



Sociaal Economische Raad  
Social Economic Council



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## LETTER OF ADVICE

To: The Minister of Tourism, Economic Affairs, Transport and Telecommunication, the Honorable Mr. Cornelius De Weever  
The Prime Minister, the Honorable Mrs. Leona Marlin- Romeo  
The Minister of Public Health, Social Development and Labor, the Honorable Mr. Emil Lee

Soualiga Road #1  
Philipsburg, Sint Maarten

Philipsburg, April 17<sup>th</sup>, 2018

Our reference: SER /18/BP/11



Re: Letter of Advice concerning the draft national decree, containing general measures, regarding the changes of the decree medical and nursing tariffs and to establish the appendix (containing the maximum tariffs) [Dutch: Landsbesluit, houdende algemene maatregelen, van de tot wijziging van het Besluit medische en verpleegtarieven en vaststelling van de bijlage]

Honorable Ministers,

On March 9<sup>th</sup>, 2018, the Social Economic Council (hereinafter: SER) received the solicited advice request from the Minister of Tourism, Economic Affairs, Transport and Telecommunication concerning the above mentioned 'draft national decree, containing general measures (hereinafter: the draft decree). This Letter of Advice was discussed in the SER board meetings of April 5<sup>th</sup>, April 12<sup>th</sup>, 2018.

As the draft decree is compiled in Dutch and the Letter of Advice in English, certain laws and words mentioned between brackets [...] are in the Dutch language.

The SER evaluated the social, economic and legal consequences of the advice request and came to the following conclusions:

1. The SER does not agree with the indexation of 41.83%, however,
2. The SER understands that an adjustment is inevitable and therefore agrees with an immediate adjustment of the medical and nursing tariffs. This adjustment should be temporary and introduced in phases. The SER concludes on a 25% increase to be implemented in phases of 12.5% in 2018 and 12.5% in 2019.
3. Meanwhile, the SER advises the government to re-calculate the medical and nursing tariffs before the end of the year 2019 and to adjust/ establish these tariffs in a national ordinance. At the same time, the SER urges government to revise the national ordinance, so that it will become mandatory to recalculate the tariffs every five years.



Handwritten signature and date: April 17<sup>th</sup> 2018



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4. To revise the explanatory memorandum accordingly with regard to the new hospital and to also take into account the re-calculation of tariffs and the justification of different tariffs for non-residents (see 1.3 point 1, last paragraph; 1.5 and 1.6).
5. To include in the law the possibility to adjust the tariffs (bi)- annually.
6. To amend the Prices Ordinance in such a way that the Minister of Public Health, Social Development and Labor (VSA) will be the responsible Minister to adjust the maximum tariffs for medical care and nursing (and not the Minister of Tourism, Economic Affairs, Transport and Telecommunication). In this respect, the SER once more emphasizes its conclusions under 3 and 5 stating that the law should provide for the tariffs to be re-calculated every five years (5) and that the national decree, containing general measures, medical and nursing tariffs should provide the possibility to index the tariffs every two years.

**For the elucidation of the above points 1-6, see below under heading 1.3 'SER's general concerns.'**



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### 1.1 Historical context - Background

Sint Maarten has legislation that establishes various social security and insurance systems for different groups in society. The following social and health insurance schemes are administered and managed by SZV:

- the General Insurance Exceptional Medical Expenses (AVBZ, AB 2013 GT no. 613) which is a compulsory insurance for long-term exceptional medical expenses.
- the Accident Insurance (OV, AB 2013 GT no. 801), which insures employees against the cost of medical care and loss of wages as a consequence of an accident on the job.
- the Sickness insurance (ZV, AB 2013 GT no. 802), ensures that employees with an income under the maximum wage limit are insured for the costs of medical care and loss of wages as a consequence of sickness.
- the insurance for medical assistance (AB 2013 GT no. 68),
- the regulation to cover medical expenses of former civil servants (FZOG, AB 2013 GT no. 644)
- the regulation for compensation of medical costs of civil servants.

