

REPUBLIC OF SOUTH AFRICA

MEDICAL SCHEMES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 31114 of 2 June 2008)
(The English text is the official text of the Bill)*

(MINISTER OF HEALTH)

[B 58—2008]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Medical Schemes Act, 1998, so as to amend and insert certain definitions; to provide for risk equalisation among medical schemes; to provide for the establishment of a risk equalisation fund; to extend the functions of the Council for Medical Schemes in relation to risk equalisation; to provide for the application of risk equalisation to medical schemes; to provide for the provision of information by medical schemes to the Council for Medical Schemes for purposes of risk equalisation; to provide for the methodology and procedures for risk equalisation; to amend the provisions relating to benefits and contributions provided by medical schemes; to amend the provisions relating to the composition of boards of trustees and eligibility of persons to serve as trustees or principal officers; to define the respective functions of boards of trustees and principal officers; to specify the powers of the High Court in relation to election processes; to amend the provisions relating to disclosure of trustee remuneration; to provide for good corporate governance guidelines and associated disclosure requirements; to amend the provisions relating to the powers of the Minister to make regulations; to amend the provisions relating to offences; to rearrange some of the existing sections; and to provide for matters in connection therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 131 of 1998, as amended by section 1 of Act 55 of 2001, section 1 of Act 62 of 2002, section 40 of Act 65 of 2002 and section 25 of Act 52 of 2003

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1. Section 1 of the Medical Schemes Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the—

(a) insertion after the definition of “**Appeal Board**” of the following definitions:
“**‘Auditing Profession Act’** means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

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“**‘basic benefits’** means the benefits contemplated in section 32H(1);”;

(b) insertion after the definition of “**beneficiary**” of the following definition:
“**‘benefit’** means the liability accepted by a medical scheme to render a relevant health service or to defray fees or charges in respect of the provision of a relevant health service;”;

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- (c) substitution in the definition of “**business of medical schemes**” for paragraphs (a) and (b) of the following paragraphs:
 - “(a) to make provision for the obtaining of any relevant health service;
 - or
 - (b) to grant assistance in defraying expenditure incurred in connection with the rendering of any relevant health service; **[and] or**”;
- (d) insertion after the definition of “**dependant**” of the following definitions:
 - “**Financial Institutions (Protection of Funds) Act** means the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);
 - “**financial transfer**’ means a financial transfer from the Fund to a medical scheme or from a medical scheme to the Fund, as the case may be.”;
- (e) insertion after the definition of “**financial year**” of the following definition:
 - “**Fund**” means the bank account contemplated in section 19C(1);”;
- (f) insertion after the definition of “**general waiting period**” of the following definition:
 - “**Inspection of Financial Institutions Act**’ means the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998)”;
- (g) insertion after the definition of “**Master**” of the following definition:
 - “**material relationship**’ means a relationship with, or interest in, a natural or juristic person which in the view of a reasonable person would interfere with the independent judgment of the officer of the medical scheme or prejudice the interests of the medical scheme or its members.”;
- (h) substitution for the definition of “**principal officer**” of the following definition:
 - “**principal officer**’ means **[the principal officer]** a person appointed in terms of section **[57(4)(a)] 57C(1)**”;
- (i) insertion after the definition of “**restricted membership scheme**” of the following definitions:
 - “**risk-equalisation**’ means the system of financial transfers to ensure the sharing of expected costs of providing benefits contemplated in section 19B;
 - “**risk equalisation factor**’ means a risk factor to be used in the calculation of financial transfers, as contemplated in section 19K(1);
 - “**risk-equalised benefits**’ means the benefits in respect of which risk equalisation will take place, as contemplated in section 19B.”; and
- (j) insertion after the definition of “**Service**” of the following definition:
 - “**supplementary benefit option**’ means the additional benefits offered by a medical scheme in respect of which its members may choose to enroll.”.

Amendment of section 7 of Act 131 of 1998, as amended by section 2 of Act 55 of 2001

- 2. Section 7 of the principal Act is hereby amended by the insertion after paragraph (f) of the following paragraphs:
 - “(fA) manage the administration of the Fund in accordance with the provisions of this Act;
 - (fB) consult on a regular basis with relevant stakeholders in relation to the implementation of risk equalisation;”.

Amendment of section 13 of Act 131 of 1998

- 3. Section 13 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
 - “(2) The financial year of the Council shall end on **[31 December]** 31 March in each year.”.

Insertion of Chapter 3A in Act 131 of 1998

4. The following Chapter is hereby inserted in the principal Act after section 19:

“CHAPTER 3A

RISK EQUALISATION

Part 1

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General provisions

Scope of risk equalisation

19A. Risk equalisation shall apply to each medical scheme, and such medical scheme shall comply with the terms and conditions of risk equalisation.

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Risk-equalised benefits

19B. The benefits in respect of which risk equalisation applies, shall be those contemplated in section 67(1)(g), subject to such limitations as may be prescribed.

Part 2

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Risk Equalisation Fund

Establishment of Risk Equalisation Fund

19C. (1) The Council shall cause a bank account, to be known as the “Risk Equalisation Fund,” to be opened at any bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

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(2) The Council must report on the Fund as part of the report contemplated in section 14.

(3) The costs of managing the Fund shall be paid from the revenue of the Council raised in terms of section 2(1) of the Council for Medical Schemes Levies Act, 2000 (Act No. 58 of 2000), and not from financial transfers to the Fund.

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Financial administration by Council

19D. (1) Money in the Fund shall vest in the Council.

(2) The Fund is under the control and management of the Council, which—

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(a) must utilise the monies in the Fund in accordance with section 19F only;

(b) is accountable for all monies received and payments made by the Fund;

(c) must maintain separate accounting records for the Fund;

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(d) must prepare annual financial statements for the Fund in accordance with general accepted accounting practice;

(e) must cause the necessary accounting and related records of the Council to be audited annually by the Auditor-General and an auditor registered in terms of the Auditing Professions Act; and

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(f) must incorporate the audited records referred to in subsection 2(e) in the report contemplated in section 14.

Revenue of Fund

19E. The Fund shall consist of—

- (a) financial transfers paid to the Fund in terms of section 19N;
- (b) interest and dividends derived from the investment of money standing to the credit of the Fund;
- (c) administrative penalties paid in terms of section 19R; and
- (d) any money accruing to the Fund in terms of this Act or from any other source.

Allocation of money in Fund

19F. (1) All money paid to the Fund shall be appropriated for expenditure by the Council in accordance with subsection (2).

(2) The Council must appropriate expenditure for financial transfers to medical schemes in accordance with the risk equalisation methodology set out in this Chapter.

(3) With the exception of claims by medical schemes in respect of financial transfers, no person shall in respect of any liability of the Council have or obtain recourse or any right against money standing to the credit of the Fund.

