



CIRCULAR

Reference: Update for industry on legal processes
Contact person: Alicia Schoeman
Tel: 012 431 0431
Fax: 012 431 0631
E-mail: a.schoeman@medicalschemes.com
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Circular 48 of 2013: Update for industry on legal processes

The Council for Medical Schemes (CMS) would like to update the medical schemes industry on certain legal developments that will affect stakeholders in the near future and going forward:

1. Medical Schemes Amendment Bill

The final version of the Medical Schemes Amendment Bill was submitted to the Department of Health on 4 October 2013. The Department will publish the Bill in the *Government Gazette* for public comment as soon as the ministerial task team has considered the document.

Proposed amendments to look out for include:

- Improved information management will be possible through the creation of a Health Services Provider and Central Beneficiary Registry;
- The term "Prescribed Minimum Benefits" (PMBs) will change to "Mandatory Minimum Benefits" (MMBs). MMBs will be updated more regularly and stakeholders will be able to comment on these processes.
- The complaints procedure will be more streamlined and guidelines will be issued to ensure the fair treatment of medical scheme members.
- The Appeals Committee will be removed and all appeals will be heard by the Appeal Board.
- Governance provisions will be strengthened and expanded.

The Bill is currently draft legislation and will only become enforceable once it has been assented to and signed into law by the President. The final Act will be published in the *Government Gazette* and the CMS will inform stakeholders accordingly.

Please note that this process can take a number of years to be completed. For a detailed description of the legislative process you are welcome to visit the website of the Department of Justice and Constitutional Development (<http://www.justice.gov.za/legislation/legprocess.htm>)

2. Rules of the Appeals Committee

The Appeals Committee of the Council has drafted rules to ensure that appeal hearings are conducted in an effective and efficient manner. The rules provide guidelines on how appeals should be conducted, from the initial lodging of an appeal to the issuing of and compliance with a ruling of the Appeals Committee.

The draft rules are attached to this Circular (below); we invite all interested parties to submit any comments they may have to a.schoeman@medicalschemes.com before 30 November 2013. The final rules of the Appeals Committee will be published on the CMS website in December 2013.

3. Conciliation pilot phase

In Circular 15 of 2013 the CMS introduced the industry to a conciliation pilot phase aimed at resolving appeals in a cost-effective and time-efficient manner. The pilot phase ran from 25 March 2013 to 31 July 2013. Of the 21 matters that were referred for conciliation, 15 were settled between the parties with the assistance of a qualified mediator. Unfortunately not all medical schemes could participate in the project as the CMS had to select and refer those appeals that were lodged first, irrespective of who the parties were. However, any interested party is welcome to forward comments or questions relating to the project to the CMS.

The CMS will embark on a process of implementing conciliation on a permanent basis and would like to thank those who were involved in the pilot phase for their cooperation and for contributing to the success of the project.

4. Practice Code Numbering System

In terms of Section 1 of the Regulations to the Medical Schemes Act 131 of 1998, "practice code number" means "the number allotted to a supplier of a relevant health service as a practice number by an organisation or body approved by the Council". Regulation 5 states that if applicable the accounts of suppliers of service must contain the practice code number.

In 2012 the CMS went out on tender to secure a service provider who will be responsible for the administration of the Practice Code Numbering System (PCNS). The subsequent award of the

tender has been challenged by an unsuccessful bidder and the matter will be adjudicated by the courts. The outcome of the matter will be communicated to the industry in due course.

The PCNS contract with the Board of Healthcare Funders of Southern Africa (BHF) has been extended. We look forward to a new and improved PCNS which will benefit all our stakeholders.

5. Protection of Personal Information Bill

The prediction is that the Protection of Personal Information Bill (POPI) will be assented to and signed into law before the end of the year. Section 103 of the Bill deals with transitional arrangements and provides that the processing of information must be compliant with the new legislation within one year from the date on which the Act comes into force. The relevant Minister may extend this period by notice in the *Government Gazette* to a maximum of three years.

The CMS endeavours to have all the necessary systems in place well in advance of the above-mentioned deadlines and will assist the industry with guidelines in due course.

