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Discovery Health Response to Section 59 Investigation Interim Report

On Friday 15 January, the full 300 plus page report of the Section 59 Investigation Panel's findings was made available to the CMS and the Steering Committee. The full report was not made available to the Discovery Health Medical Scheme (DHMS) and Discovery Health (DH) for review, in contravention of the terms of reference set out initially which specifically provided that parties would be given an opportunity to comment over 30 days. On Tuesday 19 January, the Section 59 Investigation Panel convened a media conference to announce the findings of the Interim Report, and simultaneously published the report on its website. DHMS and DH have not yet had sufficient time and access to be able to analyse the contents of the report. Now that the report is available, we will study the interim findings and recommendations of the Section 59 Investigation Panel in detail, and comment further within the six weeks set out for the schemes to do so. As senior leaders in the industry, we feel it is important that you are provided Discovery Health's initial view on the process to date and our thoughts regarding the interim report.

The Panel has concluded that there was unfair racial discrimination in the forensic investigations of Fraud, Waste and Billing Abuse (FWA) by the medical scheme industry. The Panel's finding is based on the fact that there is a higher proportion of Black African, Indian and Coloured healthcare professionals amongst those found to have breached industry rules in their billing, following detailed forensic investigations. Importantly, the Panel reached this conclusion despite the fact that there was no specific evidence of even a single case wherein the methodology or approach to the identification and investigation of the FWA matter has been found to be inappropriate. Furthermore, the Panel was clear in recognising that there is no evidence of deliberate, explicit racial bias in the methods and algorithms employed by schemes and their administrators used to identify and investigate FWA. Whilst we are pleased that the panel supports our strong view that our processes are robust and independent, nevertheless the panel reached the conclusion based on the proportionality of the racial distribution in the outcomes, and not on the actual underlying processes applied to the investigations. The implications of this are that it is difficult to rectify processes that were found to be sound, and that carry appropriate integrity. Specifically, at the media conference on 19 January, the Chairperson of the Panel confirmed that the Panel could find no racial bias or reason to have concern in Discovery's fraud algorithms, which the Chairperson pointed out were disclosed and transparently provided to the Panel. Regardless, whilst we don't accept any racial discrimination in our processes, we accept and respect the Panel's recommendations and will endeavour to work hard within the healthcare system to ensure that going forward, outcomes are more satisfactory, balanced and representative.

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Directors: Dr A Ntsaluba (Chairperson), A Gore* (Group CEO), Dr J Broomberg*, H L Bosman, Dr B A Brink, S E N De Bruyn, R Farber, H D Kallner*, F N Khanyile, N S Koopowitz*, Dr T V Maphai, H P Mayers, A Pollard*, B Swartzberg*, D M Viljoen*, S V Zilwa (*Executive).
Secretary: M J Botha

The Panel is recommending enhanced oversight, controls and frameworks from the Regulators involved, principally the CMS and the Health Professions Council of SA (HPCSA). We support this as we are strongly of the view that corruption, fraud, waste and billing abuse must be firmly rooted out of our society, requiring the joint commitment of all stakeholders. We are indeed strongly committed to being an integral and meaningful stakeholder in South Africa's broader conversations and changes to ensure fairness, transparency and equitability at all times. We will not shirk our responsibility to contribute to a system that is fully transformed and equitable.

DHMS and DH welcome the Panel's important finding that Section 59 of the Medical Schemes Act (the section which underpins medical schemes' ability to recover funds inappropriately dispersed) does not need to be amended. In this regard, the Panel has confirmed that our FWA processes are necessary and justifiable given the significant risk and implications of losses to Medical Scheme members. The Panel has recommended that the regulatory authorities, both the CMS and the Health Professions Council of SA (HPCSA), should provide clear guidance to industry stakeholders regarding the "rules of engagement" with regard to FWA processes, to address any differences in interpretation of the practical implementation of this section of the Act going forward. This endorsement and importance of Section 59 and the associated processes accords with the rigorous independent legal opinions, audits and reviews that DH has frequently commissioned around its own processes.

We also welcome the Panel's recommendations of actions that could be taken to strengthen FWA processes. Ensuring fairness, objectivity and transparency in these processes is essential. In the context of this support for the industry's interpretation of Section 59, and the recommendations to strengthen FWA processes, we are pleased to confirm that we now routinely ensure the participation of an independent observer at all healthcare provider hearings, to further ensure fairness. It was particularly rewarding to have heard the Panel's chairperson reflect on the concrete value of this improvement and others adopted by Discovery to strengthen its processes, in the media conference announcing the findings. We remain committed to continuous improvement, transparency and enhancement.

