

ACCESS TO HEALTH CARE



south african
**human
rights**
commission



BACKGROUND

The South African Human Rights Commission (SAHRC) is an independent institution established in terms of Chapter 9 of the Constitution of the Republic of South Africa, (the Constitution) to support constitutional democracy. The mandate of the SAHRC is to promote, protect and monitor the observance of human rights in the Republic. In line with its promotional mandate, the SAHRC must educate and raise awareness to promote respect for human rights and a culture of human rights. The SAHRC has developed this information sheet to provide the general public with basic information on the right to access health care.

THE RIGHT TO HAVE ACCESS TO HEALTH CARE

The right to have access to health care services is a basic human right guaranteed by the Constitution. Section 27 of the Constitution provides that everyone has the right to have access to health care services, including reproductive health care services and no one may be refused emergency medical treatment.

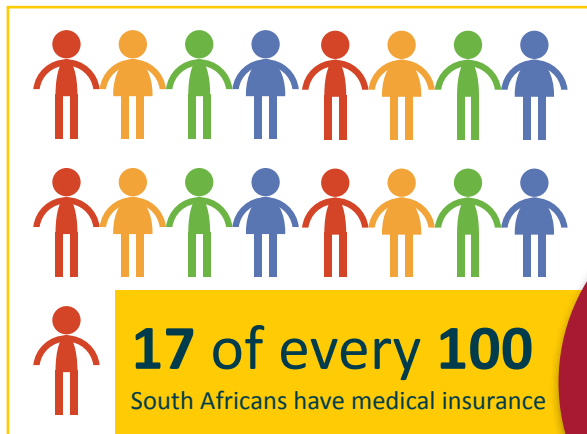
The Constitution and the National Health Act 61 of 2003 (as amended) envisage a single health system for South Africa. However, in addition to public health care a number of private health care service providers exist in country. The State uses a means test to determine who qualifies for access to free medical services. In addition, the Minister of Health may from time to time determine who is eligible for basic health care services. The right to access health care includes pregnant or lactating women and pregnant women who are eligible for termination of pregnancy services in accordance with the Choice of Termination of Pregnancy Act 92 of 1996. In addition, all children are entitled to access basic health care, which right is reinforced by the special protections for the rights of children entrenched in Section 28 of the Constitution. The right to health care can however be limited in certain instances, depending on the availability of resources. However, the right cannot be denied completely.





CURRENT STATUS OF ACCESS TO HEALTH CARE SERVICES IN SOUTH AFRICA

South Africa remains an unequal society, where the quality and type of services people receive tends to be influenced significantly by their socio-economic status and ability to access to services, regardless of the level of need for care. The majority of people in South Africa depend on public health care facilities to access their right to health care services. A small number of people are able to afford private medical care. In its **2016 General Household Survey** Statistics South Africa reported that only 17 of every 100 South Africans have medical insurance, and as many as 45 million or 82 out of every 100 South Africans fall outside the medical aid net and, are largely dependent on public health care. The number of people who depend on the public health system in South Africa is likely to be much higher as a number of people who are undocumented also rely primarily on the public health system to access health care services.



High demand on the public health care system impacts timeliness, range and quality of services provided to users. Private healthcare is administered by medical scheme providers which are costly and out of reach for the majority of people seeking access to health care services. An inquiry by the Competition Commission revealed that only 17% of the population, primarily in urban areas are able to afford private health care which is provided by approximately 5000 private practitioners. The services provided by the private sector therefore invariably meet standards characterised by high quality, timeliness, and ease of access for those who are able to afford the service.

The private sector health industry is however not without challenges which have implications for its users and providers. Many of these relate to a lack of competition in respect of pricing, and charges for treatments that may not always be necessary. In contrast the remaining 80% of the population are serviced by approximately 4000 public health facilities, which despite high levels of expertise, remain in a constant battle to adequately meet demands.