Investment of money not immediately required

19G. (1) Any money of the Fund which is not required for immediate allocation may be invested in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(2) Any unexpended balance of the money of the Fund at the end of any financial year shall be carried forward as a credit to the next financial year.

Part 3 25

Information required for risk equalisation

Information for calculation of financial transfers

19H. (1) Every medical scheme must at such intervals and in the form determined by the Registrar submit to the Registrar such information as may be necessary for purposes of—

- (a) ascertaining the number of beneficiaries of each medical scheme;
- (b) allocating beneficiaries to various age categories;
- (c) allocating beneficiaries to various risk equalisation factors; and
- (d) auditing the correctness of information supplied by the medical scheme.

(2) Information collected in terms of subsection (1) shall include, in respect of every beneficiary of a medical scheme—

- (a) personal particulars, including full names, gender, identity number or passport number in the case of a non-resident, date of birth and, where applicable, date of death;
- (b) the unique medical scheme number of the beneficiary and any other unique identifier assigned to the beneficiary for purposes of risk equalisation;
- (c) details of the status of beneficiaries, including whether the beneficiary is a principal member, adult dependant or child dependant and the relation to the principal member, where applicable;
- (d) date and details of the enrolment and, where applicable, termination of enrolment of the beneficiary, including details of the medical scheme from or to which the member transferred, where applicable;
- (e) the name of the benefit option on which the beneficiary is enrolled and date and details of change of benefit option, where applicable;
- (f) details of any waiting periods applicable to the beneficiary;

- (g) information related to the health status and claims history of beneficiaries, specifically in relation to health conditions or other factors identified as risk equalisation factors in terms of section 19K(1).
- (3) The Registrar shall ensure that—
 - (a) personal information that identifies a person is subject to confidentiality;
 - (b) health status data and personal information that identifies a person are submitted separately by a medical scheme in terms of section (1) and are stored and maintained in a manner that prevents simultaneous access to health status and personal information that identifies a person.
- (4) A request for access to information submitted in terms of this section shall be dealt with in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

Verification of information

- 19I.** (1) The Registrar may in relation to information provided in accordance with section 19H on written notice require a medical scheme to submit to him or her—
- (a) the information as specified in the notice; or
 - (b) a report by an auditor or by any other person with appropriate professional skill, designated by the Registrar, on any matter specified in the notice.
- (2) (a) Despite the provisions of any other law, the auditor of a medical scheme must inform the Registrar in writing of any matter relating to the affairs of a medical scheme of which the auditor became aware in the performance of his or her functions as the auditor of that medical scheme, that, in the opinion of the auditor, relates to the medical scheme’s participation in the risk equalisation fund or may negatively impact on the medical scheme’s ability to pay a financial transfer which it may be required to pay in terms of this Chapter.
- (b) An auditor must inform the principal officer of a medical scheme of any information referred to in paragraph (a), provided to the Registrar.
 - (c) The furnishing in good faith by an auditor of information in terms of paragraph (a) may not be held to constitute a contravention of any provision or breach of any provision of a code of professional conduct to which such auditor may be subject.

Part 4

Risk equalisation methodology

Formula for risk equalisation

- 19J.** (1) The Minister shall, in consultation with the Minister of Finance, prescribe the formula for the determination of the quantum of financial transfers.
- (2) The formula prescribed in terms of subsection (1) shall—
- (a) provide for a method of determining the expected cost per beneficiary in a medical scheme of providing the risk-equalised benefits, taking into consideration—
 - (i) the weighted values assigned to these risk factors as published in terms of section 19L(1)(a); and
 - (ii) the prevalence of risk equalisation factors amongst the beneficiaries, identified in accordance with the criteria published in terms of 19L(1)(b)
 - (b) provide for a method of determining the expected cost per beneficiary among all medical schemes of providing the risk-equalised benefits taking into consideration the factors in paragraph (a)(i) and (ii);

- (c) as far as reasonably possible, result in the expected cost to a medical scheme, per beneficiary, of providing the risk-equalised benefits, being equivalent to the average expected cost per beneficiary among all medical schemes.

Risk equalisation factors 5

19K. (1) The Minister shall from time to time prescribe the risk factors to be used in the calculation of financial transfers, which shall be demographic variables, health status indicators and other factors capable of predicting the cost to medical schemes of risk-equalised benefits.

(2) When prescribing the risk equalisation factors, in order to discourage the selection by a medical scheme of beneficiaries with only preferred risks, the Minister must ensure that the factors contemplated in subsection (1) are—

- (a) objective and auditable;
- (b) measurable using data that are readily available to medical schemes; and
- (c) not readily susceptible to manipulation.

Publication of information related to risk equalisation factors

19L. (1) The Council shall from time to time, after consultation with the Minister—

- (a) assign and publish weighted values to each of the risk equalisation factors based upon their importance in predicting costs of risk-equalised benefits; and
- (b) publish criteria to identify and verify the existence of a risk equalisation factor in a beneficiary, taking into account the need, as far as possible, to—
 - (i) accurately identify beneficiaries with one or more of the risk equalisation factors; and
 - (ii) prevent opportunities for misrepresentation and manipulation of the risk equalisation system.

Determination of amount of financial transfers

19M. (1) The Registrar shall evaluate and assess the information submitted to him or her in terms of this Chapter and, applying the formula prescribed in terms of section 19J, determine the amount of financial transfers payable by a medical scheme to the Fund or by the Fund to a medical scheme, as the case may be.

(2) The Registrar may adjust the amount of a financial transfer calculated in terms of this section to—

- (a) correct an error;
- (b) give effect to the outcome of an appeal;
- (c) provide for an adjustment in the number of beneficiaries and prevalence of risk factors within a medical scheme; or
- (d) distribute interest accrued on monies standing to the credit of the Fund or administrative penalties which have been paid into the Fund proportionate to the value of financial transfers payable in respect of medical schemes.

(3) If a medical scheme fails to submit the information it is required to submit to the Registrar in terms of section 19(I)(1), the Registrar may make a determination of the amount of a financial transfer to be paid in respect of that medical scheme, taking into consideration one or more of the following factors:

- (i) The most recent previously uncontested data submission of the medical scheme;
- (ii) the industry average of the relevant data;
- (iii) the age profile of the medical scheme; and
- (iv) any other factor the Registrar may reasonably consider relevant for the determination.

- (4) Notwithstanding the provisions of this section—
- (a) the liability of the Council in relation to financial transfers payable to medical schemes shall not under any circumstances exceed the amount standing to the credit of the Fund at the time that such financial transfers are paid; and
 - (b) if, due to bad debt from medical schemes or for any other reason, the amount standing to the credit of the Fund is insufficient to pay a medical scheme the full quantum of a financial transfer calculated in terms of this section—
 - (i) the amount of a financial transfer payable from the Fund to the medical scheme will be adjusted downwards proportionately to the amount that would otherwise have been paid to it; and
 - (ii) to the extent that the monies owed to the Fund are subsequently partially or fully recovered, such monies will at that stage be paid to the medical scheme proportionately to the amount that would otherwise have been due in terms of this section.

