



Society of Radiographers of South Africa

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Director General of Health
Department of Health
Private Bag X828
Pretoria
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Attention: Dr Aquina Thulane (Technical specialists, health economists for NHI)
Email: Con@health.gov.za

Dear Dr A. Thulane

RE: GOVERNMENT GAZETTE NO. 44714, NOTICE 528, DATED 15 JUNE 2021/ NO. 44873, NOTICE 636 – REGULATIONS RELATING TO THE CERTIFICATE OF NEED FOR HEALTH ESTABLISHMENTS AND HEALTH AGENCIES

The Society of Radiographers of South Africa (SORSA) hereby submits substantiated comments pertaining to the above. We draw on provisions in the National Health Act 61 of 2003, the Bill of Rights as contained in the Constitution and the constitutional court judgement *President of the Republic of South Africa and Others v South African Dental Association and Another* [2015] ZACC 2.

SORSA supports the initiative to improve access to healthcare for all, especially those in underserved areas. However, we are of the view that the proposed regulations have gaps and do not adequately consider radiographers.

- Section 2 (2)(d),(e),(f) of the proposed regulations makes provisions of who can submit applications for a certificate of need (CoN). It is not clear whether radiographers and other healthcare professionals (e.g., physiotherapists, dietitians, occupational therapists, etc.) are covered under section 2 (2)(f) or whether these healthcare professionals are excluded from making an application for private practice and therefore a CoN. It is also not clear what the implications for radiographers, if excluded from the above subsections, would be in terms of practicing independently. Will they be required to work under supervision of the healthcare professionals contemplated in the draft regulations? Should the response be in the affirmative for the above concerns this would be in direct conflict of the current registrations for radiographers with the Health Professions Council of South Africa Professional Board of Radiography and Clinical Technology which permits independent practice for radiographers and for them to establish their own private practices. SORSA is also of the opinion that excluding radiographers from section 2 of the proposed regulations is in conflict of their human rights as citizens of South Africa and the rights of the communities they serve in terms

of section 18 (freedom of association), section 27 (health care, food, water and sanitation) and section 28 (children).

- SORSA is concerned as to why the draft proposal suddenly came to the fore after being dormant for approximately a decade. Has there been consultation with the relevant stakeholders and/or professional groups? It appears that the Director-General: Health and his/her team will decide which healthcare facilities are approved and the location of such facilities – should this not be a consultative process?
- The criteria that the Director-General and their team will use to evaluate applications are absent in the proposed regulations. In our opinion this is a major gap and not congruent with sections 36 and 39 of the National Health Act 61 of 2003. The criteria need to be made explicit in the regulations so that applicants have adequate knowledge as to the criteria that their applications must address.
- The draft regulations provides comprehensive provisions about the structural requirements of health establishments (section 5 and 8). But, the specific provisions that need to be in place for a radiography practice or department are absent. We believe the regulations must address the requirements recommended by the Directorate: Radiation Control. These recommendations can either be singled out or a more broad provision can be included to point out that profession specific structural requirements as contemplated by the relevant regulatory authorities must also be adhered to.
- According to the National health Act section 36 (1) it would appear without a CoN one would have to cease to practice within 24 months of effect of this section of the NHA and may also not own a practice. However, it is not clear from the proposed regulations whether the CoN regulations will apply to new applications or whether those that are already practicing also have to apply for a CoN. Have the implications on service delivery and the economy been considered should already practicing healthcare practitioners fail to obtain a CoN?
- In terms of section 38 (2) of the NHI Bill, it would appear that if a healthcare professional applies for a CoN they cannot practice without being accredited or contracted by the NHI Fund. If they are contracted they will not be able to opt out of rendering of services to the NHI Fund. This could have a double edged sword effect in terms of human rights violations of individual radiographers vs saturation of service providers with radiographers then being out of jobs potentially if they cannot open their own practice or get a post elsewhere.
- The draft regulations are silent on what the position is on a single healthcare practitioner owning more than one private practice. Is this permissible? Will they have to apply for a separate CoN for each branch of their private practice?
- Annexure A of the regulations will have to be amended to include all healthcare professionals covered by these regulations.

RECOMMENDATIONS

1. The list of healthcare professionals covered in section 2 of the draft regulations must be made more explicit. Annexure A will also need to be amended accordingly.
2. The criteria that will be used to evaluate the applications for a CoN must be made explicit.
3. The structural requirements must be expanded to include special considerations for specific professions as required by the relevant governmental authorities.

Yours Sincerely,



Dr Riaan van de Venter
SORSA President