Some of the challenges experienced in respect of access to health care services are recorded in the reports by the **SAHRC** arising from its investigations into **Access to Healthcare Services** and into **Access to Emergency Medical Services in the Eastern Cape** respectively. The **SAHRC** found that public health care services are largely under-resourced in terms of personnel, availability of suitable medication and infrastructure; conditions which are adversely impacting the ability to deliver adequate care to poor people, especially to those in rural areas. The reports noted serious shortages of emergency transport, long waiting times, and over-crowding, compromised cleanliness, out-dated technology, under-staffing and discriminatory attitudes towards vulnerable groups as major concerns.

The SAHRC's 2017 Investigative Hearing on the State of Oncology in KwaZulu Natal Report found that long delays, and in some cases a denial of oncology services to cancer patients in KwaZulu Natal were evident in all public health facilities in the province, with serious implications for both prevention and treatment of cancer for members of the public seeking medical assistance. These problems were exacerbated for large numbers of people particularly those travelling from rural areas, women, children and the elderly.



The SAHRC 2018 National Investigative Hearing on the Status of Mental Health Care in South Africa Report reiterated that the shortage of skills, training and resources negatively impacted on the rights of additionally vulnerable groups such as mentally ill patients. Poor treatment, abuse and neglect of patients result, not only in a denial of their rights to access health, but also violate their right to be treated with dignity. Based on its monitoring and complaints regarding the right to access health in almost all provinces of the country, the SAHRC is conducting inspections at several hospitals in the Free State, Gauteng, Kwa Zulu Natal, Northern Cape, North West and Limpopo provinces.

Given systemic challenges in the provision of access to health services, the Department of Health is spearheading reforms through the National Health Insurance Bill, which aims at changing the inequalities within the health system. The proposed National Health Insurance Fund proposes a population based approach where the State will allocate budgets for the provision of services which take into account the number of people living in an area, and what their health care needs are. Broadly the Bill will allow services from all health professionals to be secured and delivered through both public and private facilities.

THE ROLE AND RESPONSIBILITY OF GOVERNMENT WITH REGARDS TO HEALTH CARE SERVICES

The Constitution provides that the State must respect, protect, promote and fulfil the rights enshrined in the Bill of Rights, which includes the right to have access to health care services. The Constitution further provides that the State must take reasonable measures within its available resources to achieve the progressive realisation of the right to have access to health care services, including reproductive health care. The Department of Health, together with the provincial departments of health have the responsibility to provide health care services in the country. In order to create ease of access and reduce demand on hospitals, clinics at local level provide basic health care services. Clinics refer appropriate cases to hospitals assigned to receive patients from particular areas. These hospitals in turn refer complex matters to larger designated hospitals which are equipped to deliver certain expert services. Despite the arrangements; backlogs and long waiting lists are common at various levels of the referral system.

National Health Act 13 of 2013 and Access to Emergency Medical Treatment

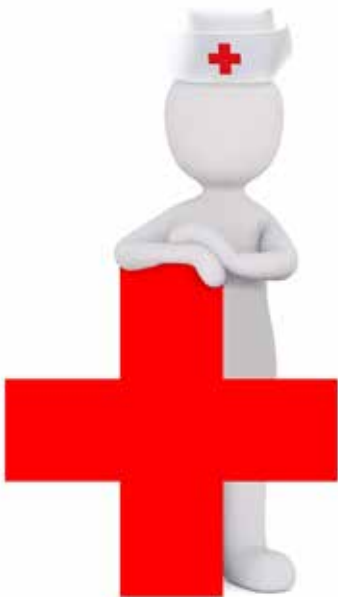
The Act gives effect and content to the right to access health care services as provided for in the Constitution. It outlines the laws that govern national, provincial and local government with regard to the provision of health services. Beyond regulating the provision of health care services by the different spheres of government, the Act also recognises and creates responsibilities in terms of the provision of medical treatment in cases of medical emergencies.



Emergency medical treatment

The Constitution and the National Health Act provide that no one may be refused emergency medical treatment by any health care provider, health care worker or health establishment. A health establishment means any clinic or hospital, private or public. The rules in respect of the types and location of hospitals do not apply in respect of access to emergency medical treatment. Both private and public hospitals must provide treatment to people experiencing a medical emergency. Private hospitals will stabilise such patients and transfer them to public health hospitals where such individuals do not have medical health insurance.