6. Trustee Remuneration

The Office has appointed Ernest and Young Pty (Ltd) to conduct a detailed survey on the current remuneration of trustees of medical schemes. A further circular will follow with specific details on the scope and duration of the project. The aim of the project is to gain insight into the current processes that are being applied and to develop Board of Trustee remuneration guidelines for medical schemes in the South African market. Stakeholders will be requested to make submissions and to voluntarily participate in the process. The success and impact of the project will depend on the meaningful participation of the selected stakeholders. The survey will be conducted during the months of November and December 2013. The outcomes will be published by the CMS.

You are welcome to direct any enquiries to our Legal Services Unit at legal@medicalschemes.com.

Sincerely



Craig Burton-Durham
Head: Legal Services
Council for Medical Schemes



RULES OF THE APPEALS COMMITTEE

The Council for Medical Schemes (CMS) is a statutory body established by the Medical Schemes Act 131 of 1998 to provide regulatory supervision of private health financing through medical schemes.

The governance of the CMS is vested in a Board appointed by the Minister of Health, called the Council, consisting of a Non-executive Chairperson, Deputy Chairperson, and 13 members.

The Executive Head of the CMS is the Registrar, also appointed by the Minister in terms of the Medical Schemes Act. Council determines overall policy, but day-to-day decisions and the management of staff are the responsibility of the Registrar and the Executive Managers.

The jurisdiction and proceedings of the Appeals Committee of Council are governed by Sections 48 and 49 of the Medical Schemes Act. The CMS has, after consultation with the Chairperson of the Appeals Committee, drafted rules on the jurisdiction and proceedings of the Appeals Committee as per the Schedule that follows.

These rules came into operation on (date to be announced).

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SCHEDULE

RULES ON THE JURISDICTION AND PROCEEDINGS BEFORE THE APPEALS COMMITTEE

1. Application

- 1.1 Section 7(f) of the Medical Schemes Act ("the Act") empowers the Council to make rules, not inconsistent with the provisions of this Act, for the purpose of the performance of its functions and the exercise of its powers.
- 1.2 Section 9(1)(b) of the Act allows the Council to appoint from amongst its members, or any other persons, any other committee in regard to any matter falling within the scope of the Council's functions and powers under the Act. Council may delegate to any such committee such of its functions and powers as it may determine from time to time.
- 1.3 The Appeals Committee is a sub-committee of Council. It elects its own chairperson as per section 9(3) and it determines its own rules regarding the procedures at its meetings as per section 9(5) of the Act.
- 1.4 The function of the Appeals Committee is to hear and rule upon all appeals against decisions lodged in terms of sections 48 and 49 of the Act.

2. Constitution of the Appeals Committee

- 2.1 The Appeals Committee consists of the following members:
 - 2.1.1 Two independent chairpersons with at least 10 years experience as an admitted attorney or advocate. The two chairpersons alternate the chairing of Appeals Committee hearings subject to their availability.
 - 2.1.2 A minimum of two and a maximum of three Council members per Appeals Committee meeting.
 - 2.1.3 In an instance where the Appeals Committee reaches a deadlock, the chairperson has the casting vote.
- 2.2 Council has adopted the practice of appointing an independent chairperson to the Appeals Committee. In the event that neither of the appointed chairpersons is available to chair an Appeals Committee meeting, the Council members on the committee may appoint a chairperson amongst themselves in terms of section 7(3) to the Act, provided that there is a total of three Appeal Committee members present at the meeting.
- 2.3 The tenure and remuneration of the committee members must be set out in an agreement that must be undersigned by the Registrar and the respective members prior to the commencement of services.