Effecting of financial transfers

- 19N.** (1) Financial transfers shall be effected on a quarterly basis, based upon the cumulative assessments of the three months in that quarter, or if the Registrar provides 12 months’ written notice to medical schemes, financial transfers shall take place on a monthly basis.
- (2) Every medical scheme must pay the financial transfers determined by the Registrar to the Fund on notice by the Registrar in writing of the amount of the financial transfer, within the period and in the manner as prescribed.
- (3) The Registrar shall, within such period as may be prescribed following the date on which financial transfers to the Fund are due in terms of subsection (1), make the required financial transfers to those medical schemes to which payments are due.
- (4) Interest at the rate determined by the Minister of Finance under the Public Finance Management Act, 1999 (Act No. 1 of 1999), is due and payable on any late payments by a medical scheme of a financial transfer.
- (5) If a medical scheme fails to pay a financial transfer or pay it within the specified period, the Registrar may, by way of civil action in a competent court, recover the amount owed by the medical scheme.

Progressive implementation of financial transfers

19O. The Council may recommend to the Minister a schedule for the progressive implementation of financial transfers, taking into account the potential impact of the financial transfers on the financial soundness and viability of medical schemes in general.

Projections on financial transfers

19P. The Registrar must annually, four months before the start of a calendar year, inform each medical scheme of the projections on financial transfers relating to that medical scheme for that calendar year.

Part 5 45

Appeals and penalties

Appeals

19Q. Notwithstanding the provisions of this Act or any other law, if an appeal is lodged against a decision made in terms of the provisions of this Chapter, such appeal shall not suspend any obligation to pay a financial transfer determined in terms of section 19N pending the outcome of an appeal.

Administrative penalty

- 19R.** (1) Any medical scheme that provides incorrect calculations of financial transfers to the Registrar, is liable to a penalty equivalent to 5% of the difference between the incorrect amount of the financial transfer and the correct amount of the financial transfer that ought to have been paid, if it is determined that the incorrect calculation of the amount of the financial transfer was as a result of—
- (a) the non-submission by that medical scheme of information required in terms of section 19H; or
 - (b) the submission by that medical scheme of incomplete or incorrect information required in terms of section 19H.
- (2) Before imposing a penalty the Council must in writing—
- (a) inform the medical scheme of its intention to impose a penalty;
 - (b) specify the particulars of the alleged contravention or non-compliance;
 - (c) provide reasons for the penalty intended to be imposed;
 - (d) specify the amount of the penalty intended to be imposed;
 - (e) invite interested persons to make representations within a period specified by the Council.
- (3) If the Council imposes an administrative penalty contemplated in subsection (1), no prosecution may be instituted against the medical scheme in terms of section 66 in respect of the same set of facts.
- (4) An administrative penalty imposed or payable under this section must be paid within the period specified by the Council.
- (5) If a medical scheme fails to pay an administrative penalty within the specified period, the Registrar may, by way of civil action in a competent court, recover the amount of the administrative penalty from the medical scheme.
- (6) The Council shall pay any penalties received in terms of this section into the Fund.”.

Amendment of section 29 of Act 131 of 1998, as amended by section 9 of Act 55 of 2001

5. Section 29 of the principal Act is hereby amended by the—
- (a) substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “The Registrar shall not register a medical scheme under section 24, and no medical scheme shall carry on any business, unless provision is made in its rules for the following matters, subject to the provisions of this Act:”;
 - (b) substitution in subsection (1) for paragraph (h) of the following paragraph:
 “(h) **[Subject to the provisions of this Act, the]** The manner in which and the circumstances under which a medical scheme shall be terminated or dissolved.”;
 - (c) substitution in subsection (1) for paragraph (n) of the following paragraph:
 “(n) The terms and conditions applicable to the admission of a person as a member and his or her dependants, which terms and conditions shall provide for the determination of contributions **[on the basis of income or the number of dependants or both the income and the number of dependants, and shall not provide for any other grounds including age, sex, past or present state of health, of the applicant or one or more of the applicant’s dependants, the frequency of rendering of relevant health services to an applicant or one or more of the applicant’s dependants other than for the provisions as prescribed]** in accordance with the provisions of Chapter 5B.”;
 - (d) substitution in subsection (1) for paragraph (p) of the following paragraph:
 “(p) **[No limitation shall apply to the re-imbusement of any relevant health service obtained by a member from a public hospital where this service complies with the general scope and level as contemplated in paragraph (o) and may not be different from the entitlement in terms of a service available to a public hospital**

- patient]** The reimbursement for services obtained from a public hospital in accordance with the provisions of section 34A.”;
- (e) deletion in subsection (1) of paragraph (r);
- (f) substitution in subsection (1) for paragraph (s) of the following paragraph:
 - “(s) The **[continuation, subject to such conditions as may be prescribed, of the membership of a member, who retires from the service of his or her employer or whose employment is terminated by his or her employer on account of age, ill-health or other disability and his or her dependants]** admission and continuation of membership of members and dependants contemplated in subsection (1) of section 32C, in accordance with the provisions of that section.”;
- (g) deletion in subsection (1) of paragraphs (t) and (u); and
- (h) deletion of subsections (2) and (3).

Repeal of section 29A of Act 131 of 1998

- 6. The principal Act is hereby amended by the repeal of section 29A. 15

Insertion of Chapter 5A in Act 131 of 1998

- 7. The following Chapters are hereby inserted in the principal Act after Chapter 5:

“CHAPTER 5A

ADMISSION OF BENEFICIARIES

Open enrolment 20

32A. A medical scheme shall not—

- (a) exclude any applicant or a dependant of an applicant, subject to the conditions as may be prescribed, from membership except for a restricted membership scheme as provided for in this Act;
- (b) exclude any applicant or a dependant of an applicant who would otherwise be eligible for membership to a restricted membership scheme; or
- (c) impose waiting periods other than as provided for in section 32B.

Waiting periods

32B. (1) A medical scheme may impose upon a person in respect of whom an application is made for membership or admission as a dependant, and who was not a beneficiary of a medical scheme for a period of at least 90 days preceding the date of application—

- (a) a general waiting period of up to three months; and
- (b) a condition-specific waiting period of up to 12 months.

(2) A medical scheme may impose upon any person in respect of whom an application is made for membership or admission as a dependant, and who was previously a beneficiary of a medical scheme for a continuous period of up to 24 months, terminating less than 90 days immediately prior to the date of application—

- (a) a condition-specific waiting period of up to 12 months, except in respect of any treatment or diagnostic procedures covered within the prescribed minimum benefits;
- (b) in respect of any person contemplated in this subsection, where the previous medical scheme had imposed a general or condition-specific waiting period, and such waiting period had not expired at the time of termination, a general or condition-specific waiting period for the unexpired duration of such waiting period imposed by the former medical scheme.