By way of example, if a person has been involved in an accident and needs urgent medical attention, such a person may not be refused emergency medical treatment by a private institution simply because the person does not have private health insurance. Similarly a private ambulance is obliged to transport such person to the closest hospital, and the facility needs to stabilise the person before requesting payment and transferring such a patient to an appropriate facility if they do not have private medical aid insurance.



Responsibilities of a health care provider

A health care provider means any person who provides health services in terms of any law, and includes doctors or nurses. Such a person has the responsibility to inform a health care user of the following:

- Their health status except in circumstances where there is substantial evidence that such disclosure would be contrary to the best interest of the user. This means that a health care provider has a responsibility to tell the user what (if anything), is wrong with their health;



- The range of diagnostic procedures and treatment options generally available to them, including the benefits, risks, costs and consequences generally associated with each option. This means that a health care provider must inform the user of all the options the user can choose from as well as all the consequences that come with choosing any of the mentioned options for treatment;
- The user's right to refuse health services and explanation of the implications, risks and obligation of refusal;
- The health care provider must, where possible, use a language that the user understands and in a manner which takes into account the user's level of literacy. This means that the health care provider must as far as possible try to simplify medical terms in order for the health care user to better understand the information.
- The personal information of the user must be protected in terms of the Protection of Personal Information Act by the health care provider.

Rights of a health care user

A health care user refers to any person using any health care facility, be it private or public. Such a person has the following rights:

a) Consent



A health care user has a right to give informed consent prior to receiving any health care service. This means that no health care service can be given to a user before the user agrees to receive such a service and the user must understand what he/she is consenting to. A health care giver must take all reasonable steps to obtain such informed consent. However, the health care giver can continue administering health care services without the consent of the user in circumstances where:

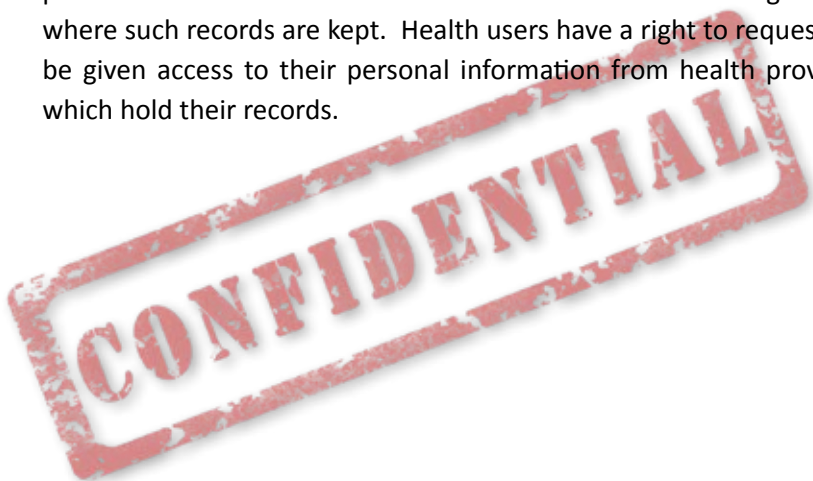
- The user is unable to give such consent and such consent is given by a person who is authorised in writing by the user or a person who is authorised by any law or a court order to give such consent. By way of example, if the user is a child, the health care provider may proceed to provide health care services if given consent by a parent or guardian of the child;
- The user is unable to give consent, and such consent is given by a parent, spouse or partner or an adult child of the user;
- The provision of health care service without informed consent is authorised in terms of any law or a court order;
- If failure to treat the user or a group of people which includes the user will result in a serious risk to public health;
- Any delay in the provision of health services to the user may result in his or her death or irreversible damage to the user's health and the user has not refused that service.