We will not be daunted in our efforts to ensure that the hard-earned funds belonging to the diverse membership of the medical schemes we administer, are protected from corrupt and dishonest practices. As a country and as an industry, the zero-tolerance approach to corruption, fraud, waste and abuse is essential to ensure sustainability, and to protect members' hard-earned money. This also safeguards the funds available to the vast majority of healthcare professionals who are skilled, honest and hardworking and committed to their patients. To this end, we remain committed to continue working constructively with the CMS to address the challenges faced by healthcare providers, whilst encouraging and rewarding ethical conduct.

While the impact of fraud, waste and abuse of medical scheme funds by healthcare providers must be managed, we are also concerned that this narrative could lead to the perception that these activities are “the norm.” It is critical that we point out that a small number of healthcare professionals, on the margin of the profession have been investigated and have had to refund medical schemes. The vast majority of healthcare professionals are focused entirely on delivering excellent care, demonstrating a committed and honest work ethic.

Promoting a diverse health profession that reflects the demographic profile of South Africa is fundamental to a sustainable and fair healthcare sector. DHMS and DH are committed to transformation in the healthcare sector and we are acutely aware of the complex challenges faced by healthcare professionals. Discovery Health has adopted a holistic approach to the sustainability of the sector by providing extensive support to healthcare practices through our healthcare provider relations team, through the Discovery Foundation and the Discovery Fund. Consequently, Discovery Health has made a significant contribution to the training of healthcare specialists, healthcare in rural areas and ongoing leading clinical research. We will continue with this commitment, unwavering in our support of healthcare professionals, and cognisant of the socio-economic and social factors in this regard, as mentioned by the Panel in the media conference.

We appreciate the Panel’s efforts to protect health professionals who are at the core of our national health system. Pursuant to South Africa’s history of a discriminatory past, in which members of our society were racially oppressed, this discourse could not be more important to the basic principles of fairness and equality in our diverse society. Discovery Health takes this matter extremely seriously, and supports every effort and improvement to enhance the rigour, and guarantee the fairness of every forensic process.

We are committed to work constructively with the CMS to implement the recommendations of the Section 59 Investigation Panel, as part of a broader industry-level initiative to enhance tools and processes to efficiently and fairly manage Fraud, Waste and Billing Abuse.

BACKGROUND TO THE SECTION 59 INVESTIGATION.

During May 2019, allegations of racial bias and discrimination in the management of fraud, waste and billing abuse (FWA) were made by groups of Black African, Indian and Coloured healthcare professionals, against the entire South African Medical Scheme and Medical Scheme Administration industry. Then Minister of Health, Dr Aaron Motsoaledi, instructed the Council for Medical Schemes (CMS) to investigate these allegations, who subsequently convened a panel to carry out the investigation. This Section 59 Investigation Panel is independent of the regulator, the CMS, and is constituted as an advisory panel to the CMS and the Minister of Health. The CMS then established an Industry Steering Committee, comprising a small closed group of industry representatives, and the Terms of Reference for the Panel’s work were collectively agreed. The Panel commenced its investigation and convened hearings wherein Discovery Health Medical Scheme (DHMS) and Discovery Health (DH), together with other industry role players, submitted extensive evidence, analysis and information.

Corruption, fraud, waste and billing abuse seriously undermine efforts to make medical insurance affordable for medical scheme members, and ultimately to extend lower cost options to a broader representative group of South Africans at all affordability levels. Another consequence of FWA is that it progressively impairs the ability of schemes to maintain appropriate levels of reimbursement for healthcare professionals. At the 2019 FWA Summit, the CMS stated that FWA claims may account for up to 15% of all claims paid out by medical schemes in South Africa, suggesting that as much as R22 billion to R28 billion of medical scheme members' money may be lost to fraudulent claims each year. DH's own data analysis indicates that the extent of FWA against its scheme clients' accounts for no less than 3% - 7.5% of claims annually. This equates to between R700m and R1.7bn being lost annually to FWA for DHMS alone. This is a very conservative estimate of the total amount actually being lost to FWA on an annual basis. These are members' funds, held in these not-for-profit medical schemes on behalf of their members. They are also the funds on which the huge majority of skilled, honest and committed healthcare professionals are dependent.

We will continue to update you following our detailed review and response to the full interim report.

In the interim should you have any concerns or queries please make contact with us via Dr Maurice Goodman on e-mail: mgoodman@discovery.co.za

Kind regards,



Dr Ryan Noach

Chief Executive Officer of Discovery Health