

REPUBLIC OF SOUTH AFRICA

MEDICAL SCHEMES AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 22554 of 8 August 2001) (The English text is the official text of the Bill)

(MINISTER OF HEALTH)

[B 80—2001]

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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.

BILL

To amend the Medical Schemes Act, 1998, so as to extend certain rights of members to their dependants; to broaden the definition of complaint; to explicitly prohibit discrimination on the basis of age; to further regulate the practice of reinsurance; to regulate the circumstances under which waiting periods may be applied; to improve the powers of the Council and the Registrar to act in the interests of beneficiaries; to regulate the marketing of entities doing the business of a medical scheme; to provide for more frequent submission of returns to the Registrar; to determine the circumstances under which inspections may be made; to further define the persons who may be appointed as auditors of medical schemes; to further define the persons who may serve as trustees of a medical scheme and to further clarify their duties; to define 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 regulate the transfer of business of medical schemes to any person; to remove the requirement for staff of the Council to be members of the Government Employees Pension Fund; to amend the transitional provisions with regard to certain schemes; 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 referred to as the principal Act), is hereby amended by the— 5

(a) insertion after the definition of “Appeal Board” of the following definition: 5
 “ ‘beneficiary’ means a member or a person admitted as a dependant of a member;”;

(b) insertion after the definition of “board of trustees” of the following definition: 10
 “ ‘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) substitution for the definition of “complaint” of the following definition: 15
 “ ‘complaint’ means a complaint 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;”;
- (d) substitution in the definition of “dependant” for paragraph (b) of the following paragraph: 5
 “(b) 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];”;
- (e) insertion after the definition of “Registrar” of the following definitions: 10
 “ ‘reinsurance contract’ means a contract for the purchase of an insurance policy in terms of section 20(2);
 ‘reinsurer’ means an insurer—
 (a) registered as a long-term insurer in terms of section 9 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), unless that insurer is prohibited from engaging in the practice of reinsurance in terms of section 10 of that Act; or 15
 (b) registered as a short-term insurer in terms of section 9 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), unless that insurer is prohibited from engaging in the practice of reinsurance in terms of section 10 of that Act;” . 20

Amendment of section 7 of Act 131 of 1998

2. Section 7 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) protect the interests of the [members] beneficiaries at all times;”.

Amendment of section 8 of Act 131 of 1998

3. Section 8 of the principal Act is hereby amended by the substitution for paragraph (h) of the following paragraph:

“(h) exempt, in exceptional cases and subject to such terms and conditions and for such period as the Council may determine, a medical scheme or other person upon written application from complying with any provision of this Act;” . 30

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 of Act 131 of 1998

5. Section 20 of the principal Act in hereby amended by the addition of the following subsections: 35

“(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 an existing reinsurance contract is not valid unless such amendment has been approved by the Registrar. 40

(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; 45

(b) an evaluation of the need for the proposed reinsurance contract, prepared in accordance with directives issued by the Council and undertaken by a person who—

(i) has the necessary expertise to conduct such an evaluation;

(ii) is not otherwise engaged as an employee, officer, consultant or contractor of the medical scheme concerned; 50

- (iii) is not an employee, director, officer, consultant or contractor of the administrator of the medical scheme concerned, or of the holding company, subsidiary, joint venture or associate of that administrator;
 - (iv) is not an employee, director, officer, consultant or contractor of the relevant reinsurer, or of the holding company, subsidiary, joint venture or associate of that reinsurer; and
 - (v) has no direct or indirect financial interest in the relevant reinsurance contract; and
- (c) any other relevant 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; and
 - (b) any other information required by the Registrar, which may include an independent evaluation of the proposed amendments to the reinsurance contract, prepared in accordance with guidelines published by the Council.
- (7) The Registrar may not approve a reinsurance contract or an amendment to an existing reinsurance contract in terms of this section if—
- (a) due consideration has not been given by the medical scheme concerned to the need for reinsurance, based upon an assessment of the financial risks to which that medical scheme is exposed;
 - (b) the reinsurance contract is not in the best interests of the members of the medical scheme concerned;
 - (c) there is conflict of interest between the parties to the reinsurance contract;
 - (d) the reinsurance contract will adversely affect the accumulation of reserves; or
 - (e) the medical scheme concerned is not exposed to identifiable risks that are best managed through the use of reinsurance.”.