(3) A medical scheme may impose upon any person in respect of whom an application is made for membership or admission as a dependant, and who was previously a beneficiary of a medical scheme for a continuous period of more than 24 months, terminating less than 90 days immediately

prior to the date of application, a general waiting period of up to three months, except in respect of any treatment or diagnostic procedures covered within the prescribed minimum benefits.

(4) A medical scheme may not impose a general or a condition-specific waiting period on a beneficiary who changes from one benefit option to another within the same medical scheme unless that beneficiary is subject to a waiting period on the current benefit option, in which case any remaining period may be applied. 5

(5) A medical scheme may not impose a general or a condition-specific waiting period on a child dependant born during the period of membership. 10

(6) A medical scheme may not impose a general or specific condition for a waiting period on a person in respect of whom application is made for membership or admission as a dependant, who was previously a beneficiary of a medical scheme and who thereafter has terminated his or her membership, less than 90 days immediately prior to the date of application, where the transfer of membership is required as a result of— 15

- (a) change of employment;
- (b) an employer changing or terminating the medical scheme of its employees, in which case such transfer shall occur at the beginning of the financial year, or reasonable notice must have been furnished to the medical scheme to which application is made for such transfer to occur at the beginning of the financial year. 20

(7) A medical scheme may require an applicant to provide the medical scheme with a medical report in respect of any proposed beneficiary only in respect of a condition for which medical advice, diagnosis, care or treatment was recommended or received within the 12-month period ending on the date on which an application for membership was made. 25

(8) In respect of members who change medical schemes in terms of subsection (6), where the former medical scheme had imposed a general or condition-specific waiting period and such waiting period had not expired at the time of termination, the medical scheme to which the person has applied may impose a general or condition-specific waiting period for the unexpired duration of such waiting period imposed by the former medical scheme. 30

Continued membership 35

32C. (1) A medical scheme shall allow the—

- (a) continued membership, subject to such conditions as may be prescribed, of a member who retires from the service of his or her employer or whose employment is terminated by his or her employer on account of age, ill-health or other disability and his or her dependants; 40
- (b) continued membership of a member's dependants, subject to conditions as may be prescribed, after the death of that member, until such dependants become members of, or are admitted as dependants of a member of, another medical scheme. 45

(2) If the members of a medical scheme who are members of that medical scheme by virtue of their employment by a particular employer, terminate their membership of the said medical scheme with the object of obtaining membership of another medical scheme or of establishing a new medical scheme, such new medical scheme shall admit those members referred to in this section without a waiting period or the imposition of new restrictions regarding their state of health or the state of health of their dependants. 50

Cancellation or suspension of membership

32D. A medical scheme shall not cancel or suspend a member's membership or that of any of his or her dependants, except on the grounds of— 55

- (a) failure to pay, within the time allowed in the medical scheme's rules, the membership fees required in such rules;
- (b) failure to repay any debt due to the medical scheme;

- (c) submission of fraudulent claims;
- (d) committing any fraudulent act; or
- (e) the non-disclosure of material information.

CHAPTER 5B

CONTRIBUTIONS

5

Determination of contributions

32E. (1) A medical scheme shall not determine contributions on the basis of—

- (a) age of a person, except to the extent allowed in this Chapter;
- (b) gender, race, marital status, ethnic or social origin or sexual orientation of a person;
- (c) pregnancy or disability of a person; and
- (d) state of health of a person or frequency of utilisation of relevant health services.

(3) The only discounts available, if any, are discounts allowed under section 32G. 15

(4) Contributions may be differentiated on the basis of income categories only to the extent that this does not result in direct or indirect contravention of the requirements set out in subsection (1).

(5) The contribution payable to the medical scheme meets the contribution requirements in section 32F. 20

Contributions requirement for basic benefits and supplementary benefit options

32F. (1) The contributions payable in respect of the basic benefits of a medical scheme shall be based on the average expected costs of providing the basic benefits to the beneficiaries of a medical scheme, taking into account projections of financial transfers contemplated in section 19P, subject to such regulations relating to categories of beneficiaries as may be prescribed. 25

(2) The contributions payable in respect of a supplementary benefit option of a scheme shall be based on the average expected cost of providing the basic benefits to the beneficiaries participating in that supplementary benefit option, subject to such regulations relating to categories of beneficiaries as may be prescribed. 30

Discounts for choice of provider

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32G. A medical scheme may provide in its rules for a discount on the contribution payable by a member in respect of the basic benefits or a supplementary benefit option because the member agrees to the choice of a particular provider or provider network for the provision of specified services to that member and his or her dependants, provided that— 40

- (a) such choice promotes greater efficiency in the delivery of benefits and does not give rise to unfair discrimination against beneficiaries of the medical scheme; and
- (b) the discount shall be disclosed in the rules of a medical scheme as a uniform percentage of the relevant contributions and is approved by the Registrar in terms of section 33.” 45

Amendment of heading of Chapter 6 in Act 131 of 1998

8. The principal Act is hereby amended by the substitution for the heading of Chapter 6 of the following heading:

“CHAPTER 6

[BENEFIT OPTIONS] BENEFITS”

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Insertion of section 32H in Act 131 of 1998

9. The principal Act is hereby amended by the insertion in Chapter 6, immediately preceding section 33, of the following section:

“Basic benefits and supplementary benefit options

32H. (1) A medical scheme shall provide to every beneficiary of the medical scheme—

- (a) basic benefits which have been prescribed in terms of section 67(1)(g); and
- (b) any additional benefits which the medical scheme offers in respect of services rendered to a beneficiary while that beneficiary is an in-patient in a hospital.

(2) A medical scheme may offer to its members the choice of enrolling in supplementary benefit options, provided that—

- (a) a supplementary benefit option does not offer benefits contemplated in subsection (1); and
- (b) the dependants of a member shall enrol in the same supplementary benefit option as the member.”.

Amendment of section 33 of Act 131 of 1998

10. Section 33 of the principal Act is hereby amended by the—

- (a) substitution for subsection (1) of the following subsection: 25

“(1) A medical scheme shall apply to the Registrar for the approval of its basic benefits and any supplementary benefit option [if such a medical scheme provides members with more than one benefit option].”;

- (b) deletion in subsection (2) of paragraphs (a) and (b); 30

- (c) substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) will not jeopardise the financial soundness of the medical scheme or of any [existing] supplementary benefit option within the medical scheme.”.

