



Reference: Intention to declare certain practices irregular or undesirable  
Contact person: **Alicia Schoeman**  
Tel: 012 431 0431  
Fax: 0866865390  
E-mail: [a.schoeman@medicalschemes.com](mailto:a.schoeman@medicalschemes.com)  
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**Circular 39 of 2017: INVITATION TO INTERESTED PERSONS TO MAKE WRITTEN REPRESENTATIONS CONCERNING THE INTENDED DECLARATION OF CERTAIN PRACTICES BY MEDICAL SCHEMES IN SELECTING DESIGNATED HEALTH CARE PROVIDERS AND IMPOSING EXCESSIVE CO-PAYMENTS ON MEMBERS AS IRREGULAR OR UNDESIRABLE PRACTICES**

The Council for Medical Schemes (CMS) has published a notice in the Government Gazette (Notice 435 of 2017) dated 9 June 2017 whereby interested persons are invited to make written representations regarding the Registrar of Medical Schemes' intention to declare certain practices relating to the activities of medical schemes, as irregular or undesirable practices. This is in line with the provisions of Section 7 of the Financial Institutions (Protection of Funds) Act, read together with section 61 of the Medical Schemes Act, No. 131 of 1998 (the MS Act).

The notice deals with the appointment of Designated Service Providers (DSPs) and the excessive penalty co-payments imposed by certain medical schemes where members voluntarily use non-DSPs.

Regulation 8 to the MS Act entitles medical schemes to select certain healthcare providers as designated service providers, to provide members with diagnosis, treatment and care in respect of prescribed minimum benefit (PMB) conditions. If a member uses a DSP no co-payments may be imposed and the member's invoice must be funded in full. Regulation 15E(2) further provides that a medical scheme may place limits on the number or categories of health care providers with whom it may contract to provide relevant healthcare services, provided that there is no unfair discrimination and provided that the selection is based upon a clearly defined and reasonable policy which furthers the objectives of affordability, cost-effectiveness, quality of care and member access to health services.

Despite the above provisions, the Registrar was furnished with information suggesting that some medical schemes:

- (1) Unilaterally and without restriction determine the criteria to apply when selecting their DSPs.

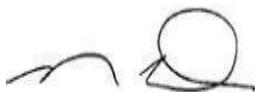
- (2) Select DSPs without engaging in a fair procurement or tender process and without considering applications or tenders from all interested service providers to join their DSP network.
- (3) Thereby unfairly limiting the number of selected service providers (including pharmacies) available to provide healthcare services to their members.
- (4) Oblige members to only use a limited number of DSPs or to risk paying exorbitant co-payments.
- (5) Specify in their rules the quantum of Regulation 8(2)(b) co-payments for pharmaceutical products which amount to penalty co-payments;
- (6) Calculate the penalty co-payments as a percentage of the total script dispensed by pharmacies which comprises the Single Exit Price (cost price) of the medicine plus the dispensing fee rate charged by the service provider pharmacy, thereby unfairly penalising members who do not use the designated service provider.

In view of the above, the Registrar has published a notice of his intention to declare, subject to written representations by interested persons, and with the concurrence of the Council for Medical Schemes and the Minister of Health, the following business practices as irregular or undesirable:

- a. The selection by a medical scheme of a healthcare provider or group of providers as DSPs without engaging in a fair, equitable, transparent, competitive and cost-effective tender process.
- b. Imposing a co-payment in terms of Regulation 8(2)(b) that exceeds the quantum of the difference between what is charged by the scheme DSPs, and what is charged by a service provider who is not a DSP of the scheme.

Interested parties are invited to make written representation regarding the proposed declaration as contained in the Government Gazette. The representations must reach the Registrar's office within 21 days of the date of publication of the Government Gazette notice. Representations can be sent to [legal@medicalschemes.com](mailto:legal@medicalschemes.com).

To access copy of the Gazette notice, please click [here](#)



**Craig Burton-Durham**  
**General Manager: Legal Services**  
**Council for Medical Schemes**