Insertion of section 21A in Act 131 of 1998

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

“Marketing

21A. (1) It is an offence to market, advertise or in any other way promote the business of any person in a manner likely to create the impression that such person conducts, will conduct, or is entitled to conduct, the business of a medical scheme unless that person is registered as a medical scheme in terms of section 24(1) of this Act.

(2) The admission of a person as a member or dependant of a medical scheme may not be made directly or indirectly conditional upon that person purchasing or participating in any product, benefit or service provided by a person other than the medical scheme in terms of its rules.

(3) It is an offence to market, advertise or in any other way promote a medical scheme in a manner likely to create the impression that membership of such medical scheme is conditional upon an applicant purchasing or participating in any product, benefit or service provided by a person other than the medical scheme in terms of its rules.”.

Amendment of section 24 of Act 131 of 1998

7. Section 24 of the principal Act is hereby amended by the substitution in—

(a) subsection (2) 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) subsection (2) 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]**.”. 5

Amendment of section 29 of Act 131 of 1998

9. Section 29 of the principal Act is hereby amended by the substitution in—

- (a) subsection (1) 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.”; 10
- (b) subsection (1) for paragraph (s) of the following paragraph:
 “(s) The continuation, subject to **[the prescribed]** such conditions as may be prescribed, 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.”; 15
- (c) subsection (1) for paragraph (t) of the following paragraph:
 “(t) For continued membership of a member’s dependants, subject to **[the prescribed]** such conditions as may be prescribed, 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.”; 20
- (d) subsection (3) for paragraph (c) of the following paragraph:
 “(c) for the imposition of general or condition-specific 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, taking into account the need to reasonably protect medical schemes against adverse selection.”. 25 30

Amendment of section 30 of Act 131 of 1998

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10. Section 30 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

- (a) donations to any hospital, clinic, nursing home, maternity home, infirmary or home for aged persons in the interest of all or some of its **[members]** beneficiaries;”. 40

Amendment of section 35 of Act 131 of 1998

11. Section 35 of the principal Act is hereby amended by the substitution in—

- (a) subsection (6) for the words following paragraph (d) of the following words:
 “without the prior approval of the Council or subject to such directives as the Council may issue.”; 45
- (b) subsection (12) for paragraph (b) of the following paragraph:
 “(b) if he or she is satisfied that it is necessary to do so in the interest of the **[members]** beneficiaries of the medical scheme, at the same time, or at any time thereafter, and notwithstanding any steps already taken by him or her under paragraph (a), act in terms of any other provision of this Act.”. 50

Amendment of section 36 of Act 131 of 1998

12. Section 36 of the principal Act is hereby amended by the—

(a) 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) insertion in subsection (3) of the following paragraphs, the existing paragraphs (b) and (c) becoming paragraphs (d) and (e), respectively:

“(b) a person who is otherwise engaged as an employee, officer, consultant or contractor of the medical scheme;

(c) a person who is an employee, director, officer, consultant or contractor of the medical scheme’s administrator, or of the holding company, subsidiary, joint venture or associate of its administrator;”;

(c) substitution for subsection (6) of the following subsection:

“(6) An auditor who in terms of this section furnishes a report in good faith shall not contravene a provision of a law or breach a provision of a code of professional conduct, to which he or she is subject **[to]**.”.

Amendment of section 37 of Act 131 of 1998

13. 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, and without derogating from other powers conferred on the Registrar in terms of this Act, the Registrar may, on a quarterly basis, require the board of trustees to prepare and furnish to him or her financial statements, in any specified medium or form.”.

