



CIRCULAR

Reference:	Election of Trustees
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Circular 37 of 2016: Extension of deadline for representations – Draft Undesirable Business Practice Declaration in terms of Section 7 of the Financial Institutions (Protection of Funds) Act, 2001 and Section 61 of the Medical Schemes Act, 1998

1. On **27 May 2016**, the Acting Registrar of Medical Schemes (“the Registrar”) published in Government Gazette No 40022, a draft Undesirable Business Practice Declaration Notice 305 of 2016. The notice was made in terms of section 7 of the Financial Institutions (Protection of Funds) Act 28 of 2001, read with section 61 of the Medical Schemes Act 131 of 1998.
2. The representations – in accordance with section 7(2) (a) of the Financial Institutions (Protection of Funds) Act as well as section 61(2) of the Medical Schemes Act – are required to reach the Registrar of Medical Schemes within 21 days after publication of the draft notice. No substantive representations have been received from various medical schemes yet within the prescribed 21 days.
3. Instead, some medical schemes have made requests for further time to make representations. The Registrar has considered the reasons given for requesting further time as well as the time periods requested. The Registrar holds the view that 21 days are, in accordance with the provisions of section 7(2)(a) of the Financial Institutions (Protection of Funds) Act as well as section 61(2) of the Medical Schemes Act, adequate time within which to make representations.

4. However, in response to the requests for further time, the Registrar hereby gives a further period of 21 days within which to submit representations invited per the notice published on 27 May 2016. Therefore, all interested persons can still make representations until **8 July 2016**.

Written representations should be directed to one of the following addresses by 8 July 2016:

Mail: Compliance and Investigations Unit, Council for Medical Schemes, P/Bag x34, Hatfield, 0028.

Email: declarationcomments@medicalschemes.com

Fax: 012 431 0656

Post: Council for Medical Schemes, P/Bag x34, Hatfield, 0028

Block A, Eco Glades 2 Office Park

420 Witch-Hazel Avenue

Eco Park

Centurion, 0157

Tel: 086 112 3267

The draft undesirable business practice declaration notice 305 of 2016 published in Government Gazette No 40022 is attached herein below for your ease of reference.



STEPHEN MMATLI
GM: COMPLIANCE & INVESTIGATIONS
COUNCIL FOR MEDICAL SCHEMES

GENERAL NOTICES

DEPARTMENT OF HEALTH

NOTICE 305 OF 2016

COUNCIL FOR MEDICAL SCHEMES

MEDICAL SCHEMES ACT, 1998

FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, 2001

INVITATION TO INTERESTED PERSONS TO MAKE WRITTEN REPRESENTATIONS CONCERNING THE FOLLOWING INTENDED DECLARATION OF CERTAIN ELECTORAL AND VOTING PRACTICES FOR THE APPOINTMENT OF TRUSTEES OF MEDICAL SCHEMES IRREGULAR OR UNDESIRABLE PRACTICES BY THE PERSONS REFERRED TO, IN TERMS OF SECTION 7 OF THE FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, 2001 READ WITH SECTION 61 OF THE MEDICAL SCHEMES ACT, 1998

- 1 In terms of section 7 of the Financial Institutions (Protection of Funds) Act, 2001, read with section 61 of the Medical Schemes Act, 1998, the Registrar of Medical Schemes hereby:
 - a. Publishes notice of the intention to declare certain electoral practices as irregular or undesirable practices in relation to the activities of medical schemes;
 - b. Invites interested persons to make written representations concerning the intended declaration so as to reach the Registrar within 21 days after the date of publication of this notice;
 - c. Advises that the final declaration will not be published until at least 60 days after the date of this notice.
- 2 Written representations must be addressed to: The Registrar of Medical Schemes (Attention: Sibonelo Cele), Block A, Eco Glades, 2 Office Park, 420 Witch-Hazel Avenue, Eco Park, Centurion, or email: s.cele@medicalschemes.com.

PURPOSE

- 1 Amongst the main purposes of the Medical Schemes Act, 1998 and of the Council for Medical Schemes and of the Registrar of Medical Schemes is to control the activities of medical schemes and to protect the interests of members of medical schemes at all times.
- 2 The board of trustees is charged with managing the affairs of a medical scheme. It is essential that democratic processes are used to appoint or elect fit and proper persons to hold such office of trust. In this regard, it is also essential to avoid the appointment of candidates whose personal interests or the interests of those promoting or ensuring their candidature and appointment are in conflict with the interests of beneficiaries of medical schemes and potential scheme members and the public interest.
- 3 Section 57 provides that 50% of the members of the board of trustees must be elected from amongst members and that employees, directors, officers, consultants or contractors of the administrator of the medical scheme concerned, or of the holding company, subsidiary, joint venture or associate of that administrator must not be members of the board of trustees of a medical scheme. The provisions are undermined:
 - 3.1 if the election of members' representatives is not conducted in a fair and democratic manner;

- 3.2 if the persons prohibited from being members of the board of trustees use their information, processes or influence to procure the election of members of the board of trustees who are beholden to or likely to be influenced by anyone prohibited from being a member of the board of trustees;
 - 3.3 if any person, who by virtue of services provided to a medical scheme has access to or possession of information and details of members of a medical scheme, uses members' information and details, and/or provides such details and information to another person, for purposes of election campaigning or influencing the nomination or the outcome of election of members of a board of trustees.
- 4 The practices that will be declared irregular or undesirable practices have been used by persons in order to appoint or influence the appointment of persons as members of the board of trustees.

DRAFT DECLARATION

In terms of section 7 of the Financial Institutions (Protection of Funds) Act, 2001 as read with section 61 of the Medical Schemes Act, 1998, the Registrar of Medical Schemes after consultation with the Council for Medical Schemes, and with the concurrence of the Council for Medical Schemes and the Minister of Health, declares that it is an irregular or undesirable practice for:

- 1 An employee, director, officer, consultant, associate of a person who renders contractual, administrative or intermediary services to a medical scheme including an administrator, or managed healthcare organisation of the medical scheme concerned, or of a broker, or of the holding company, subsidiary, joint venture or associate of any of those service providers, to:
 - 1.1 Approach any person to persuade them to stand as a candidate for election to be a member of the board of trustees of the medical scheme.
 - 1.2 Canvass for or obtain proxies for the appointment of any particular person to stand as a candidate for election to be a member of the board of trustees of the relevant medical scheme.
 - 1.3 Use -for the purposes of bringing about the election or the appointment of any particular person into becoming a member of the board of trustees of the medical scheme- of personal information of members in the possession of a service provider.
 - 1.4 Fund or organise the election of candidates for membership of the board of trustees of a medical scheme or campaign for the appointment of any particular members' representative to the board of trustees of the relevant medical scheme.
- 2 A person who renders contractual, administrative or intermediary services to a medical scheme including an administrator, or managed healthcare organisation or any employee, director, officer, consultant or contractor of such person acting on its behalf to approach any person or to procure proxies in favour of any person for the purposes of bringing about the appointment of that person as a members' representative on the board of trustees of the medical scheme concerned.
- 3 A medical scheme or any employee, director, officer, consultant or contractor of a medical scheme, to approach any employee of a medical scheme or to procure proxies in favour of any employee of a medical scheme for the purposes of bringing about the appointment of that employee as a members' representative on the board of trustees of the medical scheme concerned.
- 4 Any person who renders contractual, administrative or intermediary services to instruct or influence its employees to stand for election as a member trustee on the board of trustees of a medical scheme, or to vote for a particular person to be a member of the board of trustees of any medical scheme.

Note: The above practices do not apply to election practices required or permitted by the rules of the medical scheme concerned.