Insertion of section 34A in Act 131 of 1998

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11. The principal Act is hereby amended by the insertion after section 34 of the following section:

“Services obtained from public hospitals

34A. (1) A medical scheme shall not apply any limitation to the reimbursement of any relevant health service obtained by a beneficiary from a public hospital where this service complies with the general scope and level as contemplated in section 29(o). 40

(2) If a beneficiary obtains a service contemplated in paragraph (o) of section 29 from a public hospital, the entitlement of the beneficiary to receive this service may not be different from the entitlement in terms of a service available to a public hospital patient.” 45

Amendment of section 35 of Act 131 of 1998, as amended by section 12 of Act 55 of 2001

12. Section 35 of the principal Act is hereby amended by the substitution in subsection (12) for the words preceding paragraph (a) of the following words:

“(12) The Registrar may, when he or she has received the information referred to in subsection (11)[, and in concurrence with the Council]—”.

Amendment of section 36 of Act 131 of 1998, as amended by section 13 of Act 55 of 2001

13. Section 36 of the principal Act is hereby amended by the—

(a) substitution for subsection (4) of the following subsection: 10

“(4) The approval of an auditor of a medical scheme by the Registrar shall not lapse if an auditor of a medical scheme is a firm as contemplated in the **[Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)] Auditing Profession Act**, whose membership of the firm has changed, if not fewer than half of the members after the change, were members when the appointment of the firm was first approved by the Registrar.”;

(b) substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) whenever he or she furnishes a report or other document of particulars as contemplated in section **[20(5)(b) of the Public Accountants’ and Auditors’ Act, 1991]** 45(1) of the **Auditing Profession Act**, also furnish a copy thereof to the Registrar.”;

(c) substitution in subsection (5)(c) for subparagraph (ii) of the following subparagraph:

“(ii) if he or she would, but for that termination, have had reason to submit to the medical scheme a report as contemplated in section **[20(5)(b) of the Public Accountants’ and Auditors’ Act, 1991]** 45(1) of the **Auditing Profession Act**, submit such a report to the Registrar.”; and

(d) substitution in subsection (8) for paragraph (a) of the following paragraph: 30

“(a) in respect of a return or statement which he or she is required to examine in terms of this Chapter, certify whether that return or statement complies with the requirements of this Act and whether the return or statement, including any annexure thereto, presents fairly the matters dealt with therein as if such return or statement were a financial statement contemplated in section **[20 of the Public Accountants’ and Auditors’ Act, 1991]** 44 of the **Auditing Profession Act**.”.

Amendment of section 37 of Act 131 of 1998, as amended by section 14 of Act 55 of 2001

14. Section 37 of the principal Act is hereby amended by the—

(a) substitution for subsection (3) of the following subsection:

“(3) The annual financial statements of a medical scheme shall, subject to the provisions of the **[Public Accountants’ and Auditors’ Act, 1991]** **Auditing Profession Act**, be audited by an accountant and auditor registered in terms of that Act except where such accounts are to be audited by the Auditor-General in terms of any law.”; and

(b) substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) be prepared in accordance with **[general accepted accounting practice]** **International Financial Reporting Standards, which is the set of accounting standards issued from time to time by the International Accounting Standards Board**.”.

Amendment of section 44 of Act 131 of 1998, as amended by section 17 of Act No 55 of 2001

15. Section 44 of the principal Act is hereby amended by the—
- (a) substitution for subsection (2) of the following subsection:

“(2) The Registrar, or such other person authorised by him or her, shall in addition to the powers and duties conferred or imposed upon him or her by this Act, have all the powers and duties conferred or imposed upon an inspector under section 2 of the Inspection of Financial Institutions Act, [1984 (Act No. 38 of 1984)] 1998 (Act No. 80 of 1998), as if he or she has been appointed an inspector under that Act.”;
 - (b) substitution for subsection (3) of the following subsection:

“(3) Any reference in this Act to an inspection made under this section shall also be construed as a reference to an inspection made under the Inspection of Financial Institutions Act, [1984] 1998.”;
 - (c) substitution in subsection (6) for the words preceding paragraph (a) of the following words:

“(6) The Registrar may direct that any statement furnished to him or her under subsection [(4)] (5), or any document so furnished and which relates to the financial affairs of that medical scheme, shall be accompanied by a report thereon by the auditor of the medical scheme, and in which the auditor shall state—”;
 - (d) substitution for subsection (7) of the following subsection:

“(7) The Registrar may, if he or she, on account of any statement, document or information furnished to him or her by virtue of subsection [(4)] (5), [and, after consultation with the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990),] by notice in writing direct the medical scheme to furnish to him or her a report compiled by an actuary, in the form and relating to the matters specified by the Registrar in the notice.”;
 - (e) substitution in subsection (10) for the words preceding paragraph (a) of the following words:

“(10) The Registrar may, for the purposes of paragraph (a) of subsection [(8)] (9), by notice in writing direct the medical scheme concerned—”;
 - (f) substitution for subsection (11) of the following subsection:

“(11) The Registrar may, if a medical scheme fails to amend its rules as directed by the Registrar under subsection [(9)(a)] (10)(a) within the period specified in the notice concerned, amend such rules, and such amendment shall be deemed to be an amendment within the meaning of section 31.”.

Amendment of section 51 of Act 131 of 1998, as amended by section 19 of Act 55 of 2001

16. Section 51 of the principal Act is hereby amended by the—
- (a) substitution in subsection (5) for paragraph (d) of the following paragraph:

“(d) order that the medical scheme be placed under judicial management in terms of section 52; [or]”;
 - (b) substitution in subsection (5) for paragraph (e) of the following paragraph:

“(e) order that the whole or any part of the business of the medical scheme be wound up in terms of section 53[.]; or”;
 - (c) addition to subsection (5) of the following paragraph:

“(f) in the case of an application brought on the basis of material irregularities relating to the conduct of elections for trustees of a medical scheme—

 - (i) declare the results of the election to be irregular in certain material respects and issue such directions to the medical scheme concerned as the High Court may deem desirable to remedy such irregularity; or
 - (ii) declare the results of the election to be invalid and order the medical scheme concerned to hold another election subject to such conditions as the High Court may deem desirable.”.

Amendment of section 56 of Act 131 of 1998, as amended by section 22 of Act 55 of 2001

17. Section 56 of the principal Act is hereby amended by the—
- (a) substitution for subsection (2) of the following subsection:

“(2) The provisions of the [**Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984)**] Financial Institutions (Protection of Funds) Act, insofar as those provisions relate to the appointment of a curator in terms of the said Act, and insofar as they are not inconsistent with the provisions of this Act, shall apply with the necessary changes to the appointment of a curator of a medical scheme in terms of this section.”;
 - (b) substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) In the application of the [**Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984)**] Financial Institutions (Protection of Funds) Act, as provided for by subsection (1)—”; and
 - (c) substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) a reference to a company and the registrar in section 1 of the [**Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984)**] Financial Institutions (Protection of Funds) Act, shall be construed as a reference also to a board of trustees and the Registrar, respectively;”.

