
GENERAL NOTICE

NOTICE 1724 OF 2006

DEPARTMENT OF HEALTH

PUBLICATION OF THE MEDICAL SCHEMES AMENDMENT BILL, 2007

The Minister of Health intends to introduce the attached Medical Schemes Amendment Bill, 2007 (the bill) in Parliament in 2007. The bill is hereby published for public comment in accordance with rule 241 of the Rules of the National Assembly.

Interested persons are invited to submit any substantiated comments or representations on the bill to the Director-General: Health, Private Bag X828, Pretoria, 0001 (for the attention of the Director: Social Health Insurance) by not later than Wednesday the 31 of January 2007.

Further copies of the bill can also be obtained from –

Ms H Langa
Legal Services
Room 1612 DTI Building
Corner Church and Prinsloo Streets
Pretoria

Tel: (012) 312 0735
Fax: (012) 320 8329
Email: langah@health.gov.za

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 provide for risk equalisation among medical schemes; to amend and insert certain definitions; to provide for the establishment of a risk equalisation fund; to extend the functions of the Council for Medical Schemes; to provide for the application of risk equalisation to medical schemes, subject to certain exceptions; to provide for the provision of prescribed data by medical schemes to the Council for Medical Schemes for purposes of risk equalisation; to grant powers to the Minister to make regulations prescribing the methodology and procedures for risk equalisation; to provide for the early termination of office of a trustee or principal officer to be subject to approval by the Registrar; to amend the provisions relating to benefits provided by medical schemes; to amend the provisions relating to the composition of boards of trustees and eligibility of persons to serve as trustees or principal officers; to provide for oversight of the Registrar over election processes; to amend the provisions relating to disclosure of trustee remuneration; to provide for good corporate governance guidelines and associated disclosure requirements; to amend the provisions relating to the powers of the Minister to make regulations; to amend the provisions relating to offences; and to provide for matters in connection therewith.

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

Amendment of section 1 of Act 131 of 1988, as amended by section 1 of Act 55 of 2001, section 1 of Act 62 of 2002, section 40 of Act 65 of 2002, and section 25 of ~~Act~~ 52 of 2003.

1. Section 1 of the Medical Schemes Act, 1988 (hereinafter referred to **as** the principal Act), is hereby amended **by** the —

(a) insertion after the definition of “Appeal Board” of the following definition:

“ ‘basic benefits’ means those benefits which a medical scheme provides to all of its beneficiaries;” ;

(b) insertion after the definition of “beneficiary” of the following definitions:

“ ‘benefit’ means the liability accepted by a medical scheme to render a relevant health service or to defray specified medical expenses in respect of a specified relevant health service or category of relevant health services;

‘benefit option’ means an offering of benefits in respect of which members may choose to enroll, which is supplementary to the basic benefits of a medical scheme;”;

(c) insertion after the definition of “business of a medical scheme” of the following definitions:

“ ‘community’ means a defined grouping of beneficiaries and may, de uendinn on the context, refer to all beneficiaries within —

- (i) the medical schemes industry as a whole;
- (ii) an individual medical scheme;
- (iii) a benefit option within a medical scheme; or

(iv) some other defined grouping of beneficiaries:

‘community rate’ means the average expected cost per beneficiary of providing a defined set of benefits to the relevant **community** of which that beneficiary is a member;’;

(d) insertion after the definition of “dependant” of the following definition:

“ ‘**financial transfer**’ means a financial transfer **from** the **risk** equalisation fund to a medical scheme, or vice-versa as the case may be, for purposes of risk equalisation;’;

(e) insertion after the definition of “Master” of the following definition:

“ ‘**material relationship**’ means a relationship with, or interest in, a natural or juristic person which in the view of a reasonable person with knowledge of all the relevant circumstances, would interfere with the independent judgment of the officer of the medical scheme;’;

(f) substitution for the definition of “principal officer” of the following definition:

“ ‘**principal officer**’ means the [**principal officer appointed in terms of section 57(4)(a)**] chief executive officer of a medical scheme, who is responsible under the **direct** authority of the board of trustees for the financial accounting and conduct of the business of the medical scheme concerned;’;

(g) insertion after the definition of “restricted membership scheme” of the following definitions:

“ ‘**risk equalisation**’ means the mechanism, by means of a system of inter-scheme fund transfers, to ensure that the expected cost to **all** beneficiaries of participating medical schemes of the package of benefits **is** at the **community** rate subject to efficiency adjustments;’;

(h) insertion after the definition of “Service” of the following definition:

“ ‘**the Fund**’ means the **Risk** Equalisation Fund established by the Council under section 19A;’.