Amendment of section 41 of Act 131 of 1998

14. Section 41 of the principal Act is hereby amended by the substitution—

(a) in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) A medical scheme shall deliver to a **[member] beneficiary** on demand by such member, and on payment of such fee as may be determined by the rules of the medical scheme, a copy of any of the following documents:”

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

“(2) A **[member] beneficiary** shall be entitled to inspect, without charge, at the registered office of a medical scheme of which he or she is a member, the documents referred to in subsection (1) and to make extracts therefrom.”.

Amendment of section 43 of Act 131 of 1998

15. 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

16. Section 44 of the principal Act is hereby amended by the insertion 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— 5
- (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 48 of Act 131 of 1998 10

17. Section 48 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Any person who **[may be]** is aggrieved by any decision relating to the settlement of a complaint or dispute may appeal against such decision to the Council.”. 15

Amendment of section 51 of Act 131 of 1998

18. Section 51 of the principal Act is hereby amended by the substitution—

- (a) for subsection (1) of the following subsection:
- “(1) 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 paragraph (b), (c), (d) or (e) of subsection (5) if the Registrar is of the opinion that it is in the interest of **[members]** beneficiaries or because material irregularities have come to his or her notice.”. 20
- (b) in subsection (4) for paragraph (b) of the following paragraph:
- “(b) the Registrar may, if he or she is of the opinion that the application is contrary to the interest of the **[members]** beneficiaries of the medical scheme concerned, make application to join the application as a party and file affidavits and other documents in opposition to the application.”. 25

Amendment of section 52 of Act 131 of 1998 30

19. Section 52 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

- “(b) the Registrar may, if he or she is satisfied that the application is contrary to the interests of the **[members]** beneficiaries of the medical scheme concerned, make application to the High Court to join the application as a party and file affidavits and other documents in opposition to the application.”. 35

Amendment of section 53 of Act 131 of 1998

20. Section 53 of the principal Act is hereby amended by the substitution—

- (a) for subsection (2) of the following subsection:
- “(2) The Registrar may, with the concurrence of the Council and with the approval of the High Court, make an application under section 346 of the Companies Act, 1973, for the winding-up of a medical scheme if he or she is satisfied that it is in the interest of the **[members]** beneficiaries of that medical scheme to do so.”. 40
- (b) in subsection (3) for paragraph (b) of the following paragraph:
- “(b) in addition to any question whether it is just and equitable that a medical scheme should be wound up, there shall be considered also the question whether it is in the interests of the **[members]** beneficiaries of that medical scheme that it should be wound up;”. 45

Amendment of section 56 of Act 131 of 1998

21. Section 56 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Registrar may, notwithstanding the provisions of section 52 and 53, if he or she is of the opinion that it is in the interest of **[members] beneficiaries** or that it is desirable to do so, because material irregularities have come to his or her notice, or because a medical scheme is not in sound financial condition or as a result of an inspection of the affairs of a medical scheme, apply, with the concurrence of the Council, to the High Court, for the appointment of a curator to take control of and to manage the business of that medical scheme.”.

Amendment of section 57 of Act 131 of 1998

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

(a) substitution for subsection (3) of the following subsection:

“(3) A person **[who is a director or an employee of an administrator of a medical scheme]** shall not be a member of the board of trustees of **[such]** a medical scheme, if that person is—

(a) an employee, director, officer, consultant or contractor of the administrator of the medical scheme concerned, or of the holding company, subsidiary, joint venture or associate of that administrator; or
 (b) a broker.”;

(b) substitution in subsection (4) 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) substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) take all reasonable steps to ensure that the interests of **[members] beneficiaries** in terms of the rules of the medical scheme and the provisions of this Act are protected at all times”;

(d) substitution in subsection (6) for paragraph (d) of the following paragraph:

(d) “act with impartiality in respect of all **[members] beneficiaries**”;

(e) addition of the following subsection:

“(7) A person shall not be a principal officer of a medical scheme if that person is—
 (a) an employee, director, officer, consultant or contractor of the administrator of the medical scheme concerned, or of the holding company, subsidiary, joint venture or associate of that administrator; or
 (b) a broker.”.