In addition to the abovementioned groups, there also persons privately insured. There are different regulated tariffs or payment structures for each group of insured in the various schemes.

Prior to 10-10-10, the St. Elizabeth Hospital (SEHOS) in Curacao was considered the main, national hospital of the former Netherlands Antilles and the Sint Maarten Medical Center (SMMC) was considered a supporting hospital. After the dismantling of the Netherlands Antilles, SMMC, equal to the SEHOS, was established as a hospital by law<sup>1</sup>. As of 10-10-10, the Sint Maarten government is responsible for regulating the (social) tariffs. By establishing SMMC as the general hospital for Sint Maarten, the tariffs were also adjusted from peripheral to general, which corresponded with the SEHOS tariffs.

SMMC, the only hospital on Sint Maarten, provides secondary health care. It also provides health care support to nearby islands, including Saba, Saint Eustatius, and Anguilla. Since 2010, SMMC's services has expanded.

SMMC raised its tariffs for private insurance companies and non- insured persons per February 1<sup>st</sup>, 2018 with 41.83%. These tariffs were not raised since 2004. This draft decree serves to formalize the tariff increase, as this has not been done legally yet.

The national decree medical and nursing tariffs (AB 2013 GT. No. 53) determines that SMMC may not charge a higher fee for medical and nursing services than those fees agreed upon in the annex to the decree. However, the SER learned that the annex cannot be found or does not exist. Thus, since 2004 the national decree, containing general measures Medical Tariffs Social Insurances<sup>2</sup> (MTSV tariffs) have been

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<sup>1</sup> AB 2013, GT no. 188

<sup>2</sup> AB 2014 no. 69



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used. Furthermore, the national decree medical and nursing tariffs does not provide for annual tariff indexation.

### 1.2 Summary of the explanatory memorandum of the draft decree

The explanatory memorandum of the draft decree (hereafter: the explanatory memorandum) states that the draft decree aims to establish the maximum tariffs for medical treatment [medische handelingen] and nursing care [verpleging] of SMMC. The maximum tariffs will go into effect on February 1<sup>st</sup>, 2018. In addition, it states that these maximum tariffs have not been established. The tariffs used by SMMC between 2004 and 2018 are from 2004, and since then were not adjusted for inflation. The draft decree establishes the maximum prices for the privately insured, uninsured and non-residents by increasing the 2004 tariffs with 41.83%. The social tariffs, read the ZV/OV fund managed by the Social and Health Insurer (SZV), have not been adjusted to inflation. However, by increasing the calculation method [rekenmethode] for the budget support for SMMC, the tariffs used together with the budget support constituted an increase of income of SMMC related to medical treatments and nursing care governed by the national decree, containing general measures, medical tariffs social insurances [Landsbesluit medische tarieven sociale verzekeringen], in 2018, also amounted to 41.83%. The budget support for medical treatment and nursing care concerning the ZV/OV fund already took place for the years 2016 (35%), 2017 (38,38%) and 2018 (41,83%).

The explanatory memorandum also states that the reason to increase the maximum tariffs, or rather to establish them, is to absorb the increased costs of the SMMC during the years 2004-2018. This increase is necessary to guarantee the sustainability and continuity of (specialized) medical treatment and hospital care in Sint Maarten. The SMMC is the only hospital in Sint Maarten. After all, this treatment and care can only be offered in a responsible manner if the costs of the SMMC are in line with the prices the SMMC is allowed to charge for them; both must develop equally on average. Moreover, the increase in tariffs is also necessary to cover the construction of the new hospital. A new hospital offers more medical treatments and nursing care is necessary for (better) healthcare. Additionally, a new hospital would reduce the number of medical treatments referred to other countries [medische uitzendingen], and therefore the demand of current health care can be met with less costs. The business case for the new hospital includes the increases of both social tariffs and tariffs for the privately insured, uninsured and non-residents and is supported by a minimal 2.5% annual increase in tariffs in the future. Together, they form conditions to meet future obligations of the new hospital and better health care. The explanatory memorandum states that the government intends to adjust the tariffs annually. Furthermore, government deems this essential to guarantee sustainable specialized medical treatments and hospital care.