Amendment of section 7 of Act 131 of 1998, as amended by section 2 of Act 55 of 2001.

2. Section 7 of the principal Act is hereby amended by the insertion of the following paragraphs after paragraph (f):

“ (fA) control the management **and** administration of the Fund in accordance with the provisions of this Act;’;

Insertion of Chapter 3A in Act 131 of 1998

3. The principal Act is hereby amended by the insertion after section 19 of the following Chapter:

“CHAPTER 3A RISK EQUALISATION

Part 1 :Risk Equalization Fund

Establishment of Risk Equalization Fund

19A. (1) The Council must establish a Fund to be known as the **Risk** Equalization Fund, to be managed by the Council.

(2) The Council must annually report on the Fund as part of the report contemplated in section 14.

Fund to vest in and to be administered by Council

- 19B.** (1) The Fund shall vest in and be administered by the Council.
 (2) The Fund shall be held in trust by the Council for the purposes mentioned in section 19D.
 (3) The Fund is under the control and management of the Council, who—
 (a) must utilise the money in the Fund in accordance with section 19D only;
 (b) are responsible for accounting for money received in, and payments made from, the Fund; and
 (c) must cause the necessary accounting and other related records to be kept.

Revenue of Fund

- 19C.** The Fund shall consist of—
 (a) financial transfers paid to the Fund in terms of section 19H;
 (b) interest and dividends derived from the investment of money standing to the credit of the Fund; and
 (c) other money lawfully paid into the Fund.

Allocation of money in Fund

- 19D.** (1) All financial transfers that are paid to the Fund shall be appropriated for expenditure by the Council in accordance with subsection (2).
 (2) The Council must appropriate expenditure for risk equalization transfers to relevant medical schemes in accordance with the risk equalisation methodology as prescribed.

Banking account

- 19E.** (1) Money in the Fund shall, pending the application thereof in terms of this Chapter, be paid into an account to be known as “The Risk Equalisation Fund” at a financial institution.
 (2) The financial institution where the account contemplated in subsection (1) is kept, shall not in respect of any liability of the Council, not being a liability arising out of or in connection with any such account, have or obtain recourse or any right, whether by set-off, counter-claim, charge or otherwise, against money standing to the credit of such account.

Investment of money not immediately required

- 19F.** (1) Any money of the Fund which is not required for immediate allocation, may be invested by the Council in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999) and may be withdrawn when required.
 (2) Any unexpended balance of the money of the Fund at the end of any financial year shall be carried forward as a credit to the next succeeding financial year.

Separate financial records and financial statements

- 19G.** (1) The Council must maintain separate accounting records for the bank account referred to in section 19F, of the transactions, including investment transactions, undertaken by the Council and annually prepare separate annual financial statements for the Fund in accordance with international financial reporting standards.
 (2) The Fund and the records referred to in subsection (1) must be audited by the Auditor-General.
 (3) The audited records referred to in subsection (1) must be incorporated into the report contemplated in section 14.

Part 2: Financial transfers to and *allocations from Risk* Equalisation Fund**Financial transfers to Fund**

19L. (1) (a) Every medical scheme must pay the financial transfers as calculated/ determined by the Registrar under section 19I to the Fund on being notified by the Registrar in Writing of the amount of the financial transfer, within the period and in the manner stated in the notice.

(b) Interest at the rate determined by the Minister of Finance under the Public Finance Management Act, is payable on any late payments by a medical scheme of a financial transfer referred to in paragraph (a).

