future Guideline Tariffs. NCC submits that this is a vague statement; it does not give definite timeframes. We recommend that certainty is provided in so far as the review period is concerned.**

**COMMENT 4:**

**The NCC is aware that there is a full investigation on the costs of health services and products led by the Competition Commission. There is a concern that in light of this investigation, the tariff determination may be premature.**

**6. CONCLUSION**

In conclusion, the NCC would like to thank the HPCSA for the opportunity given to comment on the Guideline Tariffs. We would like to further engage with the HPCSA to discuss issues of common interest and the implementation of these Guideline Tariffs.