



Reference: Model Rules  
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## **CIRCULAR 39 OF 2016: MODEL RULES AND THE EXPLANATORY MEMORANDUM**

The Council for Medical Schemes (CMS) is today releasing the revised model rules for medical schemes that provide guidance to schemes as to the interpretation and requirements of sections 24, 29 and 30 of the Medical Schemes Act, 131 of 1998 (MSA). The model rules have been developed in consultation with internal and external stakeholders.

The external consultation process commenced with the CMS' request for industry comments on the draft model rules discussion document released on 26 January 2015 (Circular 15 of 2015) and further invitation for comments and the extension of the comment period released on 26 March 2015 (Circular 24 of 2015). The comments were received and collated by the Office after the deadline of 20 April 2015. Work has since commenced in finalising the document, prior to it being released to the industry.

The Office received comments from 17 medical schemes and 2 administration companies, which comments were analysed and summarised for incorporation into the revised model rules. The CMS appreciates the industry comments in this regard, many of which have been considered and incorporated in this copy.

Some of the most common comments and concerns raised in the submissions include the following:

- Definitions: Some proposed changes to the definitions were inconsistent with, or do not comply with the MSA and Regulations;
- The consequence of some of the changes may expose schemes to financial risks;
- Some of the proposed rules were open to interpretation or impractical;
- The prescribed term of office for trustees and assessments were welcomed;
- The requirement to categorise savings as trust funds was under appeal;
- References from the proposed Medical Schemes Amendment Bill (MSAB) were premature; and
- The Protection of Personal Information (POPI) and Consumer Protection Act were entirely taken into account.

The preamble to the explanatory memorandum seeks to address some of the concerns raised and some proposed changes by respondents have been incorporated in the document. To take note are the following in this regard:

- The recent (27 May 2016) judgement in the matter between “*The Registrar of Medical Schemes v Genesis Medical Scheme*” where amounts in the members’ savings accounts are “trust property” in terms of the Financial Institutions (Protection of funds) Act 28 of 2001 and are to be accounted for separately in terms of section 4(4) and (5) of the MSA, read together with section 35(9)(c) of the MSA;
- Circulars 31 and 33 of 2016 with regards to the authorisation of auditors and audit firms;
- Fiduciary duties of the trustees where “trustees should be allowed to delegate of their duties”. The CMS’ view is that as persons elected/appointed to a position of trust, such persons hold a legal and ethical relationship and owes that duty to members. Fiduciary responsibilities cannot be delegated. This is different from functions of the board, where they can be delegated; however, for trustees, these still remains the responsibility of the trustees.
- Refer to the explanatory memorandum for the CMS’ view on dependants, other than the members’ immediate family.
- While the MSA makes no reference to formal contracting where a designated service provider (DSP) is sourced for the delivery of prescribed minimum benefits, it makes sense that an agreement for reimbursement for the delivery of these services has to be concluded. This is only possible in a form of a formal contract. This agreement extend also to state/public facilities where a scheme desires to conclude such. Medical schemes having found to have indicated the state/public facilities as DSPs may be required to produce demonstrable proof that such contracts are in place.
- All proposed changes made in reference to the MSAB have been removed. These will be revisited upon the review of the Bill by Parliament.

Both the model rules and the explanatory memorandum can be accessed using the following link:

[Model Rules](#)

[Explanatory Memorandum](#)

The model rules remain live and will be updated on a continuous basis. The CMS values all comments received and trust that the industry will use these documents to its benefit.



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