

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.

Supplier's accountability to customers

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

This right covers the following issues:

- Lay-by's
- Prepaid certificates, credits and vouchers
- Prepaid services and access to service facilities
- Supplier to hold and account for consumer's property
- Deposits in respect of containers, pallets or similar objects
- Return of parts and materials

Prepaid certificates, credits and vouchers

Section 63 of the CPA prohibits the expiry of a prepaid certificate, card, credit, voucher etc. prior to the consumer having redeemed it in exchange for goods or services or future access to services, otherwise it may not expire before three years after the date on which it was issued, or at a longer time, if so agreed by the supplier. Such certificates, vouchers, etc may be found in the medical scheme industry as connected to a loyalty programme, for example.

Consumer's property

Section 65 applies to cases where a supplier has possession of any prepayment, deposit, membership fee, or other money of the consumer, that must be regarded as the property of the consumer and the supplier is bound to handle, safeguard and utilise that property with the degree of care, diligence and skill that can reasonably be expected of a person responsible for managing such property. This right also applies to administrators, executors and or liquidators.

Deposits in respect of containers, pallets, etc

Section 66 authorise the Minister of Trade and Industry, in consultation with the Minister of Environmental Affairs to prescribe a minimum or maximum deposit payable in relation to the return of a bottle, container, pallet, reel, etc.

Examples

Only section 65 could potentially apply to the provision of medical scheme services, as it requires of schemes to handle fees paid by members as belonging to the members, and requiring diligence, care and skill when such monies are managed. Currently medical scheme membership fees go into a bigger joint risk pool, in terms of the provisions of the Medical Schemes Act, and only additional monies paid, such as for savings accounts, belong to the member and can be claimed after termination of membership.

The Medical Schemes Act also requires of the Board of Trustees of a medical scheme to act in good faith relating to the membership contributions (premiums) it collects. As medical scheme care cover is about healthcare, it can be expected of trustees to ensure that they understand the implications of limitations of funding certain types of care, and the impact it will have on the pool of funds currently, and into the future.

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.