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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL NOTICE

NOTICE 1438 OF 2001

The Minister of Health intends to table in Parliament, this year, the Medical Schemes Amendment Bill, 2001 ("the Bill")

The Bill is hereby published for comment.

Interested persons are invited to submit, within six weeks after the date of publication of this notice, comments regarding the proposed Bill to the Minister of Health, Private Bag X828, PRETORIA, 0001 (for the attention of the Director-General: Health)

Note: This notice replaces Notice 1407 published on 1 June 2001.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

DRAFT BILL

To amend the Medical Schemes Act, 1998, so as to extend certain rights of members to their dependants; to explicitly prohibit discrimination on the basis of age; to distinguish between medical schemes and legitimate health insurance products; to further regulate the practice of reinsurance; to restrict the circumstances in which waiting periods may be applied; to improve the powers of the Council and the Registrar to act in the interests of members and their dependants; to regulate the marketing of entities doing the business of a medical scheme; to provide for the more frequent submission of returns to the Registrar; to determine the circumstances in which inspections may be made; to clarify the powers of the Registrar in regard to the investigation and resolution of complaints; to provide for the granting of urgent temporary orders; to further restrict the persons who may be appointed as auditors of medical schemes; to further restrict the persons who may serve as trustees of a medical scheme, and to further clarify their duties; to restrict the persons who may serve as principal officers of a medical scheme; to limit the purposes for which medical schemes may compensate brokers and provide for the regulation of their professional conduct; to remove the requirement for staff of the Council to be members of the Government Employees Pension Fund; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: □

Amendment of section 1 of Act 131 of 1998

1. Section 1 of the Medical Schemes Act, 1998 (hereinafter called the principal Act), is hereby amended □

(a) by the insertion after the definition of "Appeal Board" of the following definition:

"'beneficiary' means a member or a person enrolled or admitted as a dependant of a member;"

(b) by the insertion after the definition of "board of trustees" of the following definition:

"'broker' means a person whose business, or part thereof, entails providing a service or advice in respect of the introduction of prospective members to a medical scheme;"

(c) in the definition of "business of a medical scheme," by the addition after paragraph (c), of the following words:

"and shall include any insurance policy, savings vehicle or any risk pooling mechanism which provides directly or indirectly for the defraying of expenditure incurred in connection with the rendering of any relevant health service;"

(d) by the substitution for the definition of "complaint" of the following definition:

"'complaint' means a complaint of a complainant against any person required to be registered or accredited in terms of this Act, or any person whose professional activities are regulated by this Act, and alleging that such person has □

(a) acted, or failed to act, in contravention of this Act; or

(b) acted improperly in relation to any matter which falls within the jurisdiction of the Council;"

(e) in the definition of "dependant," by the substitution for paragraph (b) of the following paragraph:

"any other person who, under the rules of a medical scheme, is recognised as a dependant of [such] a member and is eligible for benefits under the rules of the medical scheme;"

(f) by the insertion after the definition of "Registrar" of the following definitions:

"'reinsurance contract' means a contract for the purchase of an insurance policy in terms of section 20(2) of the Act;

'reinsurer' means an insurer □

- (a) registered or deemed to be registered as a long-term insurer in terms of section 7 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and authorized to carry on the business of reinsurance in terms of that section;
or
(b) registered or deemed to be registered as a short-term insurer in terms of section 7 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and authorized to carry on the business of reinsurance in terms of that section;".

Amendment of section 7 of Act 131 of 1998

2. Section 7 of the principal Act is hereby amended in paragraph (a), by the substitution for the word "members" of the word "beneficiaries".

Amendment of section 8 of Act 131 of 1998

3. Section 8 of the principal Act is hereby amended by the addition of the following paragraph, the existing paragraph (k) becoming paragraph (l):

(k) approach the High Court in the interests of any person or class of persons, concerning any matter where any right of such person or class of persons in terms of this Act is affected;:

Amendment of section 19 of Act 131 of 1998

4. Section 19 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 20

5. Section 20 of the principal Act is hereby amended by the addition of the following subsections:

(3) A reinsurance contract entered into by a medical scheme is not valid unless such contract has been approved by the Registrar and-

- (a) is entered into with a reinsurer; and
(b) complies with any condition which may be prescribed.

- (4) Any amendment of the terms of the existing reinsurance contract is not valid unless such amendment has been approved by the Registrar.
- (5) When applying to the Registrar for approval of a reinsurance contract in terms of subsection (3), a medical scheme must furnish the Registrar with the following information-
- (a) the proposed reinsurance contract;
 - (b) an independent evaluation of the proposed reinsurance contract, prepared in accordance with guidelines published by the Council; and
 - (c) any other information required by the Registrar.
- (6) When applying to the Registrar for approval of an amendment to an existing reinsurance contract in terms of subsection (4), a medical scheme must furnish the Registrar with-
- (a) the proposed amendments to the reinsurance contract;
 - (b) any other information required by the Registrar, with may include an independent evaluation of the proposed amendments to the reinsurance contract, prepared in accordance with guidelines published by the Council.

