

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 choose

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

Choice is one of these rights. You have, in terms of the CPA, the right to:

- Select suppliers, i.e. who your doctor, medical scheme or broker should be
- Give pre-authorisation of any repair or maintenance service
- Cool-off after direct marketing, i.e. to re-think your decision to change medical schemes after a broker has contacted you
- Cancel an advance reservation, booking or order
- Choose or examine goods, i.e. to know exactly what it is that you will be getting (and what your medical scheme will be paying for)
- Expect delivery of goods or supply of service as was promised
- Not receive any unsolicited (un-asked for) goods or services

The right to select suppliers: bundling

Section 13 of the CPA states that the offer or supply of services may not be conditional on -

- the purchase of any other goods or services,
- entering into an additional agreement, or
- agreement to purchase goods or services from a designated third party.

These agreements are only permitted if it can be shown that the bundling outweighs the limitation of the consumer's right to choice or that it results in economic benefit for consumers; or that bundled goods or services are offered separately and at individual prices.

Cooling-off

Section 16 provides for 5 days cooling-off, after direct marketing, in which a consumer may in writing cancel any agreement resulting from such marketing. This protection is in addition to any other legal cooling-off protection that may be offered under other legislation.

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Section 17 allows for the cancellation of bookings or reservations, such as an appointment made at the doctor, but it stipulates that suppliers may not charge an unreasonable cancellation fee. A cancellation fee will be unreasonable if it exceeds a fair amount in the circumstances, having regard to the nature of the goods or services that were reserved or booked, the length of notice of cancellation provided by the consumer, the reasonable potential to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation and the general practice of the relevant industry.

The right to select or reject

Section 18 gives consumers the right to inspect, choose and reject goods before completing a transaction, and to examine samples provided. This may not always be possible for all healthcare goods, but consumers should ask what their scheme pay for, and how that may be different from other options available.

The rights of consumers on supply of service

Section 19 means that the supplier is responsible to perform the services as agreed in terms of dates, times and places, at the

cost of the supplier. Should this not happen, a consumer would be entitled to cancel an agreement without penalty and treat such supply of services as unsolicited.

Unsolicited goods or services

Unsolicited services are governed by section 21 of the CPA. Goods or services provided without any payment arrangement are regarded as unsolicited.

If a consumer is party to an agreement that concerns delivery of services and goods throughout the life of the agreement, and

changes are introduced to the goods or services during this period, the consumer has to expressly consent to the material change. The supply of goods or services without the consumer having expressly or implicitly requested that delivery or performance, the goods or services, as the case may be, are unsolicited goods.

A person may not be held responsible to pay for unsolicited goods or services.

Examples

Bundling of products, such as medical scheme cover and credit card or other memberships or medical scheme – and insurance products, should not be conditional on each other and termination of the one should not affect the other. Bundling also takes place where your medical scheme has agreed to pay a total amount for a specific procedure, and included in that are various items. You can request how the amount is being made up, and what the various services and products are that make up the total amount.

Where a medical scheme appoints a designated service provider (“DSP”, i.e. that a particular hospital or doctor should be visited), it constitutes a limitation on choice, and such agreements have to be justifiable in terms of the economic benefits it provides to the medical scheme membership. A further implication is that, where the DSP is not available to provide the service, you are entitled to go to another provider at no additional cost.

Sometimes medical scheme benefits change during a year. The CPA states that services offered by medical schemes are “materially different” from that initially offered can only take place with the express consent of the consumer. Changes in medicine lists, providers and disease coverage could all potentially constitute such materially different services.

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.