Amendment of section 59 of Act 131 of 1998

23. 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 to 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

24. Section 63 of the principal Act is hereby amended by the substitution—

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

“(1) No transaction involving the amalgamation of the business of a medical scheme with any **[other medical scheme] business of any other**

person (irrespective of whether that other person is or is not a medical scheme) or the transfer of any business from a medical scheme to any other medical scheme or the transfer of any business from any other person to a medical scheme, shall be of any force, unless such amalgamation or transfer is carried out in accordance with the provisions of this section.”; 5

- (b) in subsection (7) for paragraph (a) of the following paragraph:
 “(a) would not be detrimental to the interests of the majority of the **[members]** beneficiaries of the medical scheme or medical schemes concerned; and” . 10

Amendment of section 65 of Act 131 of 1998

25. Section 65 of the principal Act is hereby amended by the—

- (a) substitution for subsection (1) of the following subsection:
 “(1) A medical scheme may compensate **[any person]** a broker, **[in cash or otherwise,]** in accordance with its rules, for the introduction or admission of a member to that medical scheme.”; 15
- (b) 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).”; 20
- (c) 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 may be prescribed.”; 25
- (d) addition of the following subsections:
 “(5) A medical scheme may not directly or indirectly compensate a broker other than in terms of this section. 30
 (6) No person, other than a medical scheme, may directly or indirectly compensate a broker for the introduction or admission of members to a medical scheme.”.

Amendment of section 66 of Act 131 of 1998

26. Section 66 of the principal Act is hereby amended by the— 35

- (a) deletion in subsection (1) of paragraph (f);
- (b) substitution in subsection (1) for the words following paragraph (f), of the following words:
 “shall, subject to the provisions of subsection (2), be guilty of an offence, and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and imprisonment.” . 40

Amendment of section 67 of Act 131 of 1998

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

- (a) substitution in subsection (1) 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.”; 45
- (b) substitution in subsection (1) 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]”; 50
- (c) insertion in subsection (1) of the following paragraphs after paragraph (m), the existing paragraph (n) becoming paragraph (q);

- “(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;
- (o) penalties to be applied to a medical scheme or administrator in respect of the late payment of benefits owing to a member or a supplier of service, in contravention of section 59(2);
- (p) reporting of acts or omissions of any person in contravention of the provisions of this Act; and”.

Amendment of item 4 of Schedule 2 of Act 131 of 1998

28. Item 4 of Schedule 2 to the principal Act is hereby amended by the— 10

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

“(2) Any medical scheme which immediately prior to the commencement of this Act was established as a medical scheme under [the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), the Labour Relations Act, 1995 (Act No. 66 of 1995),] the South African Police Services Act, 1995 (Act No. 68 of 1995), and the Correctional Services Act, 1959 (Act No. 8 of 1959), shall be [deemed to be a medical scheme registered in terms of section 24(1) read with sections 26 and 32] exempt from the provisions of this Act until the Registrar registers that medical scheme in terms of section 24 of this Act;”;

(b) insertion of the following subitem, the existing subitems (3) to (5) becoming subitems (4) to (6), respectively:

“(3) Any medical scheme which immediately prior to the commencement of this Act was established as a medical scheme under the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), and the Labour Relations Act, 1995 (Act No. 66 of 1995), shall be deemed to be a medical scheme registered in terms of section 24(1) read with sections 26 and 32 of this Act.”.