(c) If a medical scheme fails to uav a financial transfer referred to in paragraph (a) or pay it within the specified period, the Registrar may, by way of civil action in a competent court recover the amount owed by the medical scheme.

(2) Despite subsection (1)(a), the Council may, where it considers it necessary for the development of a newly registered medical scheme, exempt that medical scheme for a specific period from participation in risk equalisation.

Calculation of financial transfers

19I. (1) The Minister shall, in consultation with the Minister of Finance and after following the consultation processes contemplated in section 67, prescribe the methodology to be applied in calculation of the financial transfers for purposes of risk equalisation.

(2) The Registrar must, on a quarterly or monthly basis assess the financial transfers payable by a medical scheme, if any, to the risk equalization fund and the financial transfers to be made to a medical scheme, if any, in accordance with the risk equalisation methodology as prescribed and utilizing the information submitted to the Registrar in accordance with section 19L.

(3) The Registrar may adjust any assessment made in accordance with subsection (1) to correct an error or to retrospectively effect changes in the number of beneficiaries, prevalence of risk factors or other material changes.

(4) (a) A medical scheme may lodge an appeal against a determination by the Registrar under subsection (1).

(b) An appeal lodged in terms of this subsection does not suspend any obligation to pay a financial transfer pending the outcome of an appeal, provided that if the Registrar is of the opinion that the information submitted by the medical scheme in accordance with Section 19L may be incorrect, the Registrar may on some other reasonable basis make a determination of a financial transfer to be paid by the scheme pending the appeal.

Progressive implementation of financial transfers

19J. (1) The Registrar may, after consultation with the Minister and Minister of Finance, determine a schedule for the progressive implementation of the financial transfers referred to in section 19I, taking into account the potential impact of the financial transfers on the financial soundness and viability of medical schemes in general.

(2) The schedule referred to in subsection (1) must provide for an annual increase in the percentage of the financial transfers that are payable and the total financial transfers referred to in section 19I to become payable within a reasonable period.

Review and amendment of formula for calculating financial transfers

19K. (1) The Council must regularly review the risk equalisation methodology and each component thereof and may recommend to the Minister any amendments thereto necessary for ensuring the effective and appropriate utilization of the Fund.

(2) (a) The Minister may annually, on the recommendation of the Council and in consultation with the Cabinet member responsible for national financial matters, amend the risk equalisation methodology as prescribed.

(b) Before regulations in terms of this subsection are promulgated, the Minister must follow the procedures for publication of regulations contemplated in section 67.

Information for calculation of financial transfers

- 19L.** (1) Every medical scheme must at such intervals and in the form determined by the Registrar submit to the Registrar the information that he or she may require for purposes of risk equalization.
- J2)** The Registrar must take reasonable measures to protect unauthorized access to information submitted in accordance with subsection (1).
- (3)** It is an offence for any person to submit information that to the knowledge of that person is untrue or misleading in any material respect.

Verification of information

19M. (1) The Registrar may in relation to information provided in accordance with section 19L, on written notice require a medical scheme to submit to him or her -

- (a) the information as specified in the notice: or
- (b) a report by an auditor or by any other person with appropriate professional skill, designated by the Registrar, on any matter specified in the notice.

J2) The Registrar may at any time inspect the business of a medical scheme if the Registrar has reason to believe that information submitted by a medical scheme in accordance with section 19L is incorrect or false. The provisions of section 44, with the necessary changes, apply to inspection under this subsection.

(3) (a) Despite the provisions of any other law, the auditor of a medical scheme must -

- (i) provide the Registrar with a COPY of any report submitted to the Regulatory Board in terms of section 45 of the Auditing Profession Act, 2005 (Act No. 32 of 2005) that contains a statement referred to in section 45(3)(c)(i)(cc) of that Act, if the report, amongst others, relate to the medical scheme's participation in the risk equalization fund; and
 - (ii) inform the Registrar in writing of any matter relating to the affairs of a medical scheme of which the auditor became aware of in the performance of his or her functions as auditor of that medical scheme, that, in the opinion of the auditor relates to the medical scheme's participation in the risk equalization fund or may negatively impact on the medical scheme's ability to pay the financial transfers referred to in section 19H.
- (b) An auditor must inform the principal officer of a medical scheme of any information referred to in subsection (1), provided to the Registrar.
- (c) The furnishing in good faith by an auditor of information in terms of subsection (1) may not be held to constitute a contravention of any provision of the law or breach of any provision of a code of professional conduct to which such auditor may be subject.
- (d) Nothing in this subsection may be construed as conferring upon any person any right of action against an auditor which, but for the provisions of that subsection, such person would not have had.

