



CIRCULAR

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Reference : Broker Policy
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CIRCULAR 2 OF 2013 - DEADLINE EXTENSION FOR SUBMISSIONS OF COMMENTS ON CIRCULAR 44 OF 2012 - DRAFT POLICY DOCUMENT: ACCREDITATION OF BROKERS AND BROKER ORGANISATIONS

The Council for Medical Schemes (CMS) has extended the deadline for the submissions of comments on Circular 44 of 2012 from 11 January 2013 to **31 January 2013**. Please submit your suggestions/comments as indicated on the front page of the attached draft policy document.

Yours sincerely

D Lehutjo
ACTING: CHIEF EXECUTIVE AND REGISTRAR
Council for Medical Schemes



POLICY DOCUMENT ON THE REQUIREMENTS FOR AND PROCESS WITH REGARD TO THE ACCREDITATION OF HEALTH CARE BROKERS AND BROKER ORGANISATIONS

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Purpose

The purpose of this document is to provide guidance and clarity on the functions, requirements and processes in terms of which accreditation of brokers takes place as prescribed in terms of the Medical Schemes Act (Act No. 131 of 1998)

Scope

This document covers Section 1 and 65 of the Medical Schemes Act, (Act No.131 of 1998), and Regulations 28 and 31 framed thereunder. The circulars referred to herein are as published on the website www.medicalschemes.com. To the extent that brokers are similarly required to be licensed by the Financial Services Board, appropriate reference is made to dual regulatory provisions provided for in the Financial Advisory and Intermediary Services Act, 2002 ("FAIS Act").

Applicability

This document applies to any person who provides broker services in terms of the Act and the Regulations framed thereunder.

It does not apply to the following persons which are excluded in the definition of broker in the Act:

- (i) *an employer or employer representative who provides service or advice exclusively to the employees of that employer;*
- (ii) *a trade union or trade union representative who provides service or advice exclusively to members of that trade union; or*
- (iii) *a person who provides service or advice exclusively for the purposes of performing his or her normal functions as a trustee, principal officer, employee or administrator of a medical scheme,*
- (iv) *Franchises that are contracted to medical schemes for the purpose of providing training to brokers.*

References

For more information, refer to:

- The Medical Schemes Act, Act No. 131 of 1998 and the Regulations published thereunder;
- Circulars as published on the website, www.medicalschemes.com under publications.
- Faisinfo@fsb.co.za in respect of all matters under the jurisdiction of the Financial Services Board as authority that regulates matters provided for in the Financial Advisory and Intermediary Services Act.

Definitions

- (i) **Broker** means a person whose business, or part thereof, entails providing broker services.
- (ii) **Broker services means:**
 - (a) The provision of service or advice in respect of the introduction or admission of members to a medical scheme; or
 - (b) The ongoing provision of service or advice in respect of access to, or benefit or services offered by, a medical scheme.
- (iii) **Person** refers to a natural person (e.g. individual person or sole proprietor) and a juristic persons (e.g. company, close corporation, associations and partnership)

Legal requirements

The table below summarises the legislative and regulatory requirements that must be met.

Acts/ Regulations	Summary of Requirements
Section 1	Defines certain terms which are used in this section, including "broker" and "broker services"
Section 65(1)	Determines certain prerequisites for persons acting as a broker to be accredited as broker.

Section 65(3)	A broker can only be compensated by a medical scheme for providing broker services provided he/she is accredited as a broker.
Section 65 (5)	A medical scheme cannot compensate a broker directly or indirectly for any other services other than for providing broker services.
Section 65(6)	A broker can only be compensated by a medical scheme, a member or prospective member or an employer in terms of employer group or a broker employing such broker.
Regulation 28	Determines certain conditions for compensation of brokers, including the need for prior written agreements between the broker and the medical scheme concerned, the cap amount to be paid to brokers by medical schemes for providing broker services and sets out the grounds and procedure for discontinuing payment to a broker in respect of services rendered.
Regulation 28A	Deals with the admission of members to medical schemes in the sense that medical schemes must not prevent any person from applying for membership of a medical scheme for the reason that that person is not using the services of a broker for such membership.
Regulation 28B	Sets out procedural requirements in respect of the granting of accreditation to brokers, apprentice brokers as well as broker organizations by the Council. It also defines the parameters of information requirements for accreditation purposes.
Regulation 28C	Sets out the grounds and procedures for suspension and withdrawal of accreditation.

