

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS


DEPARTMENT OF CO-OPERATIVE GOVERNANCE

NO. 376

22 April 2021

DISASTER MANAGEMENT ACT, 2002 AMENDMENTS TO REGULATIONS ISSUED IN TERMS OF SECTION 27(2)

I, Dr Nkosazana Dlamini Zuma, Minister of Cooperative Governance and Traditional Affairs, designated under section 3 of the Disaster Management Act, 2002 (Act No. 57 of 2002), having declared a national state of disaster, published in Government Gazette No. 43096 on 15 March 2020, and extended by Government Notices Nos. 646 of 5 June 2020, 765 of 13 July 2020, 889 of 15 August 2020, 995 of 14 September 2020, 1090 of 14 October 2020, 1225 of 14 November 2020, 1341 of 11 December 2020, R. 15 of 13 January 2021, R. 86 of 11 February 2021, R. 193 of 11 March 2021 and R. 333 of 14 April 2021 hereby in terms of section 27(2) of the Disaster Management Act, 2002, after consultation with the relevant Cabinet members, hereby in terms of section 27(2) of the Disaster Management Act, 2002 make the Regulations in the Schedule.



DR NKOSAZANA DLAMINI ZUMA, MP
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

DATE: 22.04.2021.

SCHEDULE

Definitions

1. In these Regulations, "the Regulations" means the regulations published by Government Notice No. R. 480 of 29 April 2020 as amended by Government Notices Nos. R. 608 of 28 May 2020, R. 714 of 25 June 2020, R.763 of 12 July 2020, R 846 of 31 July 2020 R. 891 of 17 August 2020, 999 of 18 September 2020, 1011 of 20 September 2020, 1053 of 1 October 2020, 1104 of 21 October 2020. 1199 of 11 November 2020, 1290 of 3 December 2020, 1346 of 15 December 2020, 1370 of 17 December 2020, 1421 of 24 December 2020, 1423 of 29 December 2020, 1435 of 29 December 2020, R. 11 of 11 January 2021, R. 69 of 1 February 2021, R. 92 of 13 February 2021, R. 93 of 13 February 2021, R. 152 of 28 February 2021 and R. 284 of 30 March 2021.

Amendment of Classification of Regulations

2. The Classification of the Regulations is hereby amended by the addition of the following Chapter after Chapter 7:

"CHAPTER 8

COVID-19 VACCINE INJURY NO-FAULT COMPENSATION SCHEME

- 88. Definitions
- 89. Establishment of COVID-19 Vaccine Injury No-Fault Compensation Scheme

90. Administration
91. Financial management and oversight
92. Appeal panel, adjudication panel, causality panel and quantum panel
93. Eligibility
94. Quantum and structure of compensation
95. Submission of claims and procedures
96. Effect of submission of claims on right to claim damages in court proceedings
97. Causality assessment
98. Quantum assessment
99. Adjudication of claims
100. Appeal and intervention by the Chairperson
101. Duration and termination of Scheme
102. Contact details of the Scheme”.

Addition of Chapter 8 to the Regulations

3. The following Chapter is hereby added to the Regulations after Chapter 7:

"CHAPTER 8 COVID-19 VACCINE INJURY NO-FAULT COMPENSATION SCHEME

Definitions

88. For the purposes of this Chapter, unless the context otherwise indicates—
'claim' means a claim made in terms of regulation 95;
'claimant' means a person who makes a claim in terms of regulation 95;
'Promotion of Administrative Justice Act, 2000' means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
'Public Finance Management Act, 1999' means the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
'Scheme' means the COVID-19 Vaccine Injury No-Fault Compensation Scheme established by regulation 89.

Establishment of COVID-19 Vaccine Injury No-Fault Compensation Scheme

89. (1) A COVID-19 Vaccine Injury No-Fault Compensation Scheme is hereby established in terms of section 27(2)(c), (m) and (n) of the Act.

(2) The Scheme is an essential part of the COVID-19 vaccination roll-out, which is a critical component of the national plan and response to alleviate, contain and minimise the effects of the disaster, and ultimately to end the State of National Disaster.