Insertion of item 5 and 6 of Schedule 2 of Act 131 of 1998

29. The following items are hereby added to Schedule 2 to the principal Act:

“Reinsurance contracts

5. A contract, which—

- (a) was lawfully entered into prior to the commencement of the Medical Schemes Amendment Act, 2001;
- (b) was legally valid and enforceable at the date of commencement of the Medical Schemes Amendment Act, 2001; and
- (c) is required to be approved by the Registrar in terms of section 20(3), is deemed to be valid until the date of its expiry as provided for in the contract, or until 30 June 2002, whichever is sooner, notwithstanding the fact that the approval of the Registrar in terms of that section has not been obtained.

Principal officers

6. A person who, immediately prior to commencement of the Medical Schemes Amendment Act, 2001, 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 the period terminating on 1 January 2004.”.

Short title and commencement

30. This Act is called the Medical Schemes Amendment Act, 2001, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

EXPLANATORY MEMORANDUM ON THE OBJECTS OF THE MEDICAL SCHEMES AMENDMENT BILL, 2001

The Bill seeks to amend the Medical Schemes Act, 1998 (Act No.131 of 1998) (“the principal Act”) in relation to the following matters:

- * rights of members vis-à-vis their dependants;
- * discrimination on the basis of age;
- * the practice of reinsurance;
- * waiting periods;
- * marketing of entities doing the business of a medical scheme;
- * submission of financial returns;
- * inspections;
- * appointment of auditors of medical schemes;
- * eligibility for office of trustee;
- * eligibility for office of principal officer;
- * compensation and conduct of brokers;
- * transfer of business of medical schemes;
- * the requirement for staff of the Council to be members of the Government Employees Pension Fund;
- * transitional provisions with regard to certain schemes; and
- * incidental matters.

2. DISCUSSION OF CLAUSES

- * Clause 1 deals with definitions and inserts the definitions of a beneficiary, broker, reinsurer, and reinsurance contract. In addition, it amends the definitions of complaint and dependant.
- * Clause 2 replaces the word “member” with the word “beneficiary” as the rights of members are extended to dependants in this instance.
- * Clause 3 amends section 8 of the principal Act. It seeks to extend the Council’s power to grant exemptions from complying with the Act to persons or entities other than medical schemes. This is to address the anomaly in the principal Act where such entities would have to first register as a medical scheme in order to receive such exemption.
- * Clause 4 amends section 19 of the principal Act by doing away with the requirement that staff of the Council must remain members of the Government Employee Pension Fund. This is appropriate as these staff members are employed on short-term contracts.
- * Clause 5 amends section 20 of the principal Act by stipulating certain requirements in relation to reinsurance contracts, including the need for an independent evaluation of the proposed contract as well as its approval by the Registrar. The powers of the Registrar in this regard are clearly circumscribed by factors to be applied in such approval process. The need for this provision has arisen from widespread abuse of reinsurance since 1996, resulting in significant losses to medical schemes.
- * Clause 6 inserts section 21A in the principal Act, which prohibits the marketing of any medical schemes business by any person or entity unless it is registered as a medical scheme in terms of the Act. It also prohibits conditional selling of medical scheme products.
- * Clause 7 amends section 24 of the principal Act to be more grammatically correct and explicitly prohibits discrimination on the basis of age.
- * Clause 8 amends section 28 of the principal Act to clarify the nature of the contractual relationship between medical schemes and members, as opposed to their dependants.
- * Clause 9 amends section 29 of the principal Act by replacing the word “members and dependants” with the word “beneficiary,” and adds a technical amendment to allow for regulation of continuation membership by the Minister to be discretionary. In addition the clause allows the Minister to prescribe by regulation the conditions under which waiting periods may be applied, but still taking into consideration the need to protect schemes against adverse selection. This allows for a consolidated provision on waiting periods to be prescribed by regulation.