The explanatory memorandum states that the calculation used for the increase for the privately insured, non-insured and non-residents is a mixture from the Consumer Price Index of Sint Maarten (CPI) and 'average yearly index of medical costs Sint Maarten'. The latter is taken from Bureau of Labor Statistics of the United States of America, 'medical care in U.S. city average, urban', and weighted 20% lower. The CPI



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and Average Yearly Index Medical Costs Sint Maarten together form a 'relevant inflation index' for the SMMC.

The explanatory memorandum adds that an increase of 41.83% is not suddenly imposed. Since 2015, private insurers and the Sint Maarten Insurance Association (SMIA) have been informed of the planned increase. In 2016 the Minister of Public Health, Social Development and Labor (VSA) informed the tripartite platform, (VSA, SZV and SMMC) of his approval of the increase. In November 2017 SMMC informed private insurers and SMIA of the planned increase per January 1<sup>st</sup>, 2018. In the last few years SMMC discussed the increase with other stakeholders, for example SZV, Insurance office BES, foreign private insurers and larger businesses with their own healthcare contract. Lastly, in anticipation of this draft decree, the Minister of VSA decided to establish the maximum prices for medical treatment and nursing care of SMMC on January 30<sup>th</sup>, 2018 [landsbesluit, DIV nr. 9792/c].

### **1.3 SER's general concerns**

1. The SER is concerned about the length of time that the maximum tariffs of SMMC were not established and as a consequence has not been adjusted timely by government. The SER understands and agrees that an adjustment with regard to the tariffs needs to take place. However, the SER does not agree with the way the adjustment is being calculated. When the prices of hospital care and specialized medical treatment are not adjusted to inflation for such a long period of time, the SER is of the opinion that these tariffs should be re-calculated instead of just being indexed. Additionally, the SER believes that the tariffs of the hospital should be revised every 5 years due to the various cost components and how these are weighted in the tariffs.

Over the past years, numerous medical advances took place as a result of improved technology. As a consequence, there must have a significant adjustment in the way direct and in particular indirect costs weigh in the medical and nursing tariffs. The risk in continuing to use the CPI year after year when adjusting the tariffs, without from time to time revising the actual way the tariffs are weighted, is that it includes historical use of resources. However, this does not reflect the actual situation, as the historical use of resources is not necessarily the way the hospital is currently being operated but is based on the way the hospital was operated and managed years ago.

In agreeing to adjust the tariffs based on indexation, the SER is contributing to the unsustainability of the SMMC. Applying incorrectly adjusted tariffs can for example encourage the population (in this case, the privately insured persons) to use a certain service more (or less) frequently in SMMC. However, if the tariff for that service does not adequately cover the costs, this will have a greater negative impact for the SMMC. Vice versa an incorrectly adjusted tariff (which may be too high) can steer private insured persons away from using a specific service in SMMC. The SER underlines that if the cost of delivered services is significantly higher than government approved tariffs, will have have a negative impact on the quality of services as well as on the sustainability of SMMC.



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Next to the abovementioned main reason not to adjust the tariffs immediately with 41.83%, the SER also does not agree with the method how the indexation of the maximum tariffs is calculated in the draft decree.

The reasoning behind the calculation in the draft decree is as follows: from 2004-2015 the CPI arrives at 36.6% inflation. After discussion with SZV, this was decreased to 35% for the budget calculation method concerning the medical treatment and nursing care (the social tariffs for SMMC) for 2015. This 35% is increased in 2016 and 2017 by 2.5% respectively (mixture of CPI and medical index), leading to an increase of 41.83% starting in 2018. By applying the same method to the privately- and non-insured, both social and private/uninsured medical treatment and nursing care of SMMC increase with the same percentage in 2018. The SER notes that the Consumer Price Index [jaarlijkse inflatie] used in the draft decree contains either estimated or erroneous data on inflation for the last three years (2015, 2016 and 2017). The inflation percentage for 2015 and 2016 is 0.3% and 0.1% respectively and not 1% (2015) and 3.79%(2016). For 2017, 2.5% has been used. The SER comments that an annual increase of 2.5% in the past does not mean that the same percentage should automatically be applied in the future.