b) Participation in decisions

A user has a right to participate in any decision affecting his/her personal health and treatment. The Act further provides that if a user is unable to participate in the decision affecting his/her personal health, he/she must still be informed after the provision of the health service in question, unless the disclosure of such information would be contrary to the user's best interest.

c) Confidentiality

All information concerning a user, including information relating to his/her health status, treatment or stay in a health facility is confidential. No person may disclose any information about the user unless the user consents in writing, or a court order or any law requires such disclosure or non-disclosure of such information represents a serious threat to public health. The person in charge of a health establishment that is in possession of a user's health record must set up control measures to prevent unauthorised access to those records and to the storage facility where such records are kept. Health users have a right to request and be given access to their personal information from health providers which hold their records.





MECHANISMS TO ENFORCE THE RIGHTS OF HEALTH CARE USERS

Any person may lay a complaint about the manner in which he/she was treated at a health establishment. The National Health Act provides that every health establishment must establish an internal procedure for the laying and investigation of complaints. Such procedure must be displayed in all health facilities, in a manner that is visible to any person entering such a facility, and the procedure must be communicated to the users regularly.

Private health care facilities must allow users to lodge complaints with the head of the facility. This means that any user who has a complaint must first lodge it within the relevant facility, the procedure for such should be displayed for all to see and in the absence of such a communication, a user can request such a procedure from any of the staff working in the facility.

The following bodies also handle health care complaints, with the aim of protecting and promoting the health and safety of users of health services:

The Health Professional Council of South Africa

The Health Professional Council of South Africa (the HPCSA) is a statutory body established in terms of the Health Professions Act 56 of 1974 (as amended) with the mandate to protect the public, and to guide and regulate the health profession. Any user may lodge a complaint with the HPCSA about health care services that either violate their right to good health or breach ethical standards.

The HPCSA can be contacted on **PO Box 205, Pretoria, 0001; Tel: 012 338 9300; email: info@hpcsa.co.za**





Office of the Health Standards Compliance

The Office of the Health Standards Compliance (OHSC) is an independent statutory body established in terms of National Health Amendment Act 12 of 2013 to ensure that both public and private health establishments comply with the required health standards. The OHSC monitors compliance on norms and standards and carry out inspections and certification of health facilities. The OHSC can be contacted at **Private Bag X21 Arcadia 0007, Tel: 012 339 8699**; national call centre on toll free number: **080 911 6472** or email: **complaints@ohsc.org.za**

The Office of the Health Ombudsman

The Health Ombud is located within the OHSC to manage complaints and carry out investigations. The office deals with complaints that include inappropriate diagnosis, treatment or care; unauthorised disclosure of information; poor quality of health service provided and unsatisfactory management of prior complaints. The Office of the Health Ombudsman's **2017 Report into the Circumstances Surrounding the Deaths of Mentally Ill Patients in Gauteng Province** (commonly referred to as the Life Esidimeni report) and the subsequent 2018 arbitration hearing on the matter by Justice Moseneke helped to build public confidence in institutions dealing with access to health care services. The office can be contacted through the OHSC details provided above.



South African Nursing Council

The South African Nursing Council is an independent body entrusted to set and maintain the standards of nursing education and practice in South Africa. Patients and other members of the public can report any case of misconduct by registered nurses or midwives to the body for investigation. The Council can be contacted on **Private Bag x 132, Pretoria, 0001; Tel: 012 420 1000; Email: registrar@sanc.co.za**



South African Human Rights Commission

The SAHRC engages directly with members of the public, State departments, other Chapter 9 bodies and civil society organisations in order to raise awareness and protect the rights of all people. Public education, outreach interventions, publication of educational material and disseminating information to enable the affected group to assert and enforce their rights, are some of the methods the SAHRC uses to improve awareness levels of human rights.

The SAHRC has the power to conduct any investigation into any alleged violation of any human right. A human rights violation is an abuse or violation of any of the rights found in the Constitution. Anyone either acting on their own interest, that of someone else or that of an organisation can lodge a complaint with the SAHRC. A complaint may be lodged at any of the provincial offices of the SAHRC where the alleged violation of a right took place. A complaint can be lodged in person, by telephone, in writing or by completing the online complaint form and the Commission's services are free.