Compliance requirements

The table below summarises the standards that must be complied with.

Standards	Summary of Requirements
Broker Agreement	Must be concluded between the broker and the medical scheme concerned
Service Level Agreement	Brokers must continue to meet the service level agreed to with the medical scheme in terms of the written agreement between them.
Appointment of broker by client	The broker must be appointed properly by the client in terms of an official letter of appointment or a broker note if the client switches from one broker to another.
Member allocation	Any allocation by a medical scheme or administrator of members already admitted, to any broker without an official appointment by the client, is unacceptable and without legal foundation.
Broke Code of Conduct	Reference to the Code of Conduct has been removed from the Act since compliance therewith vests with the Financial Services Board. Brokers must comply with requirements determined by the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act)

Licensing of accredited brokers	All accredited brokers must be licensed to provide health benefits in terms of the FAIS Act, 2002
Companies, Close Corporations, Associations and Partnership	Must be accredited as brokerages in the event that they are contracted to medical schemes for providing broker services.

Accreditation of Brokers, Apprentice Brokers and Broker Organisations

Application forms are required to be completed and submitted with proof of payment of the prescribed fees and the information requested for consideration. Information is verified with the FSB as well to ensure that applicants are licensed as financial services providers in terms of the FAIS Act to provide health service products.

Regulation 28B regulates the requirements and provides as follows:

“28B. Accreditation of brokers.—(1) Any person desiring to be accredited as a broker must apply in writing to the Council, and the application must be accompanied by—

- a)* documentary proof of a recognised educational qualification and appropriate experience;
- b)* documentary evidence of having passed or current enrolment in a relevant course of study recognised by the Council;
- (c)* in the case of a juristic person, documentary proof and a sworn affidavit that any person employed by the person, or acting under the auspices of the person, who provides or will provide advice on medical schemes to clients, is accredited with Council as a broker or an apprentice broker; and

(d) such additional information as the Council may deem necessary.

(2) A recognized educational qualification and appropriate experience, for the purposes of this regulation, means—

(a) Grade 12 education or equivalent educational qualification; and

(b) a minimum of two years demonstrated experience as broker or apprentice broker in health care business.

(3) Individuals not meeting the qualifications for a broker may apply to the Council for accreditation as apprentice brokers and such applications must be accompanied by documentary proof of—

(a) Grade 12 education or equivalent educational qualification;

(b) agreement by a fully accredited broker to supervise the applicant;

(c) current accreditation of the supervising broker;

(d) having passed or current enrolment in a relevant course of study recognised by the Council; and

(e) such additional information as the Council may deem necessary.

(4) In the case of a natural person, an application for accreditation as a broker or an apprentice

broker must also be accompanied by information to satisfy the Council that the applicant complies with—

(a) any requirements for fit and proper brokers which may be determined by the Council, by notice in the *Gazette*; and

(b) any relevant requirements for fit and proper financial services providers or categories of providers which may be determined by the Registrar of Financial Service Providers in terms of section 8 (1) of the Financial Advisory and Intermediary Services Act, 2002.

(7) Accreditation of broker or apprentice broker is granted for two years, and is accompanied by a certificate which clearly specifies the expiry date of accreditation.

Renewal of accreditation

Regulation 28B(9) determines that:

“(9) A broker or apprentice broker wishing to renew his or her accreditation shall apply to the Council for such renewal in such format as the Council may from time to time determine, provided that—

(a) such application for renewal shall be made by the broker or apprentice broker at least three months prior to the date of expiry of the accreditation;

(b) the broker or apprentice broker shall furnish the Council with any information that the Council may require.”

Fees payable

A non-refundable application fee of R1000.00 is payable in favor of the Council for Medical Schemes and proof of payment by electronic transfer or direct deposit must accompany the application for accreditation or renewal of accreditation. The office does not accept any payments in cash when applications are handed in at the counter. The application fee is non-refundable. The reference to be used when making payments is the accreditation number (BR or ORG No.) or I.D number or name of an organization or CK number (in case of new applications)

Banking details

BANK: ABSA

ACCOUNT NO.: 4051163394

BRANCH NAME: Vermeulen Street (Pretoria)

BRANCH CODE: 517 245

ACCOUNT HOLDER: Council for Medical Schemes

Sub- contracting of broker services by an accredited broker to another organization or individual

Brokers who are sub-contracted to other accredited brokers may not necessarily have a contract with one or more medical schemes. They are nevertheless required to be accredited by virtue of the reference to providing broker services and disclosure of these relationships should be made clear in the application forms and substantiated with copies of relevant contracts between the parties. **Refer to Circular 5 of 2003** as published on the Council website: www.medicalschemes.com.