Amendment of heading of Chapter 12 of Act 131 of 1998

18. The principal Act is hereby amended by the substitution for the heading of Chapter 12 of the following heading: 25

“CHAPTER 12

[GENERAL] GOVERNANCE”.

Insertion of heading in Chapter 12 of Act 131 of 1998

19. The principal Act is hereby amended by the insertion immediately preceding section 57 of the following heading: 30

“Part 1

Board of Trustees”.

Substitution of section 57 of Act 131 of 1998, as amended by section 23 of Act 55 of 2001

20. Section 57 of the principal Act is hereby amended by the— 35
- (a) substitution for the heading of section 57 of the following heading:

“[General provisions on governance] Governance by board of trustees”;
 - (b) substitution for subsection (1) of the following subsection:

“(1) Every medical scheme shall have a board of trustees consisting of persons who are fit and proper to [**manage**] direct the business contemplated by the medical scheme in accordance with the applicable laws and the rules of such medical scheme.”;
 - (c) substitution for subsection (2) of the following subsection:

“(2) [**At least 50 per cent of the members of the board of trustees shall be elected from amongst members**] The board of trustees of a medical scheme is accountable for the performance of its functions and those of its principal officer to—

 - (a) the members of the medical scheme; and
 - (b) the Council and the Registrar, to the extent provided for in this Act.”; and
 - (d) deletion of subsections (3), (4), (5), (6), (7) and (8).

Insertion of sections 57A and 57B in Act 131 of 1998

21. The principal Act is hereby amended by the insertion after section 57 of the following sections:

“Composition of board of trustees

- 57A.** (1) At least 50 per cent of the members of the board of trustees shall be elected by members of the medical scheme from amongst members of the medical scheme. 5
- (2) Members of the board of trustees who are not elected in terms of subsection (1) shall—
- (a) in the case of restricted membership schemes, be appointed in terms of the rules of the medical scheme; and 10
- (b) in the case of all other medical schemes, be appointed by those members of the board of trustees who were elected in terms of subsection (1).
- (3) The election of a trustee by the members of a medical scheme shall not be valid unless all the members of the medical scheme had reasonable opportunity to vote in the election of that trustee. 15
- (4) A person shall not serve as a trustee for more than a total of six years in any one medical scheme.
- (5) A person shall not be a member of the board of trustees of a medical scheme if that person— 20
- (a) is an employee, director, officer, consultant or contractor of any person contracted by the medical scheme to provide administrative marketing services or managing health care services of the holding company, subsidiary, joint venture, or if he or she is an associate of such person; 25
- (b) is a broker or an employee, director, or employed by a person which provides broker services; or
- (c) otherwise has a material relationship with any person contracted by the medical scheme to provide administrative, marketing, broker services or managing health care services or other services with its holding company, subsidiary, joint venture or associate. 30

Duties of board of trustees

- 57B.** (1) The duties of the Board of trustees shall be to—
- (a) provide strategic direction and oversight to the medical scheme; 35
- (b) ensure that—
- (i) the resources of the medical scheme are used in an effective, efficient, economical and transparent manner;
- (ii) proper registers, books and records of all operations of the medical scheme are kept, and that proper minutes are kept of all resolutions passed by the board of trustees; 40
- (iii) proper control systems are employed by or on behalf of the medical scheme;
- (iv) adequate and appropriate information is communicated to the members regarding their rights, benefits, contributions and duties in terms of the rules of the medical scheme; 45
- (v) all reasonable steps are taken for contributions to be paid timeously to the medical scheme in accordance with this Act and its rules;
- (vi) an appropriate level of professional indemnity insurance and fidelity guarantee insurance is taken out and maintained; 50
- (vii) the rules, operation and administration of the medical scheme comply with the provisions of this Act and all other applicable laws; and
- (viii) all reasonable steps are taken to protect the confidentiality of medical records concerning any member’s state of health; 55
- (c) approve the budget, policies and procedures in terms of which the operational and financial management of the medical scheme is carried out;

- (d) approve all contracts and expenditure with a value above levels predetermined by the board of trustees;
- (e) where applicable, negotiate and enter into contracts for the administration of the scheme by an intermediary accredited in terms of section 58 and for the provision of managed health care by an intermediary accredited in terms of regulation 15B of the General Regulations made in terms of this Act; 5
- (f) obtain expert advice on legal, accounting and business matters as required, or on any other matter in respect of which the members of the board of trustees may lack sufficient expertise; and 10
- (g) monitor the performance of the principal officer of the medical scheme and hold the principal officer accountable for the functions delegated to him or her by the board of trustees.”.

Addition of Parts 2 and 3 to Chapter 12 of Act 131 of 1998

22. The principal Act is hereby amended by the addition after section 57B of the following Parts to Chapter 12: 15

“Part 2

Principal officer

Appointment of principal officer

- 57C.** (1) The board of trustees shall— 20
- (a) appoint a principal officer who is a fit and proper person to hold such office; and
 - (b) within 30 days of such appointment, give notice thereof in writing to the Registrar.
- (2) A person shall not be a principal officer of a medical scheme if that person— 25
- (a) is an employee, director, officer, consultant or contractor of any person contracted by the medical scheme to provide administrative, marketing or managed health care services, or of the holding company, subsidiary, joint venture or associate of such person; 30
 - (b) is a broker or an employee, director, or officer of a person which provides broker services;
 - (c) is the principal officer of another medical scheme; or
 - (d) otherwise has a material relationship with any person contracted by the medical scheme to provide administrative, marketing, broker, managed health care or other services, or with its holding company, subsidiary, joint venture or associate. 35
- (3) The principal officer of a medical scheme may participate in all meetings of the board of trustees, or any of its committees, but shall not be a voting member of the board of trustees. 40

Responsibilities of principal officer

- 57D.** (1) A principal officer is responsible under the authority of the board of trustees of the medical scheme for the executive management of the business of the medical scheme. 45
- (2) The board of trustees of a medical scheme shall, in writing, delegate to the principal officer such duties as may be necessary to enable the principal officer to effectively manage the business of the medical scheme.

Part 3

General provisions on governance

Corporate governance

57E. (1) The board of trustees and the principal officer of a medical scheme shall establish and maintain an adequate and effective process of corporate governance, which shall be consistent with the nature, complexity and risks inherent in the activities and the business of the medical scheme concerned. 5

(2) The Council may, from time to time, publish in such manner as it deems fit— 10

(a) guidelines for good corporate governance to assist the trustees and principal officers of medical schemes to establish and maintain adequate and effective processes of corporate governance, as contemplated by subsection (1); and

(b) requirements for the periodic disclosure by the board of trustees of a medical scheme to the Registrar and the members of the medical scheme of the extent to which those guidelines have been met, together with reasons for failure to comply with those guidelines. 15

(3) A medical scheme shall, at such intervals and in such manner and format as the Council may from time to time determine, make such disclosures as are contemplated in paragraph (b) of subsection (2). 20

Duty of care

57F. The board of trustees and the principal officer shall—

(a) take all reasonable steps to ensure that the interests of beneficiaries in terms of the rules of the medical scheme and the provisions of the Act are protected at all times; 25

(b) act with due care, diligence, skill and good faith;

(c) take all reasonable steps to avoid conflicts of interest; and

(d) act with impartiality in respect of all beneficiaries.

