

**24 June 2014**

**Certificate of Need Consultative Meeting 18 June 2014**

On 18 June, SAMA was invited to a consultative meeting at the Department of Health (DoH) offices in Pretoria by the Director General of Health. The meeting focused on the proclamation of sections 36-40 of the National Health Act.

The Director General indicated that this was the first of a series of meetings being convened with various sectors of the healthcare industry. She indicated that the purpose of these consultative meetings was to find ways to address concerns and to assist in crafting regulations which will give effect to sections 36-40.

The DoH emphasised that an important aspect of addressing the quadruple burden of disease problems faced by South Africa was the equitable distribution of health resources. Significantly, the Certificate of Need applies to both the Public and Private Sector.

The interpretation of the wording of section 36(1) was debated extensively. Consensus was achieved on the application of this section to individual practices as they fall under the definition of "health establishment".

The attendees, however, were not in agreement as to whether the certificate of need is attached to a person or to a place. No resolution of this particular issue was arrived at.

Other issues raised in respect of this section included the current absence of "norms and standards" as referred to in section 36(5).

The concerns raised by the attendees can be grouped into three categories:

Legal concerns

The legal concerns are referred to above and relate primarily to the question of who precisely must hold a certificate of need. In addition the "clock is ticking" and the consultative and regulatory process is unlikely to be concluded prior to 1 April 2016.

The issue of potential contravention of competition law was also raised. The DoH expressed the belief that the National Health Act prevailed over the Competition Act in any potential conflict of laws situation. The DG further undertook to engage with the panel of the Competition Commission Market Inquiry to discuss the Certificate of Need issue.

It was emphasised to the DoH that the regulations to be drafted cannot be in conflict with the provisions of the Act and therefore cannot override or alter the empowering provisions.

Perceptual concerns

The DoH was informed that constituent members of the various attending groups were very concerned about the Certificate of Need as they did not wish to be "forced" to practice their profession in a place of the

department's choosing.

The practitioners were further concerned that no meaningful consideration would be given to the financial viability of their practices – and feared specifically that they would be allocated to areas where it would be impossible to earn a sustainable living.

It was suggested to the Director General that it would be preferable to incentivise practitioners as opposed to place them under the threat of criminal sanction for non-adherence. The DoH was in agreement with this approach.

#### Logistical concerns

It was made clear that the amount of time left before the deadline of 1 April 2016 was wholly inadequate to consult, draft and enact regulations and then begin accepting and processing applications for Certificates of Need. The period in which to do this must be extended. The DG undertook to investigate with her legal advisors on how this postponement could be achieved.