



CIRCULAR

Reference: Legal/Open Enrolment
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Circular 26 of 2014: Open Enrolment Following the Termination of Membership for Material Non-Disclosure

Open Enrolment

Open enrolment forms a cornerstone of the Medical Schemes Act 131 of 1998 directed at preventing risk selection by medical schemes and provides that any eligible person who wishes to join a medical scheme is entitled to join a medical scheme of his/her choice without facing any form of unfair discrimination.

Section 29(3)(a) of the Medical Schemes Act ("the Act") states that a medical scheme may not provide in its rules for the exclusion of any applicant or a dependant of an applicant, subject to the conditions as may be prescribed, from membership except for a restricted membership scheme as provided for in the Act.

In addition to the above provision section 29(1)(n) provides that schemes may not discriminate against any member on certain grounds, such as age, sex past or present state of health etc.

Even though medical schemes are not allowed to risk rate and have to accept any person who applies for membership, they are still protected from abuse by members in that waiting periods and late joiner penalties may be imposed under certain circumstances.

Material Non-disclosure

A further mechanism that granting protection to medical schemes is created by section 29(2)(e) which provides that a member's membership may be cancelled on the grounds of non-disclosure of material information. Applicants must disclose any conditions for which they have received a diagnosis, treatment or care within the 12 month period preceding the application to enable the scheme to perform a proper risk assessment. Where such information is disclosed the scheme is entitled to impose a condition specific waiting period on the condition to ensure that the member does not merely join the scheme for a limited period only to resign after his or her medical expenses have been covered following a specific health event.

Some medical schemes are lenient and grant an indulgence in favour of the member by imposing a waiting period on the membership on the same basis as would have applied had the member disclosed the pre-existing condition. Other schemes however enforce their right to terminate the agreement as provided for in the Act resulting in the original contract between the member and scheme becoming null and void. The legal effect is that the contract is regarded as never having come into existence between the member and the scheme and both parties must be placed in the same position that they were in prior to the contract being signed, i.e. the scheme can reverse all the claims paid on behalf of the member and the member can reclaim all the contributions paid to the scheme.

Undesirable Business Practice

It has come to the attention of the Office of the Registrar that certain medical scheme members whose membership has been terminated due to non-disclosure are not permitted to re-apply to the same scheme that terminated their membership as a result of their non-disclosure. Medical schemes are advised that this practice constitutes a contravention of the open enrolment provisions and will not be condoned by the Regulator. Furthermore there are no legislated exceptions regarding open enrolment.

Example

A principle member of a medical scheme, being a mother of two minor children applied for her children to be added as dependants on her medical scheme. She however on her version failed to disclose a temporary condition that her four year old son suffered from a few months prior to the application as she did not view this as relevant due to the nature of the condition. The scheme consequently terminated the membership of her son and refused to accept the reapplication in respect of this dependant. Had the condition been disclosed the scheme would have been entitled to impose a 12 month condition specific waiting period. However if the member is allowed to reapply to have her son added as a dependant the scheme may still impose the 12 month condition specific waiting period, hence the scheme is not placed in a worse position than it would have been in had the condition been disclosed from the outset. The four year old boy on the

other hand is without medical cover. To apply for membership for the minor dependant with a different scheme would clearly pose its own difficulties given the circumstances.

The question which may arise is that members who are allowed to rejoin the same medical scheme under these circumstances, may lack the incentive to be honest from the outset? The answer is that any member whose membership is terminated due to non-disclosure will have to fund all the claims previously paid by the scheme out of pocket and that upon rejoining the scheme a 12 month condition specific waiting period may be imposed on the existing condition. In addition the period prior to the termination will not be considered as creditable coverage and if such period exceeds 90 days an additional 3 month general waiting period may be imposed during which period the member would not be entitled to any benefits.

To the extent that the registered rules of any medical scheme may reflect such practices, these rules will be referred to the Benefits Management Unit of the Office of the Registrar for further action and correction. The Act always supersedes the rules of a Medical Scheme and the fact that a rule in a certain scheme may have been registered contrary to the provisions of the Act does not in any way exempt such scheme from compliance with section 29(3)(a) of the Act.

Conclusion

Should medical schemes fail to adhere to this Circular the Office will be constrained to declare this particular business practice an undesirable in terms of section 61. Subsection 3 also allows for the Registrar to direct a medical scheme to suspend the specific business practice while the matter is being dealt with.

We trust that all medical schemes will comply with the relevant legislation and principles enunciated in this circular and that the formal procedures provided for in terms of section 61 will not require to be instituted.

Yours sincerely

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

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