Notwithstanding the abovementioned, the SER also notes that the United States (USA) medical inflation percentage was used (not the international inflation percentage as mentioned in the explanatory memorandum), while the justification thereof is missing in the explanatory memorandum. The SER points this out as health spending and prices in the USA are notably higher than other (eg. OECD) countries. Although this inflation percentage was weighted by 80%, there is insufficient explanation in the explanatory memorandum why 80% of the USA medical inflation percentage was used and not another (possibly lower) percentage, especially taking the higher health care prices of the USA into consideration.

Furthermore, the explanatory memorandum also mentions that an annual 2.5% increase of the tariffs is needed in relation with the business case of the new hospital. The SER points out that if tariffs are adjusted to inflation, they need to be adjusted to inflation, and not be determined by agreements made with third parties concerning investments or budget calculation concerning (part of) the tariffs. In the opinion of the SER, the adjustment of tariffs which has been pending for some years, should be dealt with separately and not linked to and used to justify the building of the new hospital. These tariffs need to be, at least, cost-covering (kosten-dekkend). Whether a new hospital is built or not, the focus should remain the delayed adjustment of the tariffs. While the SER recognizes that there is a link between the current tariffs and the future services in the (new) hospital, the business case and the financing of the new hospital should be handled separately.

2. As mentioned before, the SER believes that an adjustment of the SMMC tariffs need to take place. The SER notes that, in the past for the adjustment of tariffs for paramedical care (AB 2014 no. 69, p.6) the explanatory memorandum states that when adjusting tariffs – with the aim to control costs-, a 60% weight is given to the inflation correction, instead of applying a 100% correction.



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Applying the same method of tariff adjustment to the tariffs SMMC is currently using, leads to a correction of 25%, rather than 41.83%. Therefore, for the reason stated above, the SER does not agree with the 41.83% indexation. Alternatively, the SER suggests to work towards making all tariffs (social & private) at least cost-covering (kosten-dekkend) based on independent third-party analysis of annual financial statements of SMMC and on independent third-party tariff calculations. Moreover, the draft decree states it is desirable [wenselijk] that the tariffs of the privately and uninsured population approach the social tariffs. Also for this reason, it is desirable to have a lower and gradual percentage increase on the maximum tariffs for the privately and uninsured population, than the percentage increases that were used for the SZV budget agreement calculation.

Any increase, especially an immediate increase of more than 40% will have consequences which may negatively influence the social and economic welfare of Sint Maarten, especially considering the impact the passing of hurricane Irma has had on the social-economic landscape. Therefore, the SER is of the opinion that the increase of 25% should be introduced in 2 equal phases starting with 12.5% in 2018 and 12.5% in 2019 and that this should be a temporary measure until the end of the year 2019 when the SMMC tariffs are recalculated as suggested under point 1.

The SER furthermore contends that the tariffs of new medical treatment and nursing care introduced between 2004 and 2018, should not be automatically adjusted with 2X12.5% but calculated from the year of introduction of the treatment.