(3) The purpose of the Scheme is to provide expeditious and easy access to compensation for persons who suffer harm, loss or damage as a result of vaccine injury referred to in regulation 93(3) and (4)(a) caused by the administration of a COVID-19 vaccine specified in terms of regulation 93(4)(b), at a facility within the Republic specified in terms of regulation 93(4)(c).

(4) In order to ensure the effective and efficient administration of the Scheme in a manner that ensures fairness in the assessment and administration of claims, and respects the constitutional rights of claimants, the Cabinet member responsible for Health must issue directions in terms of regulation 4 in consultation with the Cabinet member responsible for Finance in respect of—

- (a) the requirements relating to the administration of the Scheme;
- (b) the policy in respect of the administration of the Scheme;

- (c) the reporting of vaccine injuries;
- (d) the claims system;
- (e) the size of the causality panel, quantum panel and adjudication panel;
- (f) the qualifications for appointment of assessors on the causality panel, assessors on the quantum panel and members of the adjudication panel; and
- (g) any other matter relevant to the effective, efficient and fair administration of the Scheme.

Administration

90. (1) The National Department of Health is responsible for the administration of the Scheme and its funds.

(2) (a) The Director-General of the National Department of Health may appoint a service provider to perform the administration, or certain administrative functions, of the Scheme, which has the necessary expertise and capacity to perform the functions efficiently, effectively, competently and fairly.

(b) The applicable procurement procedures in terms of the Public Finance Management Act, 1999 and any other relevant legislation must be followed when appointing a service provider referred to in paragraph (a).

(c) A service provider appointed in terms of paragraph (a) is accountable to the Director-General of the National Department of Health as the accounting officer of the Scheme.

(d) The terms and conditions of employment of the employees of a service provider appointed in terms of paragraph (a) are determined in terms of their contracts of employment with the service provider.

(e) Accounting by a service provider appointed in terms of paragraph (a) must be in accordance with directions issued by the Cabinet member responsible for Finance in terms of regulation 4.

Financial management and oversight

91. (1) The funds of the Scheme consist of—

- (a) funds appropriated by an Act of Parliament to the vote of Health or from contingencies in terms of appropriation legislation or the Public Finance Management Act; and
- (b) funds donated to the Scheme.

(2) The Cabinet member responsible for Finance may, after consultation with the Cabinet member responsible for Health, issue directions in terms of regulation 4 in respect of the requirements relating to the financial management and oversight of the Scheme that are in accordance with the Public Finance Management Act, 1999.

(3) The funds of the Scheme shall be ring-fenced and shall not be utilised for purposes other than payment of compensation in terms of the Scheme, and the implementation and administration of the Scheme.

Appeal panel, adjudication panel, causality panel and quantum panel

92. (1) The functionaries of the Scheme hereby established are:

- (a) The appeal panel;
- (b) The adjudication panel;
- (c) The causality panel; and
- (d) The quantum panel.

(2) (a) The Chairperson of the appeal panel must be a retired Judge and is appointed by the Cabinet member responsible for Health, after consultation with the Cabinet member responsible for Cabinet member responsible for Justice and Correctional Services.

(b) The retired Judge referred to in paragraph (a) must be appointed in terms of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).

(3) (a) The Cabinet member responsible for Health must appoint:

- (i) the assessors of the causality panel;
- (ii) the assessors of the quantum panel;
- (iii) the members of adjudication panel; and
- (iv) after consultation with the Chairperson of the appeal panel, the remaining members of the appeal panel.

(b) The assessors of the causality panel and the quantum panel must possess medical expertise or other appropriate expertise to fulfil their functions in respect of the Scheme.

(c) The members of the adjudication panel and the members of the appeal panel must be independent and possess appropriate expertise to fulfil their functions in respect of the Scheme.

(d) The assessors of the causality panel, the members of the quantum panel, the members of the adjudication panel and the members of the appeal panel are appointed for the period, and on the terms and conditions, determined in writing by the Cabinet member responsible for Health.

(e) The necessary administrative support shall be provided to the adjudication panel and appeal panel.