Annual dissemination of information on risk equalization

19N. The Registrar must annually 4 months before the start of the calendar year, inform each medical scheme of its projections on financial transfers relating to that medical scheme.

Administrative penalties

19O. (1) The Registrar may, demite and in addition to taking any step he or she may take under this Act, impose an administrative penalty on a medical scheme for any failure to comply with a provision of this Chapter.

(2) An administrative penalty referred to in subsection (1) must be imposed in accordance with the relevant provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) and may not exceed the amount prescribed by the Minister for every day during which such failure continues.

(3) An administrative penalty imposed under subsection (3) must be paid to the Council within the period specified by the Council.

(4) If a medical scheme fails to pay an administrative penalty within the specified period, the Registrar by way of civil action in a competent court recover the amount of the administrative penalty from the medical scheme.”

Amendment of section 29 of Act 131 of 1998, as amended by section 9 of Act 55 of 2001

4. Section 29 of the principal Act is hereby amended by the —

(a) substitution in subsection (1) for paragraph (e) of the following paragraph:

“**(e)** The appointment, suspension or removal from office, powers and remuneration of officers of a medical scheme, provided that the suspension or removal from office of a principal officer or a trustee of a medical scheme prior to expiry of that officer’s contract period or term of office shall be made subject to the Registrar’s written consent thereto;”;

(b) substitution in subsection (1) for paragraph (n) of the following paragraph:

“(n) The terms and conditions applicable to the admission of a person as a member and his or her dependants, which terms and **conditions [shall provide for the determination of contributions on the basis of income or the number of dependants or both the income and the number of dependants, and shall not provide for any other grounds including age, sex, past or present state of health, of the applicant or one or more of the applicant’s dependants, the frequency of rendering of relevant health services to an applicant or one or more of the applicant’s dependants other than for the provisions as prescribed], subject to such conditions as may be prescribed —**

- (i) shall provide for the determination of contributions on the basis of income or number of dependants or both income and the number of dependants;
- (ii) may, to the extent specifically provided for in regulations, provide for the determination of contributions on the basis of efficiency or any other prescribed factor: and
- (iii) may not provide for the determination of contributions on any other grounds including age, sex, or past or present state of health of a beneficiary.”

Insertion of section 29B in Act 131 of 1998

5. The principal Act is hereby amended by the insertion after section 29A of the following section:

“ Benefits

29B. (1) A medical scheme shall provide in its rules for a set of **basic** benefits, which shall be provided to **every** beneficiary of the medical scheme.

(2) The basic benefits contemplated in subsection (1) shall include as a minimum the benefits contemplated in section 29(1)(e).

(3) A medical scheme may offer to its members the choice of **participating** in one or **more** benefit options.”

Amendment of section 33 of Act 131 of 1998

6. Section 33 of the principal Act is hereby amended by the —

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

“(1) A medical scheme shall apply to the Registrar for the approval of any benefit option if such a medical scheme provides members with [more than] one or more benefit **[option options]**.”;

(a) deletion in subsection (2) of paragraphs (a) and (a);

(c) substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) will not jeopardise the financial soundness of the medical scheme or of any existing benefit option within the medical scheme.”;

(d) insertion after subsection (5) of the following subsection:

“(6) The Minister may prescribe limitations on the number of benefit options that may be registered in a medical scheme.”.

