

## 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.*

### Privacy / confidentiality

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

The right to privacy (often called confidentiality) is a cornerstone right. This right has its roots in the South African Constitution, and a strong history in the healthcare sector. Protecting privacy ensures that patients are sharing critical health information with those who care for their healthcare, without fear of disclosures or negative repercussions, such as possible health status discrimination.

The right to privacy in the Consumer Protection Act includes the right to restrict unwanted or unsolicited marketing by means of:

- refusal to accept marketing, such as sms's;
- requiring that marketing be stopped, such as newsletters or brochures;

- placing one's name on a list that would prohibit anyone from marketing to one; or
- requesting a marketer to not make any direct marketing approaches or communication.

All business must make provision for one to instruct them to stop marketing or to not market to you at all. This right also protects consumers from being contacted at home or at hours which will be determined in regulations to the CPA, unless the consumer has expressly or implicitly agreed otherwise.

There are also rights in other laws that protect your privacy in healthcare, such as:

- The Promotion of Access to Information Act, which states that if anyone else requests information from your doctor or medical scheme, they may not disclose it;
- The National Health Act, which requires all healthcare information, including that relating to health status, treatment and/or stay at a health facility, to be kept confidential, unless :
  - you consent in writing to a disclosure thereof to someone else, or to some other institution; or
  - a law, such as the Medical Schemes Act, requires a disclosure (the Medical Schemes Act requires a disclosure of a diagnostic code on an account to a medical scheme); or
  - a court authorizes a disclosure.
- The envisaged Protection of Personal Information Bill, which will limit the use of your personal information institutions such as medical schemes have.

### Examples

Belonging to a medical scheme may place a member in a position where s/he is the target of direct marketing. A medical scheme member may refuse to receive further communications, such as magazine's or newsletters of a general health nature. You may also refuse to receive information from other businesses associated with the medical scheme, such as associated life insurance or short-term insurance.

The information you provide to a medical scheme, sometimes through your doctor or a hospital, should remain with the medical scheme, and cannot be given to any other business. Should you have high blood pressure that information cannot be passed on to a life insurance business, and may also not be used to discriminate unfairly against you.

Whenever you provide information on application forms, in participating in competitions, etc. you should know where the information will be going, and for what it will be used.

**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.**