(4) The appeal panel, adjudication panel, causality panel and quantum panel must take decisions and make assessments in accordance with—

- (a) the eligibility requirements contained in regulation 93 and the directions issued in terms of regulation 93; and
- (b) the directions regarding the quantum and structure of compensation issued in terms of regulation 94.

Eligibility

93. (1) A person who has suffered harm, loss or damage caused by a vaccine injury referred to in subregulations (3) and (4)(a) resulting from the administration of a COVID-19 vaccine specified in terms of in subregulation (4)(b), at a facility within the Republic specified in terms of subregulation (4)(c), is eligible for compensation from the Scheme.

(2) A dependant of a deceased person, who has suffered harm, loss or damage caused by the death of the deceased person, whose death was caused by a vaccine injury referred to in subregulations (3) and (4)(a) resulting from the administration of a COVID-19 vaccine specified in terms of in subregulation (4)(b), at a facility within the Republic specified in terms of subregulation (4)(c), is eligible for compensation from the Scheme.

(3) Vaccine injuries that are covered by the Scheme are severe injuries resulting in permanent or significant injury, serious harm to a person's health, other serious damage or death, as specified in directions issued in terms of subregulation (4)(a).

(4) The Cabinet member responsible for Health, in consultation with the Cabinet member responsible for Finance, must issue directions in terms of regulation 4 specifying—

- (a) the vaccine injuries covered;
- (b) the specific vaccines to be covered, which must be registered or otherwise approved by the South African Health Products Regulatory Authority and procured and distributed by the National Government;
- (c) facilities in the Republic where COVID-19 vaccinations are officially administered;
- (d) the timeline and duration of injury and the period of vaccinations that the Scheme will cover;
- (e) the types of claims that may be made; and

- (f) the period in respect of which claims may be instituted with the Scheme.

Quantum and structure of compensation

94. The Cabinet member responsible for Health, in consultation with the Cabinet member responsible for Finance, must issue directions in terms of regulation 4 specifying the quantum and structure of compensation that will be provided under the Scheme to eligible persons and dependants in terms of regulations 93(1) and 93(2).

Submission of claims and procedure

95. (1) Any person who maintains that they meet the requirements for claiming compensation from the Scheme in terms of regulation 93(1) or regulation 93(2) may submit a claim to the Scheme.

(2) The claim shall be submitted by the claimant in accordance with the form determined by the Cabinet member responsible for Health, which form shall be specified in directions issued in terms of regulation 4.

(3) The Cabinet member responsible for Health must, after consultation with the Chairperson of the appeal panel, issue directions in terms of regulation 4 setting out—

- (a) procedures for instituting and submitting claims to the Scheme, including the form to be used for submitting claims;
- (b) procedures for claims to be assessed by assessors of the causality and quantum panels, and adjudicated by the adjudication panel; and
- (c) procedures for appealing any decision of the adjudication panel.

(4) Whenever necessary for purposes of dealing with a claim, the Director-General: Health shall designate:

- (a) One or more assessors of the causality panel to assess the claim in terms of regulation 97;
- (b) one or more assessors of the quantum panel to assess the claim in terms of regulation 98; and
- (c) the required number of members of the adjudication panel to adjudicate the claim in terms of regulation 99.

Effect of submission of claims on right to claim damages in court proceedings

96. (1) Any person who elects to submit a claim to the Scheme thereby waives and abandons his or her right to institute legal proceedings in a Court against any party for a claim arising from harm, loss or damage allegedly caused by a vaccine injury referred to in regulations 93(3) and (4)(a), caused by the administration of a COVID-19 vaccine specified in terms of regulation 93(4)(b), at a facility within the Republic specified in terms of regulation 93(4)(c).

(2) The Cabinet member responsible for Health must ensure that the form for submitting a claim contemplated in regulation 95(3)(a) explains in plain language that a claimant who submits a claim waives and abandons the rights set out in subregulation (1).

Causality assessment

97. (1) A claim submitted to the Scheme in the prescribed form will be assessed by the designated assessor or assessors of the causality panel.