Where the SAHRC is unable to deal with a complaint, it will explain why and can also refer matters to another appropriate body. If after preliminary investigation, the SAHRC is of the opinion that there is substance in any complaint, it will in so far as it is able to do so, assist the complainant and other persons adversely affected to secure redress. Such assistance may include referring the complaint to an appropriate body.

The SAHRC has produced and publicised its Complaints Handling Procedures, which detail the procedure to be followed in conducting an investigation of any alleged violation of human rights. Further, the SAHRC has adopted special measures and guidelines to cater for complaints specific to the violation of children's rights, through the Child Friendly Complaints Handling Procedure. Both procedures are available on the SAHRC website.

Other entities

There are also other entities with a national presence such as non-governmental; faith based organisations, community advice offices and law clinics at universities that may assist with matters relating to the right to access health care services. Examples of such organisations include, but are not limited to, Section 27, Doctors without Borders, the Legal Resources Centre, and Black Sash. If you require assistance with any matter related to health care, you can contact their offices.

PROVINCIAL OFFICES

Eastern Cape

Address: 3-33 Phillip Frame Road, Waverly Park, Phase 4B, Chiselhurst, East London

Tel: 043 722 7828/21/25 | Fax: 043 722 7830

Provincial Manager

Mr Abongile Sipondo

Contact: Yolokazi Mvovo

E-mail: ymvovo@sahrc.org.za

Gauteng Office

2nd Floor, Braampark Forum 3, 33 Hoofd Street, Braamfontein

Tel: 011 877 3750 | Fax 011 403 0668

Provincial Manager

Mr Buang Jones

Contact: Nthabiseng Kwaza

E-mail: nvkwaza@sahrc.org.za

Free State

18 Keller Street, Bloemfontein

Tel: 051 447 1130 | Fax: 051 447 1128

Provincial Manager

Mr Thabang Kheswa

Contact: Alinah Khompeli

E-mail: akhompeli@sahrc.org.za

KwaZulu-Natal

First Floor, 136 Margaret Mncadi, Durban

Tel: 031 304 7323/4/5 | Fax: 031 304 7323

Provincial Manager

Mr Lloyd Lotz

Contact: Kathleen Boyce

E-mail: kboyce@sahrc.org.za

Limpopo

29A Biccard Street, Polokwane

Tel: 015 291 3500 | Fax: 015 291 3505

Provincial Manager

Mr Victor Mavhidula

Contact: Mahlatse Ngobeni

E-mail: mngobeni@sahrc.org.za

Mpumalanga

First Floor, Allied Building, 34 Brown Street, Nelspruit

Tel: 013 752 8292 | Fax: 013 752 6890

Provincial Manager

Mr Eric Mokonyama

Contact: Carol Ngwenyama

E-mail: cngwenyama@sahrc.org.za

Northern Cape

45 Mark and Scot Road, Ancorley Building, Upington

Tel: 054 332 3993/4 | Fax: 054 332 7750

Provincial Manager

Ms Chantelle Williams

Contact: Zukiswa Louw

E-mail: zlouw@sahrc.org.za

North West

25 Heystek Street, Rustenburg

Tel: 014 592 0694 | Fax: 014 594 1069

Acting Provincial Manager

Mr Osmond Mngomezulu

Contact: Poppy Mochadibane

E-mail: pmochadibane@sahrc.org.za

Western Cape

7th Floor ABSA building, 132 Adderley Street, Cape Town

Tel: 021 426 2277 | Fax: 021 426 2875

Provincial Manager

Contact: Shafeeqah Salie

E-mail: ssalie@sahrc.org.za

How to contact the SAHRC:

Forum 3, Braampark, Braamfontein, Johannesburg

Tel: 011 877 3600

Website: www.sahrc.org.za

E-mail: info@sahrc.org.za / complaints@sahrc.org.za

Twitter: @SAHRCommission

Facebook: SA Human Rights Commission

