

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.

The right to disclosure and information

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 disclosure, and to be provided with information, is another of the rights. It goes hand-in-hand with the right of choice (see CPA Brief No 3). The CPA divides this into the following:

- The right to have information provided to you in plain language, i.e. language that is easily understood
- The duty of suppliers to display the prices of goods and services, and to stick to such displayed prices
- Trade descriptions (such as what is in a pack and where it comes from) and labels of goods (such as package inserts in medicine that may indicate in which cases medicine should not be used by certain persons)
- The right to receive a written record of all sales of goods and services
- The rights of a consumer when dealing with an intermediary, such as a medical scheme broker
- The duty to provide identification when acting on behalf of a supplier in the provision of services or delivery/installation of goods, such as when receiving medicine by means of a courier pharmacy

The right to be provided with information in plain language

Section 22 of the CPA requires of all notices, documents and visual representations to be in a format prescribed by regulations, and if no format has been prescribed, to be in plain language. This duty also applies to graphs and pictorial representations.

Plain language means that the information must:

- State the context, i.e. under which circumstances the information will be read, and where it belongs in the range of information made available by, for example a medical scheme.
- Be consistent, i.e. use the same words and phrases when explaining the same thing
- Be comprehensive, i.e. give complete, and not “half” information. For example, if there are exceptions to rules, such as special cases where one could access medical scheme funded care without having to make a co-payment, that has to be communicated.
- Be organized in an understandable way and think about the audience, e.g. if it is aimed at younger people, the way in which it is done has to reflect the needs of such an audience.
- Use words and sentences that are well-understood by medical scheme members.

Display of price

Section 23 deals with the duty of suppliers to either display prices of goods and services or to provide a quotation or cost estimation. Prices can be displayed in any way from which it may reasonably be inferred that the price represented is a price applicable to the goods or services in question. It is also possible to publish prices in a catalogue, brochure, circular or similar form, which is available to that consumer, or to the public generally. Medical schemes have to make clear how monthly premiums are calculated, and what it means if they funded something up until a certain level (e.g. a “threshold”).

Trade descriptions / labels

Section 24 covers labels and trade descriptions of goods and regulations will provide further details on how these should look. If a medical scheme list mentions certain devices or equipment or medicines it will fund, it has to be clear what this is, and where further explanations of the goods, funded by the scheme, can be found.

Sales records

The provisions of the CPA aligns with the provisions on accounts and statements found in the regulations to the Medical Schemes Act. The Medical Schemes Act also requires of accounts to

medical schemes to include a diagnostic code, i.e. a code that indicates to the scheme what is wrong with the member of the scheme, so that the scheme can evaluate whether the condition and treatment forms part of the things it should pay for.

Disclosure by intermediaries

Intermediary, such as brokers and commission agents must, in terms of section 27, disclose certain information to consumers and to the entity it seeks to represent. Intermediaries will also be required to keep records of all relationships and all

transactions. Such regulations will operate parallel to those applicable to brokers in the financial sector.

Identification of installers, deliverers, direct marketers, etc

Section 28 requires of all persons who are deliverers to be identifiable when interacting with consumers or on their premises. This section also appears to outlaw ambush marketing, i.e. marketing where you actually do not know that the person is selling something specific.

Examples

Medical scheme information, i.e. brochures, marketing material, the scheme rules, etc. all have to be in plain and clear language. Technical terminology has to be explained specifically. What it means that a benefit is subject to “pre-authorisation” or a “formulary” and the implications thereof, has to be clear to you. Also the processes that you must follow if you are not happy with a scheme decision, such as the decline of an authorization or motivation for specific treatment. This provision has to be read with the provisions in the Medical Schemes Act. Information relating to, for example, medicine lists (formularies) and co-payments and when it can, and cannot be applied, should be communicated in a complete fashion.

The prices of services funded by schemes have to be specified. This means that phrases such as “x% of ABC rate” must translate into a clear price, or price estimation, so that you are clear as to what the scheme will pay in Rand value.

Medical schemes provide financial statements, and the medical schemes regulations prescribe the details that should appear on claims (invoices) to medical schemes. These are more comprehensive than the list of information stipulated in section 26.

Once regulations are published on the information that intermediaries must provide, all persons selling medical scheme cover would have to comply with those criteria. Intermediaries should make clear who they work for, and be identifiable as agents, contractors or brokers when interacting with consumers.

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.