

## THE PIASA BRIEFS: THE NEW CONSUMER PROTECTION ACT

### Implications for the consumers of medical scheme products and services

*This brief forms part of a series developed by the Pharmaceutical Industry Association of South Africa (PIASA) in the interest of patient education. It explores specific implications of this new Act for the medical scheme sector, current and future members (who are all customers in terms of the law), and agents, such as brokers and administrators. The views expressed in this brief do not constitute legal opinion or legal advice, and consumers should seek assistance to take any matter further.*

### Equality in marketing

The new Consumer Protection Act (CPA) includes a number of key fundamental consumer rights. The Act will come into force in the near future.

One of the rights is the right to equality in marketing. This right comes from section 9 of the South African Constitution, which guarantees every person the right of equality before the law, equal protection- and equal benefit of the law. It also prohibits unfair discrimination on grounds such as gender, race, religion, culture, etc.

Section 8 of the CPA prohibits the following actions when marketing for example medical scheme cover:

- Exclusion of any certain group or community (e.g. a particular religious or racial group) or district (where people from certain groups live in certain districts or areas) from marketing;
- Giving priority or exclusivity to certain persons or groups;
- Supplying different quality of goods to some persons or groups;
- Charging different prices to any person or category of persons;
- Giving preference in the supply of goods to some groups.

### Examples

A broker should not offer only “lower options” of medical schemes to some employees, based on the assumption that the group of lower level workers might not require “sophisticated” medical scheme cover. Assuming that members of certain groups would only be interested in certain medical scheme options could potentially violate this right.

Assuming that certain groups will not be able to afford or pay for premiums, may also be discriminatory. To then only offer expensive options to top management may be regarded as discrimination.

Factors such as race, gender, age, etc may also not be used in an unfair manner to:

- Assess the ability of a person to pay or to be a contractual party, for example assuming that a person of a certain race or look would not be trustworthy or that a wife needs a husband to help her with a transaction;
- Race, gender and such factors may also not be used to determine the cost of a transaction or agreement;
- When providing services to customers differentiate between customers from various cultural group, giving the one group inferior (such as rude) service, for example;
- Require of certain groups to do more, or to provide more proof or details, which is not required from other consumers;
- Be lenient to some groups, but not to others.

Health status (i.e. how ill or healthy one is, or what one’s health history is) is not listed in the Consumer Protection Act. It can, however, be a basis on which discrimination can take place. The Medical Schemes Act, 1998, prohibits discrimination on health status in that, no matter how ill or healthy one has been, one should be admitted as a medical scheme member. Two things have to be considered by medical scheme members or future members:

- When becoming a member for the first time, you have to disclose your whole health history. This is a legal requirement and failure to disclose could lead to the scheme later-on not paying one’s claims. If you disclosed, the scheme cannot refuse to pay. Remember that there are, however, in certain circumstances waiting periods or late joiner penalties that may apply.
- Medical schemes may require of members with a certain health status to register such condition. This does not mean that such persons may be subjected to reduced benefits, or face compliance criteria that would effectively exclude them from cover.

It is also possible that agreements that allow some medical scheme members access to certain benefits (e.g. private hospital access) and others not (e.g. only public hospital access) where such differentiation lead to a disproportional impact on certain groups (race, gender, age, etc) could be regarded as indirectly discrimination.

Requiring of persons to be married before awarding medical scheme benefits might also be regarded as discriminatory.

**The Pharmaceutical Industry Association of SA (PIASA) is a trade association of companies involved in the manufacture and/or marketing of medicines in South Africa. The membership includes a broad representation of foreign multinational pharmaceutical companies and local and generic companies, both large and small.**