Insertion of section 21A

6. The following section is hereby inserted in the principal Act after section 21

"Marketing of a medical scheme

21A. It is an offence to market, advertise or in any other way promote the business of any person in a manner calculated to create the impression that such person conducts, will conduct or is entitled to conduct, the business of a medical scheme unless-

- (a) that person is registered as a medical scheme in terms of section 20(1) of this Act
- (b) any informational materials used in such marketing, advertising or promotion activities-
 - (i) have been submitted to the Registrar; and
 - (ii) comply with any requirements as may be prescribed"

Amendment of section 24 of Act 131 of 1998

7. Section 24 of the principal Act is hereby amended in subsection (2) □
- (a) by the substitution for paragraph (a) of the following paragraph:
- "(a) **[a member]** members of the board of trustees **[or]** and the principal officer of the proposed medical scheme **[is a]** are fit and proper **[person]** persons to hold the **[office]** offices concerned;"
- (b) by the substitution for paragraph (e) of the following paragraph:
- "(e) the medical scheme does not or will not unfairly discriminate directly or indirectly against any person on one or more arbitrary grounds including race, age, gender, marital status, ethnic or social origin, sexual orientation, pregnancy, disability and state of health; and".

Amendment of section 28 of Act 131 of 1998

8. Section 28 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:
- "(c) claim or accept benefits in respect of himself or herself or any dependant from any medical scheme other than the medical scheme of which he or she is a **[member or a dependant]** beneficiary."

Amendment of section 29 of Act 131 of 1998

9. Section 29 of the principal Act is hereby amended □
- (a) in subsection (1) □
- (i) by the substitution for paragraph (o) of the following paragraph:
- "(o) The scope and level of minimum benefits that are to be available to **[members and dependants]** beneficiaries as may be prescribed.";
- (ii) by the substitution for paragraph (s) of the following paragraph:
- "(s) The continuation~~],~~ **subject to the prescribed conditions,** of the membership of a member, who retires from the service of his or her employer or whose employment is terminated by his or her employer on account of age, ill-health or other disability and his or her dependants.";
- (iii) by the substitution for paragraph (t) of the following paragraph:

- "(t) For continued membership of a member's dependants[, **subject to the prescribed conditions,**] after the death of that member, until such dependant becomes a member of, or is admitted as a dependant of a member of another medical scheme.";
- (b) in subsection (3), by the substitution for paragraph (c) of the following paragraph:
- "(c) for the imposition of waiting periods [**or new restrictions**] on account of the state of health of any [**member who has been a member or a dependant of a member of another medical scheme for a continuous period of at least two years and whose membership has been terminated because of change of employment and who applies for membership within three months after the termination of membership from the other medical scheme**] beneficiary except as may be prescribed."

Amendment of section 30 of Act 131 of 1998

10. Section 30 of the principal Act is hereby amended in subsection (1)(a), by the substitution for the word "members" of the word "beneficiaries".

Amendment of section 32 of Act 131 of 1998

11. Section 32 of the principal Act is hereby amended by the substitution for the word "members" of the word "beneficiaries".

Amendment of section 34 of Act 131 of 1998

12. Section 34 of the principal Act is hereby amended in subsection (2), by the substitution for the word "member" of the word "beneficiary".

Amendment of section 35 of Act 131 of 1998

13. Section 35 of the principal Act is hereby amended □
- (a) in subsection (6), by the substitution for the portion following paragraph (d), of the following:
- "without the prior approval of the Council or subject to such directives as the Council may make.";

- (b) in subsection (12)(b), by the substitution for the word "members" of the word "beneficiaries".

Amendment of section 36 of Act 131 of 1998

14. Section 36 of the principal Act is hereby amended □

- (a) by the substitution for subsection (2) of the following subsection:

"(2) The appointment of an auditor[, **other than the re-appointment that does not involve a break in the continuity of the appointment,**] shall not take effect unless it has been approved by the Registrar, subject to such conditions as he or she may deem fit";

- (b) in subsection (3), by the addition of the following paragraphs, the existing paragraphs (b) and (c) becoming paragraphs (d) and (e) respectively:

"(b) a person who is an employee or officer of it;

(c) a person who is an employee or officer of its administrator, or of the holding company, subsidiary, joint venture or associate of its administrator;"

Amendment of section 37 of Act 131 of 1998

15. Section 37 of the principal Act is hereby amended by the addition of the following subsection:

"(6) Notwithstanding anything to the contrary in this section, the Registrar may require the board of trustees to prepare and furnish to him or her financial statements, in any specified medium or form, at such intervals as he or she may deem necessary."

