



## CIRCULAR

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### Circular 34 of 2018: Clarity regarding the Netcare 911 ruling

#### Background

On 22 December 2017, the Registrar of the Council for Medical Schemes (CMS) issued a ruling on a complaint lodged by the Chief Executive Officer on behalf of the South African Private Ambulance and Emergency Services Association ("SAPAESA"). The matter concerned the manner in which the SAPAESA constituency has been negatively affected by the contracts of certain medical schemes with Netcare 911 for the rendering of emergency medical services ("EMS"). Ten medical schemes were cited as respondents and had to respond to allegations that they were paying capitation fees to Netcare 911 for services that exceeded EMS and contained elements of administration and managed care services for which the entity has not been accredited.

#### Legal framework

Ambulance services are included in the definition of a relevant healthcare service in section 1 of the Medical Schemes Act 131 of 1998 ("the Act"). The definitions of preferred providers, designated service providers (DSPs), managed care and capitation agreements are contained in Regulations 7 and 15 respectively.

Regulation 15F provides that:

*"Capitation agreements - A medical scheme shall not enter into a capitation agreement, unless -*

- (a) the agreement is in the interests of the members of the medical scheme;*
- (b) the agreement embodies a genuine transfer of risk from the medical scheme to the managed healthcare organisation;*
- (c) the capitated payment is reasonably commensurate with the extent of the risk transfer".*

On this basis, the Registrar found that medical schemes may only enter into capitation agreements with accredited managed care organisations; and the only legal prescripts under which a medical scheme may transfer risk to a third party is through regulation 15F to the Act.

### The ruling

The ruling summarised the finding of the Registrar as follows:

- (a) The Respondents have enabled Netcare 911 to perform functions which in terms of the Medical Schemes Act and Regulations, it is not entitled and empowered to perform.
- (b) The role of a DSP as defined in Regulation 7, does not countenance validation, processing and payment of claims. If Netcare 911 is an appointed DSP, it cannot usurp this function.
- (c) A person or entity not accredited by Council as a managed healthcare organisation cannot enter into a valid capitation agreement.
- (d) The Respondents must not continue to allow Netcare 911 to perform functions which require accreditation, for which it has not been duly accredited by Council.
- (e) The Respondents have no legal basis on which to decline acceptance of claims submitted by third party EMS providers and/or members of SAPAESA.

### The Appeal

Section 48 of the Act provides that any party may lodge an appeal against the decision of the Registrar, and that such an appeal effectively suspends the decision that forms the subject of the appeal. This means that the Registrar's ruling is suspended until the matter has been ruled on by the Appeals Committee of the Council.

Netcare 911 and one medical scheme duly lodged two respective section 48 appeals against the decision of the Registrar. Netcare 911 also submitted an exemption application from complying with the provisions of Regulation 15B to the Act. In terms of section 8(h) the Council may grant an exemption if a case of exceptional circumstances has been made out by the applicant.

### Advice to medical schemes

Pending the finalisation of the legal processes surrounding the appeals and the exemption application, the CMS' advice to medical schemes is as follows:

- While the operation of the "Netcare 911" ruling has been suspended, schemes are still required to ensure that all contracts with service providers and accredited entities are aligned with the provisions of the Act.
- Proper measures should be put in place to ensure that conflicts of interest are avoided as required in terms of section 57(6)(c).

- Capitation agreements are only to be entered into with accredited managed care organisations.
- Medical schemes are ultimately responsible for ensuring that members' claims are paid correctly, that complaints are adjudicated in line with the scheme rules and that contracts are properly managed in the event that services are outsourced.

The Council for Medical Schemes is currently investigating alternative reimbursement models, and a compliance framework will be communicated to the industry in due course. In the meantime, medical schemes should properly demarcate services relating to the provision of relevant healthcare services (DSPs and preferred providers) and managed care and administration agreements.

Sincerely



Dr Siphon Kabane  
Acting CE & Registrar  
Council for Medical Schemes