Disclosure 30

57G. (1) The members of the board of trustees and the principal officer shall disclose annually in the annual financial statements of the medical scheme details of any payments, gifts or considerations made to them in that particular year by—

(a) the medical scheme concerned; 35

(b) any person contracted by the medical scheme to provide administrative, marketing, brokerage, managed care or other services, or the holding company, subsidiary, joint venture or associate of such person; and

(c) and any other person if such payments, gifts or considerations were made by virtue of their holding office within the medical scheme. 40

(2) A disclosure as contemplated in subsection (1) shall include the—

(a) identity of the source of the payment, gift or consideration;

(b) reason for the payment, gift or consideration;

(c) date on which the payment, gift or consideration was given; and 45

(d) quantum of money or otherwise the value of the payment, gift or consideration.

Suspension or removal from office

57H. (1) If a board of trustees suspends or removes from office the principal officer or trustee of a medical scheme and that principal officer or trustee believes that the suspension or removal from office is as a result of him or her duly performing his or her functions in terms of this Act, or exposing inappropriate or unlawful conduct on the part of any officer of the medical scheme or any third party contracted to provide services to the 50

medical scheme, the principal officer or trustee concerned may complain in writing to the Registrar.

(2) On receipt of a written complaint in terms of subsection (1)—

- (a) the Registrar shall investigate the basis of the complaint; and
- (b) if he or she finds that the complaint has merit, the Registrar or the Council shall take such steps as may be necessary in terms of the powers provided for by this Act to address the concerns raised in the complaint.

5

Notices to medical scheme

57I. Any notice required or permitted to be given to a medical scheme in terms of this Act shall, if given to the principal officer, be deemed to have been duly given to the medical scheme.”.

10

Insertion of heading for Chapter 13 in Act 131 of 1998

23. The principal Act is hereby amended by the insertion after section 57 of the following heading:

15

**“CHAPTER 13
GENERAL”.**

Amendment of section 63 of Act 131 of 1998, as amended by section 25 of Act 55 of 2001

24. Section 63 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

20

“(1) No transaction involving the amalgamation of the business of a medical scheme with any business of any other person **[irrespective of whether that other person is or is not a medical scheme]** or the transfer of any business from a medical scheme to any other **[medical scheme]** person (irrespective of whether that other person is or is not a medical scheme), or the transfer of any business from any other person to a medical scheme, shall be of any force, unless such amalgamation or transfer is carried out in accordance with the provisions of this section.”.

25

Amendment of section 66 of Act 131 of 1998, as amended by section 27 of Act 55 of 2001

30

25. Section 66 of the principal Act is hereby amended by the—

(a) substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) renders a statement, account or invoice to a member or any other person, knowing that such statement, account or invoice is false and which may be used by such member or other person to claim from a medical scheme any benefit or a benefit greater than benefit to which he or she is entitled in terms of the rules of the medical scheme[; or]”;

35

(b) substitution in subsection (1) for the words following paragraph (e) of the following words:

40

“shall, subject to the provisions of **[subsection]** subsections (1A) and (2), be guilty of an offence, and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and imprisonment.”; and

45

(c) insertion after subsection (1) of the following subsection:

“(1A) Notwithstanding subsection (1), any person who—

(a) in any way unlawfully obstructs or attempts to delay or prevent a payment being made from a medical scheme to the risk equalisation fund;

50

(b) makes or causes or allows to be made any false entry or statement to the Council which may affect the quantum of a financial transfer, or

signs off on or submits any such statement or entry to the Council without reasonable grounds for believing the same to be true;

(c) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records of falsifies or authorises the falsification of any books of account or other records, which causes, may cause or is intended to cause an error in the value of a financial transfer; or

(d) in any other way makes use of any fraud, art or contrivance whatsoever, or authorises the use of any such fraud, art or contrivance which causes, may cause or is intended to cause an error in the value of a financial transfer,

shall be guilty of an offence and is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.”.

Amendment of section 67 of Act 131 of 1998, as amended by section 28 of Act 55 of 2001 and section 3 of Act 62 of 2002

26. Section 67 of the principal Act is hereby amended by the—

- (a) insertion in subsection (1) of the following paragraphs after paragraph (o):
- “(oA) duties of a principal officer;
 - (oB) requirements and criteria for the determination of the fit and proper status of a trustee, principal officer and any other person required to be fit and proper to perform any function or duty in terms of this Act;
 - (oC) the conduct of elections for members of the board of trustees of a medical scheme, including conditions and requirements relating to—
 - (i) oversight of election processes;
 - (ii) timing and location of elections;
 - (iii) processes for the nomination of persons standing for election as trustees;
 - (iv) advance notice to members concerning elections and voting processes; and
 - (v) any other matter affecting the fairness of elections;
 - (oD) the sound operation of risk equalisation, including—
 - (i) limitations to the benefits in respect of which risk equalisation will apply, as contemplated in section 19B;
 - (ii) the formula for the determination of the quantum of financial transfers, as contemplated in section 19J;
 - (iii) periods within which the Registrar shall make financial transfers to medical schemes, as contemplated in terms of section 19N(3); and
 - (iv) the amounts of administrative penalties as contemplated in terms of section 19R(1);
 - (oE) the determination of contributions for basic benefits and supplementary benefit options, as contemplated in sections 32F.”; and
- (b) insertion after subsection (1) of the following subsection:
- “(1A) The Minister may prescribe variations from the requirements of the regulations prescribed in terms of subsection (1) to be applied to medical scheme products which cater specifically for low-income persons, provided that the variations so prescribed are—
- (a) reasonably necessary to create conditions for the emergence of such medical scheme products in the market; and
 - (b) in the best interests of low-income consumers.”.

Addition of Schedule 3 to Act 131 of 1998

27. The principal Act is hereby amended by the addition of the following Schedule:

“SCHEDULE 3

TRANSITIONAL ARRANGEMENTS RELATING TO AMENDMENTS EFFECTED BY MEDICAL SCHEMES AMENDMENT ACT, 2007 5

Definitions

1. In this Schedule—
“the amending Act” means the Medical Schemes Amendment Act, 2008; 10
“the principal Act” means the Medical Schemes Act, 1998 (Act No. 131 of 1998).