Amendment of section 41 of Act 131 of 1998

16. Section 41 of the principal Act is hereby amended □

- (a) in subsection (1), in the portion preceding paragraph (a), by the substitution for the word "member" of the word "beneficiary";
- (b) in subsection (2), by the substitution for the word "member" of the word "beneficiary".

Amendment of section 43 of Act 131 of 1998

17. The following section is hereby substituted for section 43 of the principal Act:

"Enquiries by Registrar

43. The Registrar may address enquiries to a medical scheme in relation to any matter connected with the business or transactions of the medical scheme, and the medical scheme shall reply in writing thereto within a period of 30 days as from the date on which the Registrar addressed the enquiry to it, or within such **[further period as the Registrar may, at the request of the medical scheme, allow]** other period as the Registrar may specify.".

Amendment of section 44 of Act 131 of 1998

18. Section 44 of the principal Act is hereby amended by the addition of the following subsection, the existing subsections (4) to (10) becoming subsections (5) to (11) respectively:

"(4) The Registrar may order an inspection in terms of this section □

(a) if he or she is of the opinion that such an inspection will provide evidence of any irregularity or of non-compliance with this Act by any person; or

(b) for purposes of routine monitoring of compliance with this Act by a medical scheme or any other person."

Amendment of section 47 of Act 131 of 1998

19. Section 47 of the principal Act is hereby amended by the addition of the following subsection:

"(3) The Registrar may refuse to investigate a complaint lodged in terms of this section if he or she is satisfied that other more appropriate avenues for resolution of the complaint have not been exhausted, in which case the complainant shall be advised by the Registrar of the recommended alternative course of action."

Insertion of section 47A in Act 131 of 1998

20. The following section is hereby inserted in the principal Act after section 47:

"Urgent temporary orders

47A. Notwithstanding anything to the contrary in this Act, if the Registrar is of the opinion that conduct complained of in a complaint lodged with the Council in terms of section 47 may result in serious or irreparable prejudice to the complainant unless the complaint is addressed on an urgent basis, the Registrar may –

- (a) require the party complained against to furnish the Registrar with his or her written comments to the complaint in a period shorter than 30 days, taking into account the nature of the complaint;
- (b) issue an order to the party complained against to perform any act, or to suspend any activity or operation, pertaining to the complaint, pending resolution of the complaint; and
- (c) as soon as possible after issuing such an order, take such steps as he or she may deem necessary to resolve the complaint."

Amendment of section 48 of Act 131 of 1998

21. Section 48 of the principal Act is hereby amended ☐

- (a) by the substitution for subsection (1) of the following subsection:

"(1) Any person who may be aggrieved by any decision of the Registrar relating to the settlement of a complaint or dispute may appeal against such decision to the Council."

- (b) by the substitution for subsection (2) of the following subsection:

"(2) The operation of any decision which is the subject of an appeal under subsection (1), other than the decision to issue an order under section 47A(b), shall be suspended pending the decision of the Council on such appeal."

Amendment of section 51 of Act 131 of 1998

22. Section 51 of the principal Act is hereby amended ☐

- (a) in subsection (1), by the substitution for the word "members" of the word "beneficiaries";
- (b) in subsection (4)(b), by the substitution for the word "members" of the word "beneficiaries".

Amendment of section 52 of Act 131 of 1998

23. Section 52 of the principal Act is hereby amended in subsection (4)(b), by the substitution for the word "members" of the word "beneficiaries".

Amendment of section 53 of Act 131 of 1998

24. Section 53 of the principal Act is hereby amended ☐

- (a) in subsection (2), by the substitution for the word "members" of the word "beneficiaries";
- (b) in subsection (3)(b), by the substitution for the word "members" of the word "beneficiaries".

Amendment of section 56 of Act 131 of 1998

25. Section 56 of the principal Act is hereby amended in subsection (1); by the substitution for the word "members" of the word "beneficiaries".

Amendment of section 57 of Act 131 of 1998

26. Section 57 of the principal Act is hereby amended ☐
- (a) by the substitution for subsection (3) of the following subsection:

"(3) A person shall not be a member of the board of trustees of a medical scheme, if that person ☐

 - (a) is a director or an employee of an administrator of that medical scheme;
 - (b) is the principal officer of that medical scheme; or
 - (c) as part of his or her business, provides a service or advice in respect of the introduction of prospective members to that medical scheme.";
 - (b) in subsection (4), by the substitution for paragraph (f) of the following paragraph:

"(f) take out and maintain an appropriate level of professional indemnity insurance and fidelity guarantee insurance [from and up to such amount as the medical scheme's auditor, with the concurrence of the Registrar, may determine];";
 - (c) in subsection (6), in paragraphs (a) and (b) respectively, by the substitution for the word "members" of the word "beneficiaries";
 - (d) by the addition of the following subsection:

"(7) A person shall not be a principal officer of a medical scheme if that person ☐

 - (a) is an employee or officer of its administrator, or of the holding company, subsidiary, joint venture or associate of its administrator; and
 - (b) is not employed as a principal officer by that medical scheme.".