(2) The assessor or assessors must make a recommendation as to whether the claim meets the requirements for eligibility.

(3) (a) If the assessor or assessors recommend that the claim does meet the requirements for eligibility, the quantum of the claim will then be assessed by the quantum panel in terms of regulation 98(1).

(b) If the assessor or assessors recommend that the claim does not meet the requirements for eligibility, the claim will then be referred to the adjudication panel for adjudication in terms of regulation 99(1).

Quantum assessment

98. (1) (a) A claim contemplated by regulation 97(3)(a) will be assessed by the designated assessor or assessors of the quantum panel.

(b) The assessor or assessors must make a recommendation as to the quantum and structure of compensation for the claim.

(c) The claim will then be referred to the adjudication panel for adjudication in terms of regulation 99(2).

(2) (a) A claim contemplated by regulation 99(1)(a) will be assessed by the designated assessor or assessors of the quantum panel.

(b) The assessor or assessors must make a recommendation as to the quantum and structure of compensation for the claim.

(c) The claim will then be referred to the adjudication panel for adjudication of quantum in terms of regulation 99(3).

Adjudication of claims

99. (1) A claim contemplated in regulation 97(3)(b) will be adjudicated by the designated members of the adjudication panel, who must consider the recommendation made and make a decision on whether to—

(a) uphold the claim as complying with the requirements for eligibility and refer it for a quantum assessment in terms of section 97(2); or

(b) reject the claim as not complying with the requirements for eligibility.

(2) A claim contemplated in regulation 98(1)(c) will be adjudicated by the designated members of the adjudication panel, who must consider the recommendations and make a decision on whether to —

(a) uphold the claim as complying with the requirements for eligibility and determine the quantum and structure of compensation for the claim; or

(b) reject the claim as not complying with the requirements for eligibility.

(3) A claim contemplated in regulation 98(2)(c) will be adjudicated by the designated members of the adjudication panel, who must consider the recommendation and determine the quantum and structure of compensation for the claim.

Appeal and intervention by the Chairperson

100. (1) A claimant who is dissatisfied by:

(a) the rejection of a claim by the adjudication panel; or

(b) the quantum and structure of compensation determined by the adjudication panel, may appeal such decision to the appeal panel.

(2) Any claim rejected by the adjudication panel in terms of regulations 99(1)(b) or 99(2)(b) shall automatically be lodged with the Chairperson, who shall have the power to *mero motu* intervene in such decision and refer it to the appeal panel, which may adjudicate the claim as though it had been appealed.

(3) The appeal panel hearing an appeal in terms of subregulation (1) or intervening in terms of subregulation (2) has wide powers to adjudicate the claim, including to-

(a) confirm, vary or set aside the decision of the adjudication panel;

(b) call for and receive new information or evidence relevant to the claim; and

(c) appoint appropriately qualified persons to assist in the exercise of the powers under this regulation.

(4) Any decision of the appeal panel is final and binding, save for where a party seeks to review the decision in terms of the Promotion of Administrative Justice Act, 2000.

Duration and termination of Scheme

101. (1) This Chapter, the directions issued in terms hereof and the existence of the Scheme—

(a) will not cease to operate or cease to be of force and effect merely because the State of National Disaster comes to an end; and

(b) will continue to operate and be of force and effect until a notice is published by the Cabinet member responsible for Health, in consultation with the Cabinet member responsible for Finance, in the *Government Gazette* terminating the Scheme.

(2) The Scheme shall not be terminated until—

(a) the period for the lodgement of claims with the Scheme has expired; and

(b) all claims lodged with the Scheme have been finalized.

(3) Any funds which remain in the Scheme immediately before it is terminated shall be deposited into the National Revenue Fund, or shall otherwise be dealt with in terms of an Act of Parliament.

Contact Details of the Scheme

102. The contact details of the Scheme are as follows:

Council for Medical Schemes
Block A Ecogrades Office Park
420 Witch-Hazel Road
Eco Park
Centurion
e-mail: info@nfcfund.co.za
Telephone: 0861123267."

Commencement

4. These amendments to the Regulations come into operation on publication in the *Government Gazette*.