The situation of global markets of health care services is changing dynamically, which obliges hospital managers to continuously search for new methods and procedures to manage costs. Hospitals are one of the most important organizations in each health care system because they deliver health services to all the people, using existing resources and facilities. Efficient use of resources is a common policy in all of health care systems<sup>3</sup>. Using more developed hospital funding models<sup>4</sup> and cost analysis methods can help managers use limited resources in a better way. Costing and cost analysis can show how much and how hospital organizations meet public needs<sup>5</sup>. The focus should be on using costs weights for direct cost and indirect costs in the cost analysis, as the indirect costs can be as high as sixty percent (60%)<sup>6</sup>. By reviewing and establishing

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<sup>3</sup> Kittelsen ACS, Magnussen J, Anthun KS, Häkkinen U, Linna M, Medin E, et al. Hospital Productivity And The Norwegian Ownership Reform—A Nordic Comparative Study. Available at:

[www.med.uio.no/helsam/forskning/nettverk/hero/publikasjoner/skriftserie/2008/2008\\_10.pdf](http://www.med.uio.no/helsam/forskning/nettverk/hero/publikasjoner/skriftserie/2008/2008_10.pdf).

<sup>4</sup> [http://apps.who.int/iris/bitstream/handle/10665/85690/HSS\\_HSF\\_DP.08.1\\_eng.pdf?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/85690/HSS_HSF_DP.08.1_eng.pdf?sequence=1)  
<https://www.cambridge.org/core/journals/health-economics-policy-and-law/article/paying-for-hospital-care-the-experience-with-implementing-activitybased-funding-in-five-european-countries/AC44D759A649CD1977D00ABBDE1208D9>

<sup>5</sup> Shepard DS, Hodgkin D, Anthony YE. In: Analysis of Hospital Costs: a Manual for Managers, Geneva: World Health Organization, available at: <http://apps.who.int/iris/bitstream/handle/10665/42197/9241545283.pdf?sequence=1&isAllowed=y>

<sup>6</sup> <https://www.beckershospitalreview.com/hospital-management-administration/is-it-time-for-the-healthcare-industry-to-make-cost-management-a-priority.html>



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the tariffs every 5 years in a National Ordinance the quality and cost of hospital care can contribute to the hospital's sustainability.

As previously mentioned, the SER carefully considered that the tariffs should be re-calculated. The re-calculated tariffs are to be established via a national ordinance and not via a national decree, containing general measures, as the consultation and discussion process in Parliament before becoming a law is an important part of the democratic law-making process.

4. In addition to the re-calculation, the SER acknowledges the need to assess whether an indexation of SMMC's tariffs need to take place yearly or every two years. The SER suggests to arrange this obligation to assess whether the indexation needs to take place in a national decree, containing general measures. The explanatory memorandum notes that the government has this intention [behoort tot de voornemens]. The current situation takes root from neglect to adjust the maximum tariffs and confusion if they were established or not. This means that the Council of Ministers (read: the minister of TEATT) should adjust the prices by national decree, containing general measures [LBHAM] according to the ordinance concerning the prices of goods and services<sup>7</sup>. This is only allowed after consultation with the market parties identified by the Minister of TEATT.
5. The Minister of TEATT is responsible for adjusting SMMC tariffs by national decree, containing general measures. However, the Ministry of Public Health, Social Development and Labor (VSA) oversees the health system. Therefore, it is expected and the SER supports that the Minister of VSA should be the authorized Minister to establish SMMC tariffs, via a national ordinance which includes the consultation and discussion process in Parliament before becoming a law.

#### 1.4 Stakeholder process

The explanatory memorandum states that a consultation process with market parties took place starting in the year 2015. The SER learned from interviews with stakeholders that this is correct. However, the SER learned that not all market parties, mainly the Sint Maarten Insurers Association, were satisfied with the degree of their consultation. Moreover, non-market parties only learned of the pending increase from announcement(s) in the public debate. The SER reiterates that market parties identified by the Minister of TEATT need to be consulted before the LBHAM goes into effect<sup>8</sup>. The SER notes that the degree of involvement and number of market parties and other stakeholders of the consultation process are influenced by the necessity the Minister encounters serving the general interest [algemeen belang]. This lies within the Minister's discretionary space. The SER notes that this advice also forms part of the stakeholder process.