Amendment of section 59 of Act 131 of 1998

27. Section 59 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A supplier of a service who has rendered any service to a **[member or a dependant of such a member]** beneficiary in terms of which an account has been rendered, shall, notwithstanding the provisions of any other law, furnish to the member concerned an account or statement reflecting such particulars as may be prescribed."

Amendment of section 63 of Act 131 of 1998

28. Section 63 of the principal Act is hereby amended in subsection (7)(a), by the substitution for the word "members" of the word "beneficiaries".

Amendment of section 65 of Act 131 of 1998

29. Section 65 of the principal Act is hereby amended □

(a) by the substitution for subsection (1) of the following subsection:

"(1) A medical scheme may compensate a broker in the prescribed manner, in accordance with its rules, for □

(a) the introduction or admission of a member to that medical scheme; and

(b) for ongoing services to that medical scheme as prescribed."

(b) by the substitution for subsection (2) of the following subsection:

"(2) The Minister may prescribe the amount of the compensation which, the category of **[persons]** brokers to whom, the conditions upon which, and any other circumstances under which, a medical scheme may compensate any **[person]** broker in terms of subsection (1).";

(c) by the substitution for subsection (3) of the following subsection:

"(3) No person shall be compensated for providing services relating to the introduction or admission of a member to a medical scheme in terms of subsection (1) unless the Council has **[, in a particular case or in general,]** granted accreditation to such a person on payment of such fees and on submission of such information as prescribed."

(d) by the addition of the following subsection:

"(5) A medical scheme may not directly or indirectly compensate a broker other than in terms of this section."

Amendment of section 66 of Act 131 of 1998

30. Section 66 of the principal Act is hereby amended in subsection (1) □
- (a) by the substitution for paragraph (f) of the following paragraph:
“(f) compensates, or causes to be compensated, any **[person for the introduction or admission of a member]** broker other than in terms of section 65 **[or the consenting to keep a member in a medical scheme, shall, subject to the provisions of subsection (2), be guilty of an offence].**”;
 - (b) by the substitution for the portion following paragraph (f), of the following:
“shall, subject to the provisions of subsection (2), be guilty of an offence, and liable on conviction to a fine and imprisonment for a period not exceeding five years or both a fine and imprisonment.”

Amendment of section 67 of Act 131 of 1998

31. Section 67 of the principal Act is hereby amended in subsection (1) □
- (a) by the substitution for paragraph (b) of the following paragraph:
“(b) the conditions subject to which any person who has terminated his or her membership of a medical scheme shall be enrolled as a **[member or a dependant of a member]** beneficiary of any other medical scheme;”;
 - (b) by the substitution for paragraph (m) of the following paragraph:
“(m) provisions associated with the manner of providing managed health care to **[members]** beneficiaries and requirements for managed health care contracts; **[and]**”;
 - (c) by the addition of the following paragraphs, the existing paragraph (n) becoming paragraph (s);
 - “(n) the professional conduct of a broker, and the conditions under which such person may provide professional services to, or on behalf of, a medical scheme, beneficiary or any other person;
 - “(p) penalties to be applied to an administrator in respect of the late payment of benefits owing to a member or a supplier of service, in contravention of section 59(2) of this Act;
 - “(q) reporting of acts or omissions of any person in contravention of this Act;”.

Amendment of Schedule 2 of Act 131 of 1998

32. The following sections are hereby inserted in Schedule 2 to the principal Act after section 4:

"Reinsurance contracts

5. A contract, which is required to be approved by the Registrar in terms of section 20(3) of this Act, is deemed to be valid for a period of 6 months from the date of commencement of this Act notwithstanding the fact that the approval of the Registrar in terms of that section has not been obtained, if such contract ☐

(a) was lawfully entered into prior to the commencement of this Act; and

(b) was legally valid and enforceable at the date of commencement of this Act.

Principal officers

6. A person who, immediately prior to commencement of this Act, was a principal officer of a medical scheme in contravention of section 57(7) of this Act, will be deemed to comply with that section for a period of two years from the date of commencement of this Act."

Short title and commencement

33. This Act is called the Medical Schemes Amendment Act, 2001, and will come into operation on a date to be determined by the President by proclamation in the *Gazette*.

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