Amendment of section 35 of Act 131 of 1998, as amended by section 12 of Act 55 of 2001

7. Section 35 of the principal Act is hereby amended by the substitution in subsection (12) for the words preceding paragraph (a) of the following words:

“(12) The Registrar may, when he or she has received the information referred to in subsection (11), and in concurrence with the Council —”.

Amendment of section 37 of Act 131 of 1998, as amended by section 14 of Act 55 of 2001

8. Section 37 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) be prepared in accordance with [general accepted accounting practice] International Financial Reporting Standards.”.

Amendment of section 57 of Act 131 of 1998, as amended by section 23 of Act 55 of 2001

9. Section 57 of the principal Act is hereby amended by the —

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

“(2) At least 50 per cent of the members of the board of trustees shall be directly elected by members of the medical scheme ~~from~~ amongst members of the medical scheme.”;

(b) insertion after subsection (2) of the following subsections:

“(2A) Members of a board of trustees who are not elected in terms of subsection (2) shall be appointed or elected in terms of the rules of the medical scheme.

(2B) The election of a trustee by the members of a medical scheme shall not be valid unless all the members of the medical scheme were eligible to vote in the election of that trustee.

(2C) The Registrar may, with the concurrence of the Council, in regard to any medical scheme, apply to the High Court for an order contemplated in subsection (2D) if the Registrar is of the opinion that an election held by a medical scheme was conducted in a manner which

—

(a) did not provide all the members of the medical scheme fair and reasonable opportunity to participate in the elections; or

- (a) failed to comply in a material respect with the rules of the medical scheme or such conditions as may be prescribed.

(2D) Upon any application in terms of subsection (2C), the High Court may –

- (a) refuse the application
- (a) declare the results of an election to be flawed in certain material respects and issue such directions to the medical scheme concerned as it may deem fit to remedy such flaws: or
- (c) declare the results of the election to be invalid and direct the medical scheme concerned to –
- (i) hold another election subject to such conditions as the High Court may deem fit, and
- (ii) take such steps as may be necessary to ensure continuity of governance in the medical scheme pending the outcome of the new election process.”.

(c) 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 **[is] –**

- (a) is an employee, director, officer, consultant or contractor of [the administrator of the medical scheme concerned] any person contracted by the medical scheme to provide administrative, marketing, or managed health care services, or of [the] its holding company, subsidiary, joint venture or associate [of that administrator];
- (b) is a broker or an employee, director, shareholder, officer, consultant or contractor of a person which provides broker services: or
- (c) otherwise has a material relationship with any person contracted by the medical scheme to provide administrative, marketing, broker, managed health care or other services, or with its holding company, subsidiary, joint venture or associate.”

(d) substitution for subsection (7) of the following subsection:

“(7) A person shall not be a principal officer of a medical scheme if that person **[is] –**

- (a) is an employee, director, officer, consultant or contractor of [the administrator of the medical scheme concerned] any person contracted by the medical scheme to provide administrative, marketing, or managed health care services, or of [the] its holding company, subsidiary, joint venture or associate [of that administrator];
- (b) is a broker or an employee, director, shareholder, officer, consultant or contractor of a person which provides broker services: or
- (c) otherwise has a material relationship with any person contracted by the medical scheme to provide administrative, marketing, broker, managed health care or other services, or with its holding company, subsidiary, joint venture or associate.”

(e) substitution for subsection (8) of the following subsection:

“(8) The members **of** the Board of trustees shall disclose annually in writing to the Registrar any payments or considerations made to them in that particular year by **[the medical scheme]**

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- (a) the medical scheme concerned: and

- (a) any uerson contracted by the medical scheme to provide administrative, marketing, brokerage, managed care or other services, or its holding company, subsidiary, joint venture or associate.”.

Insertion of section 57A in Act 131 of 1998

10. The principal **Act** is hereby amended by the insertion after section **57** of the following section:

“Corporate Governance

57A. (1) The board of trustees and principal officer of a medical scheme shall establish and maintain an adequate and effective process of corporate governance, which shall be consistent with the nature, complexity and risks inherent in the activities and the business of the medical scheme concerned.