Accreditation of Broker Organisations and Sole Proprietor in terms of the Medical Schemes Act (Act No. 131 of 1998).

In the event that a closed corporation, company or other legal entity contracts with medical schemes to provide broker services, the organisation is required to be accredited as a brokerage as it is a legal person distinct from its members, together with each and every person who provides broker services in their capacity as employee or representative of the entity.

A partnership or an association of persons would similarly require dual accreditation. The position with a sole proprietor providing broker services under a business name or trade mark, does not require dual accreditation provided such person specifies the trade name under which he or she operates on the application form for individuals when application is made for accreditation and the contract with the medical scheme reflects the trade name under which he or she operates. **Refer to Circular 22 of 2004** as published on the Council website: www.medicalschemes.com.

Appointment of brokers, broker agreements with medical schemes, remuneration of brokers and collection and payment of unlawful professional fees to brokers and unlawful collection of first month contributions by brokers.

Appointment of brokers by employers, trade unions, medical schemes and persons other than members

Regulation 28(7) stipulates that "A medical scheme shall immediately discontinue payment to a broker in respect of services rendered to a particular member if the medical scheme receives a notice from that member (or the relevant employer, in the case of an employer group), that the member or employer no longer requires the services of that broker"

It is clear from the above regulation that a member may appoint a new broker in place of a broker previously appointed by a member, i.e. there must be an initial appointment prior to a subsequent broker substituting an earlier appointee.

Similarly, when a member has been admitted to a scheme without the assistance of a broker, no other person or entity is in a position to assume the role of agent representing the member in appointing a broker thereafter. It follows that medical schemes and third party administrators are not allowed to allocate "orphan" members (members who are not in any way linked to any broker) to brokers or agents.

Broker agreements

Regulation 28 (1) states that no person may be compensated by medical scheme in terms of section 65 for acting as broker unless such person enters into a prior written agreement with the medical scheme concerned. The agreement must provide for the following minimum requirements:

- The scope and duties of the broker;
- Effective date of the agreement;
- The basis on and timeframes within the broker will be remunerated (in terms of the Medical Schemes Act Regulation 28 (a)):
- Required service level agreements;
- Confidentiality undertakings of the brokers in terms of scheme and client information;
- Termination of the agreement at the instance of either party in writing within the time frames as agreed upon;
- Breach;

Remuneration of brokers

- Broker payments should only be made by medical schemes to accredited brokers;
- If there is a lapse in the accreditation period of a broker – the broker may not be compensated for that unaccredited period;
- Payments to brokers should only be made to brokers who have signed broker agreements in place with a specific scheme/s and to the party identified in the contract, that is to say, either the individual or the broker firm;
- Broker payments should only be made once the scheme RECEIVED the contribution and not on RAISED contributions as is required in terms of Regulation 28 (5);
- Schemes should provide brokers with monthly remittance advices;
- Schemes should ensure that they receive adequate proof that brokers are registered for Value Added Taxation (VAT) by means of vat certificates, etc. Failure to do so could result in schemes over-paying brokers who are not registered for VAT.

Collection and payment of professional fees to brokers

Regulation 28(6) (b) reads as follows: "The ongoing payment by a medical scheme to a broker in terms of this regulation is conditional upon the broker receiving no other or indirect compensation in respect of broker services from any source, other than a possible direct payment to the broker of a negotiated professional fee from the member himself or herself (or the relevant employer, in the case of an employer group)."

This provision prevents a medical scheme or third party administrator from offering or undertaking to facilitate any collection and payment of professional fees or other remuneration often referred to as marketing fees, research fees or any remuneration not prescribed to brokers on behalf of their members.

Unlawful collection by brokers of first month contributions as a professional or administration fee

Regulation 28(6) (b) prevents a broker from collecting upfront fees from clients unless it is disclosed properly as a direct payment of a professional fee.