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<sup>7</sup> Landsverordening houdende regels op het gebied van de prijzen van goederen en diensten, article 2, sub 2

<sup>8</sup> Landsverordening houdende regels op het gebied van de prijzen van goederen en diensten, article 2, sub 2





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### **1.5 Non-resident tariffs**

The SER notes that the explanatory memorandum does not explain why the maximum tariffs for non-residents, mainly tourists, healthcare demand from the region and French side, is set 80% higher than for the privately and uninsured residents. This difference should be commented on in the draft decree. The explanatory memorandum also clearly states that SMMC is free to charge lower tariffs and that other parties can negotiate lower prices with SMMC. Although, the SER learned from SMMC that these higher tariffs for non-residents are justified considering the amount of more expensive care non-residents use [beschikbaarheidsdiensten] and other investments in SMMC's activities the Sint Maarten population in one form or another contributes to, this difference should be commented on in the explanatory memorandum of the draft decree.

### **1.6 Tariff differentiation**

The SER acknowledges that the management of tariffs by law has created tariff differentiation for diverse groups of (un)insured. For example, ZV/OV insured sickness and accident social insurance, FZOG insured (retired government workers), privately and uninsured and insured non-residents. In general, such differentiation is unwanted, and the SER supports efforts to diminish those differences, but realizes they will be addressed when health care reform is implemented (with the exception of the non-residents). Therefore, the SER sees this increase in tariffs as a temporary measure also in anticipation of health care reform and is of the opinion that in general, new tariffs should be recalculated for hospital services and implemented no later than the end of 2019.

### **1.7 Maximum tariffs are not necessarily used tariffs**

The draft decree states it is desirable [wenselijk] that the tariffs of the privately and uninsured population should approach the social tariffs. The SER interprets this as an anticipation on health care reform (NHR). The draft also clearly states that SMMC is free to charge lower tariffs and that other parties can negotiate lower prices with SMMC.

The SER recognizes that SMMC is an indispensable institution for healthcare in Sint Maarten, and that the SMMC is the only Sint Maarten provider for hospital care. With that position comes the need to balance that responsibility through sufficient governance. The means to achieve that lies within the governance structure of SMMC, and not by withholding an increase in maximum tariffs for this long or creating a diffuse situation that has led to the current state of affairs.



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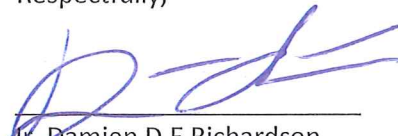
### 1.8 Advice:

The majority of the SER advises the Government of Sint Maarten

1. Not to establish the 41.83% indexation of tariffs for medical and nursing treatment of SMMC.
2. To implement an immediate adjustment of the medical and nursing tariffs. However, this immediate adjustment should be temporary and introduced in phases.  
The SER advises a 25% increase to be implemented in phases of 12.5% in 2018 and 12.5% in 2019.
3. To re-calculate the medical and nursing tariffs before the end of the year 2019 and to adjust/ establish these tariffs in a national ordinance. The SER advises government to revise the national ordinance every 5 years in order to recalculate the tariffs.
4. To revise the explanatory memorandum accordingly with regard to the new hospital and to take into account the re-calculation of tariffs, the justification of different tariffs for non-residents (see 1.3 point 1, last paragraph; 1.5 and 1.6).
5. To include in the law the possibility to adjust the tariffs (bi)- annually.
6. To amend the Prices Ordinance in such a way that the Minister of Public Health, Social Development and Labor (VSA) will be the responsible Minister to adjust the maximum tariffs for medical care and nursing (and not the Minister of Tourism, Economic Affairs, Transport and Telecommunication). In this respect, the SER once more emphasizes its conclusions under 3 and 5 stating that the law should provide for the tariffs to be re-calculated every five years (5) and that the national decree, containing general measures, medical and nursing tariffs should provide the possibility to index the tariffs every two years.

We trust to have sufficiently informed you herewith.

Respectfully,

  
Mr. Damien D.E Richardson  
Chairman

  
Gerard M.C. Richardson  
Secretary-General