(2) The Council may, from time to time, publish in such manner as it deems fit –

- (a) guidelines for good corporate governance to assist the trustees and principal officers of medical schemes to establish and maintain adequate and effective processes of corporate governance, as contemplated by subsection (1); and
 (a) requirements for the periodic disclosure by the board of trustees of a medical scheme to the Registrar and the members of the medical scheme of the extent to which those guidelines have been met, together with reasons for failure to comply with those guidelines.

(3) A medical scheme shall, at such intervals and in such manner and format as the Council may from time to time determine, make such disclosures as are contemplated in paragraph (b) of subsection (2).”

Amendment of section 66 of Act 131 of 1998, as amended by section 27 of Act 55 of 2001

11. Section **66** of the principal **Act** is hereby amended by the –

- (a) substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) renders a statement, account or invoice to a member or any other person, knowing that such statement, account or invoice is false and which ~~may~~ be used by such member or other person to claim from a medical scheme any benefit or a benefit greater than benefit to which he or she is entitled in terms of the rules of the medical scheme **;** ~~or~~.”;

- (b) substitution in subsection (1) for the words following paragraph (e) of the following words:

“shall, subject to the provisions of **[subsection]** subsections **(1A)** and (2), be guilty of an offence, and **is** liable on conviction to a fine or **to** imprisonment for a period not exceeding five **years** or to both a fine and imprisonment.”;

- (c) insertion after subsection (1) of the following subsection:

“**(1A)** Notwithstanding the provisions of subsection (1), any person who –

- (a) in any way unlawfully **obstructs** or attempts to delay or prevent a payment being made from a medical scheme to the ~~risk~~ equalisation fund;
 (a) makes or causes or allows to be made any false entry or statement to the Council which may affect the quantum of a financial transfer, or signs off on or submits any such statement or entry to the Council without reasonable **grounds** for believing the same to be true;
 (c) prepares or maintains or authorises the preparation or maintenance of any false **books** of account or other records of falsifies or authorises the falsification of any **books** of account or other records, which causes, may cause or is intended to cause an error in the value of a financial transfer; or

- (d) in any other way makes use of any fraud, art or contrivance whatsoever, or authorizes the use of any such fraud, art or contrivance which causes, may cause or is intended to cause an error in the value of a financial transfer, shall be guilty of an offence and is liable on conviction to a fine not exceeding R1000000 or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment."

Amendment of section 67 of Act 131 of 1998, as amended by section 28 of Act 55 of 2001 and section 3 of Act 62 of 2002

12. Section 67 of the principal Act is hereby amended by the —

(a) insertion in subsection (1) of the following paragraphs after paragraph (6):

"(bA) requirements and criteria for the determination of the fit and proper status of a trustee, princial officer and any other uerson required to be fit and proper to uerform any function or duty in terms of this Act,

(bB) the conduct of elections for members of the board of trustees of a medical scheme, including conditions and requirements relating to —

- (i) oversight of election processes by the Registrar;
- (ii) timing and location of elections;
- (iii) processes for the nomination of persons standing for election as trustees;
- (iv) advance notice to members concerning elections and voting processes; and
- (v) any other matter affecting the fairness of elections;";

(6) insertion after subsection (1) of the following subsection:

"(1A) The Minister may prescribe variations from the requirements of the redations prescribed in terms of subsection (1) to be applied to medical scheme products which cater specifically for low income persons, provided that the variations so prescribed are —

- (a) reasonably necessary to create conditions for the emergence of such medical scheme products in the market; and
- (b) in the best interests of low income consumers."

Short title and commencement

13. (1) This Act is called the Medical Schemes Amendment Act, 2007, and comes into operation on a date to be fixed by the President by proclamation in the Gazette.

(2) Notwithstanding the coming into effect of this Act, financial transfers shall not commence until such time as the Minister of Health, in concurrence with the Minister of Finance, provides written approval therefor after consideration of

- (a) the adequacy of the systems in place in the Council for Medical Schemes to effectively manage risk equalisation transfers;
- (6) the quality of data available for purposes of administering the risk equalisation fund; and
- (c) any other matter relevant to such approval.