Brokers must disclose the correct facts where prospective clients or members of medical schemes are required by their brokers to pay an amount equal to the first month's contribution upfront to either the broker involved when admitting members to certain medical schemes. This occurs in instances where contributions to such medical schemes are often paid in arrears. Failure to disclose the correct facts to unsuspecting clients is misleading as members believe that payments made for the benefit of the broker, are in fact payments towards their medical scheme contributions. **Refer to Circular 20 of 2010** as published on the Council website: www.medicalschemes.com.

Section 26 (7) provides that contributions shall be paid directly to a medical scheme no later than three days after payment thereof becoming due. Therefore, it would be a contravention of the Act for any broker or agent to collect any medical scheme contributions by or on behalf of their clients, irrespective of the circumstances or client consent provided.

Re-signing of mandates and transfer of business

Should a broker sell his business or transfer clients to another broker, the Code of Conduct applicable to FSP's in the FAIS Act determines that:

- The first contract is terminated; new mandates have to be signed between clients and the receiving broker as a new contract comes into place.
- However, if the original mandate provides for a cession clause which authorizes the transfer of contractual obligations to another broker, the resigning of mandated does not apply.

Accreditation process

Arrangements are in place for applicants to send and for this office to receive and retain all applications electronically thereby speeding up the process of accreditation and saving paper. Details are provided on the application forms. All application forms for accreditation are accessible on the Council website: www.medicalshemes.com under **publications/Application forms**.

The turnaround time for processing applications is on average thirty working days in respect of duly completed applications with all annexures. Delays will necessarily occur when the office has to communicate with applicants for whatever reason.

In instances where the applicant fails to respond to enquiries or fails to provide this office with any information required within 6 months from date of request, such applications are considered stale. In such cases, the applicant is required to re-apply should he/she wish to be accredited and resubmit a new application with statutory fees as prescribed. **Refer to Circular 29 of 2002** as published on the Council website: www.medicalschemes.com.

Renewal of accreditation:

- This office dispatches advance renewal notifications to all accredited entities and individuals four months prior to the expiry date. It is therefore essential that brokers ensure that correct contact details are recorded on the Council's database.

- Failure by the broker to renew accreditation during the period will have the effect that accreditation expires and the broker concerned will have to re-apply and provide all information.
- Late applications for accreditation renewal may result in a break in accreditation status since this office is not in a position to backdate accreditation. Brokers are not entitled to remuneration during any period they are not accredited and the database will reflect at all times the accreditation status of brokers. **Refer to Circular 2 of 2006** as published on the Council website: www.medicalschemes.com

Accreditation of Business, Family or other Trusts as Brokers

Whilst some individuals occasionally prefer to do business as a trust, be it a family business or any other trust, this office does not consider such requests favorably. Trusts are not accredited as broker organisations in terms of prevailing legislation for the reason that a trust is not an entity having a legal persona and can therefore not contract in the manner which will afford it legal status. A trust can only contract through a trustee who, in his or her individual capacity, represents and binds the Trust. **Refer to Circular 5 of 2007** as published on the Council website: www.medicalschemes.com

Complaints against brokers:

The public is entitled to lodge complaints against brokers which are investigated and adjudicated upon by the office of the Registrar. Complaints procedures and forms are available on the Council website www.medicalschemes.com

It is important to note that the office of the FAIS Ombud is also available to complainants for investigating complaints as health care brokers are required to comply with the FAIS Act and prescribed requirements. Please refer to FaisComplaints@fsb.co.za, Faisinfo@fsb.co.za,

Toll Free: 0800 202087 / 0800 110443 for details.

Statutory sanctions applicable to brokers:

This aspect is covered in Regulation 28C of the Act. In the event that a broker's license is suspended or withdrawn by the Financial Services Board for whatever reason, such broker becomes disqualified from being accredited by virtue of the provisions in Regulation 28B(4)(b) which requires a broker to comply with fit and proper requirements as prescribed in the FAIS Act.

In those instances, the Council for Medical Schemes is not legally bound to follow the process prescribed in Regulation 28C and steps are taken to suspend or withdraw accreditation in accordance with the actions taken by the FSB. In the circumstances, the Council may conduct its investigations into the affairs of a broker and invoke the sanctions provided for in the Regulation which is limited to either suspension or withdrawal of accreditation.

There is no provision in the Medical Schemes Act to make rulings with regard to reimbursing damages, monetary awards or cost orders.