Trustees

2. A person who immediately prior to commencement of the amending Act was lawfully a trustee of a medical scheme but who is not eligible to serve as a trustee of the medical scheme as a consequence of amendments to the principal Act by the amending Act, shall vacate such office within a period of 12 calendar months after the commencement of the amending Act. 15

Board of Trustees 20

2. A board of trustees which immediately prior to commencement of the amending Act was lawfully constituted, but which is no longer lawfully constituted as a consequence of amendments to the principal Act by the amending Act shall, within a period of 12 calendar months after the commencement of the amending Act— 25
 (a) change the constitution of the board of trustees to comply with the principal Act as amended by the amending Act; and
 (b) to the extent necessary, amend the rules of the medical scheme accordingly.

Principal officers 30

3. A person who immediately prior to commencement of the amending Act was lawfully a principal officer of a medical scheme but who is not eligible to serve as a principal officer of the medical scheme in terms of section 57C of this Act as a consequence of amendments to the principal Act by the amending Act, shall vacate such office within a period of 12 calendar months after the commencement of the amending Act.”. 35

Amendment of Arrangement of Sections of Act 131 of 1998

28. The arrangement of sections after the long title of the principal Act is hereby amended by the—
 (a) insertion after “19. Staff of Council” of the following: 40

“CHAPTER 3A

RISK EQUALISATION

19A. Scope of risk equalisation
19B. Risk-equalised benefits

Part 2

Risk Equalisation Fund

- 19C. Establishment of Risk Equalisation Fund
- 19D. Financial administration by Council
- 19E. Revenue of Fund
- 19F. Allocation of money in Fund
- 19G. Investment of money not immediately required

5

Part 3

Information required for risk equalisation

- 19H. Information for calculation of financial transfers
- 19I. Verification of information

10

Part 4

Risk equalisation methodology

- 19J. Formula for risk equalisation
- 19K. Risk equalisation factors
- 19L. Publication of information related to risk equalisation factors
- 19M. Determination of amount of financial transfers
- 19N. Effecting of financial transfers
- 19O. Progressive implementation of financial transfers
- 19P. Projections on financial transfers

15

20

Part 5

Appeals and penalties

- 19Q. Appeals
- 19R. Administrative penalty”;

(b) insertion after “32. Binding force of rules” of the following:

25

“CHAPTER 5A

ADMISSION OF BENEFICIARIES

- 32A. Open enrolment
- 32B. Waiting period
- 32C. Continued membership
- 32D. Cancellation or suspension of membership

30

CHAPTER 5B

Contributions

- 32E. Determination of contributions
- 32F. Contributions requirement for basic benefits and supplementary benefit options
- 32G. Discount for choice of provider”;

35

(c) substitution for the heading to Chapter 6 of the following heading:

“BENEFITS”;

(d) insertion before “33. Approval and withdrawal of benefit options” of the following:

“32H. Basic benefits and supplementary benefit option”; 5

(e) substitution for the heading to Chapter 12 of the following heading:

“GOVERNANCE”;

(f) substitution for “57. General provisions on governance” of the following:

“Part 1

Board of Trustees 10

- 57. Governance by Board of Trustees**
- 57A. Composition of board of trustees**
- 57B. Duties of board of trustees**

Part 2

Principal Officers 15

- 57C. Appointment of principal officer**
- 57D. Responsibilities of principal officer**

Part 3

General provisions on governance

- 57E. Corporate governance** 20
- 57F. Duty of care**
- 57G. Disclosures**
- 57H. Suspension or removal from office**
- 57I. Notice to medical scheme**.

CHAPTER 13 25

GENERAL”; and

(g) addition of the following:

“SCHEDULE 3

Transitional arrangements relating to amendments affected by Medical Schemes Amendment Act, 2008”. 30

Application of this Act

29. Subject to the transitional clauses contained in Schedule 3, as inserted by section 27 of this Act, the amendments effected by this Act shall apply to all relevant contractual or other business activities or arrangements notwithstanding the fact that such contractual or other business activities or arrangements may have been initiated or entered into prior to the coming into operation of any provision of this Act. 35

Short title and commencement

30. (1) This Act is called the Medical Schemes Amendment Act, 2008, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act. 5

(3) Notwithstanding the coming into effect of this Act, financial transfers shall not commence until such time as the Minister of Health, in concurrence with the Minister of Finance, provides written approval thereof, after consideration of—

- (a) the adequacy of the systems in place in the Council for Medical Schemes to effectively manage risk equalisation transfers; 10
- (b) the quality of data available for purposes of administering the risk equalisation fund; and
- (c) any other matter relevant to such approval.

MEMORANDUM ON THE OBJECTS OF THE MEDICAL SCHEMES AMENDMENT BILL, 2008

1. BACKGROUND

The Medical Schemes Amendment Bill provides for risk equalisation amongst medical schemes. It seeks to achieve this by the establishment of a Fund called the Risk Equalisation Fund (REF). The REF is part of the broader process of removing unfairness as it relates to the demographic and risk profile found in medical schemes. The demographic profile of a scheme has significant implications for its costs (and of its options) and its resulting contributions.

Therefore, the purpose of the REF is to ensure that contributions towards prescribed Minimum Benefits (PMB) are based on an industry community rate rather than a scheme-specific community rate. Changes to the benefit design within medical schemes also facilitate greater community rating and cross-subsidisation within medical schemes.

The strengthening of the governance model and processes within medical schemes is also an important strategic focus to protect the interests of medical schemes and to provide increased fiduciary oversight to member funds.

Therefore, the Bill seeks to amend the Medical Schemes Act, 1998 (Act No.131 of 1998) (“the principal Act”), to provide for—

- (a) the establishment of a risk equalisation fund, and for the implementation of risk equalisation among medical schemes;
- (b) a benefit structure within medical schemes that reduces complexity and facilitates greater cross-subsidisation across the membership of the medical scheme;
- (c) revisions to the governance framework within medical schemes to promote improved corporate governance;
- (d) certain measures to facilitate the emergence of risk-pooled medical scheme products for low-income beneficiaries; and
- (e) various incidental matters.

2. OBJECTS

1. The Medical Schemes Amendment Bill, 2008 (“the Bill”), seeks to amend the principal Act to provide for—

- (a) the establishment of a risk equalisation fund, and for the implementation of risk equalisation among medical schemes;
- (b) a benefit structure within medical schemes that reduces complexity and facilitates greater cross-subsidisation across the membership of the medical scheme;
- (c) revisions to the governance framework within medical schemes to promote improved corporate governance;
- (d) certain measures to facilitate the emergence of risk-pooled medical scheme products for low-income beneficiaries; and
- (e) various incidental matters.

3. PERSONS CONSULTED

The Department of Health consulted firstly with all the provincial departments of health through the National Health Council process and the national departments through a Cabinet process. There was also consultation with representative organisations like the Board of Health Care Funders (representing medical schemes) and medical schemes in general.

4. FINANCIAL IMPLICATIONS

There are no financial implications for the Department of Health. However, there will be financial implications for the Council for Medical Schemes, a regulatory body charged with the implementation of the Act.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Health are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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