- * Clauses 10, 11, 14, 18, 19, 20, 21, 23, 24 and 27 amend various sections of the Act by replacing the word “member” with the word “beneficiary” as explained under Clause 2 above.
- * Clause 11
Section 35 of the principal Act is amended by eliminating the onerous requirement on medical schemes to obtain Council approval prior to engaging in certain fairly routine activities, such as the encumbrance of assets, and instead provides for the alternative of compliance with predetermined guidelines.
- * Clause 12 amends section 36 of the Act by prohibiting medical schemes from appointing its staff or staff of its administrators as auditors, and allows for Registrar approval of reappointment of auditors. This is to ensure independent auditing of the medical scheme’s financial affairs.
- * Clause 13 amends section 37 of the principal Act, by empowering the Registrar to request on a quarterly basis financial statements from the board of trustees.
- * Clause 15 amends section 43 of the principal Act by allowing the Registrar to specify a time frame within which responses to his or her enquiries must be submitted, other than the currently specified minimum of 30 days. This allows for flexibility depending on the exigencies of the situation.
- * Clause 16 amends section 44 of the principal Act by specifying the circumstances underlined which the Registrar may order inspections, and specifically provides for inspections for routine compliance monitoring purposes.
- * Clause 17 is a grammatical correction to section 48 of the principal Act.
- * Clause 22 amends section 57 of the principal Act by prohibiting brokers and anyone employed by the schemes’ administrators from becoming principal officers or members of the board of trustees of such medical schemes. This is to prevent conflicts of interest.
In addition, the clause removes the requirement for the Registrar’s approval of the level of professional indemnity insurance obtained by medical schemes, and leaves this determination to the discretion of the trustees of the medical scheme.
- * Clause 24 amends section 63 of the principal Act by extending the procedure applied in relation to transfer of business from one medical scheme to another to include transfer of business from a medical scheme to any other person.
- * Clause 25 amends section 65 of the principal Act by restricting conditions under which medical schemes may compensate brokers. It also prohibits anyone other than a medical scheme from compensating brokers for introduction of members to a medical scheme.
- * Clause 26 amends section 66 of the Act by eliminating duplication in the Act relating to the illegal payment of commission to brokers.
- * Clause 27 enables the Minister to make regulations relating to managed health care contracts. It also enables the Minister to regulate the conduct of brokers and conditions under which they may render services. In addition, the clause empowers the Minister to impose penalties on medical schemes or administrators for the late payment of claims.
- * Clause 28 amends the transitional provisions of the principal Act relating to MEDCOR and POLMED, following consultation with the South African Revenue Services, to avoid an anomaly whereby tax would otherwise be retrospectively payable in respect of these entities due to the previous “deeming provision” in the principal Act.
- * Clause 29 provides for transitional provisions in relation to the taking effect of the provisions regarding existing reinsurance contracts and the qualifications of principal officers.
- * Clause 30 provides for the short title of the Bill and the fixing of the commencement date.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

Whereas in terms of the principal Act employees of the Council are obliged to become members of the Government Employees Pension Fund, the Bill seeks to change this position by giving them a choice.

4. FINANCIAL IMPLICATIONS

None

5. IMPLICATIONS FOR PROVINCES

None

6. COMMUNICATION IMPLICATIONS

The Department of Health and the communications unit of the Council for Medical Schemes are developing a communication strategy. The support of the Government Communication and Information Service will be sought. The Bill was published for general comment.

7. CONSTITUTIONAL IMPLICATIONS

The Department is satisfied that the provisions of the Bill are not unconstitutional.

8. ORGANISATIONS AND BODIES CONSULTED

The provisions of the Bill resulted from a consultative process between the Council and various stakeholders in the industry as well as consumers, through the gazetting of the draft Bill for comment and meetings with key stakeholders.

9. PARLIAMENTARY PROCEDURE

The State Law Adviser and the Department of Health are of the opinion that the Bill must be dealt with in accordance with the parliamentary procedure established by section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which section 74 or 76 of the Constitution applies.

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