3. Jurisdiction

- 3.1 The Appeals Committee is a creature of statute and can only exercise the powers conferred on it by the Act.
- 3.2 The following appeals may be lodged for consideration by the Appeals Committee:
 - 3.2.1 Section 48 appeals against any decision relating to the settlement of a complaint or dispute; and
 - 3.2.2 Section 49 appeals against any decision of the Registrar under a power conferred or a duty imposed upon him/her by or under this Act, excluding a decision that has been made with the concurrence of the Council.
- 3.3 Section 48 appeals
 - 3.3.1 Any person may appeal any decision made by a principal officer or committee of a medical scheme, which includes decisions of a clinical, executive, or disputes committee in terms of this section.
 - 3.3.1 The appeal must be in the form of an affidavit and must be directed to the Council. The affidavit must be commissioned by a commissioner of oaths.
 - 3.3.2 The appeal must be forwarded to the secretary of the Appeals Committee who must index and paginate the bundle.
 - 3.3.3 The appeal must be lodged within 90 calendar days after the decision that is subject to the appeal, was made.
 - 3.3.5 If an appellant is out of time with the filing of an appeal, s/he may apply for condonation. The Appeals Committee may consider the request as an interlocutory point and may grant the condonation upon good cause shown, after which the merits of the case may be heard at a date and time determined by the Appeals Committee.
- 3.4 Section 49 appeals
 - 3.4.1 Any decision by the Registrar under a power conferred or a duty imposed on him/her may be appealed against in terms of this section.
 - 3.4.2 There is no prescribed format for the appeal, save for the fact that it must be in writing.
 - 3.4.3 A notice of appeal must set out the grounds of the appeal.
 - 3.4.4 The relevant Legal Adjudication Officer that made the decision on behalf of the Registrar must index and paginate the appeal bundle, and forward it to the secretary of the Appeals Committee within four calendar days.
 - 3.4.5 The appeal must be lodged within 30 calendar days after the decision of the Registrar, which forms the subject of the appeal, was made.

- 3.4.6 There is no condonation for appeals that are submitted outside the allowed time period. Appeals that are filed out of time may be forwarded to the Appeals Committee who will decide if the matter must be heard or not. In the instance where the Appeals Committee decides to hear the merits it must be on a date and time determined by the Appeals Committee.

4. Documents

- 4.1 Every appeal bundle must consist of the following documents:
- 4.1.1 An appeal notice which clearly sets out the part(s) of the ruling or decision being appealed;
 - 4.1.2 The reasons why the appellant believes that the decision, which forms the subject of the appeal, should be set aside, varied, or overturned;
 - 4.1.3 The relief sought from the Appeals Committee;
 - 4.1.4 A copy of the ruling or decision that forms the basis of the appeal; and
 - 4.1.5 Supporting documents which substantiate the allegations that are set out in the appeal document.
- 4.2. The bundle must be indexed and paginated in accordance with these rules.
- 4.3. Further documents, including heads of argument, may be submitted prior to the hearing, as set out these rules.
- 4.4. The chairperson of the Appeals Committee may, at any time, request any party to submit further documents after the proceedings and prior to issuing of the ruling if s/he deems it necessary to properly adjudicate the matter.

5. Procedural arrangements

- 5.1 Prior to the appeal hearing:
- 5.1.1 The Legal Adjudication Officer who receives the appeal must acknowledge receipt of the appeal and inform the respondent thereof in writing.
 - 5.1.2 The secretary of the Appeals Committee may refer the matter to the Legal Services Unit to arrange a voluntary conciliation process according to the guidelines created for this purpose.
 - 5.1.3 Appeals that could not be settled through the voluntary conciliation process must be scheduled for hearing by secretary of the Appeals Committee.
 - 5.1.4 Appeals must be scheduled for hearing in the order in which they were lodged with the CMS, with the exception of urgent matters which must be prioritised.

- 5.1.5 The date, time, and place of the hearing of an appeal shall be determined by the Council.
 - 5.1.6 The secretary of the Appeals Committee must forward a notice of set down to the appellant(s) and the respondent(s) and any legal representative(s) to inform them of the date, time, and place of the hearing at least 30 calendar days prior to the hearing.
 - 5.1.7 In the event that there are openings in the schedule due to matters being postponed or removed, the secretary may set down additional matters thereby giving the parties less than 30 calendar days' notice, provided that the parties agreed to the set down.
 - 5.1.8 Any additional documents and/or heads of argument must be filed with the secretary at least 10 calendar days prior to the hearing.
 - 5.1.9 Any replying papers on the aforementioned documents must be filed with the secretary at least seven calendar days prior to the hearing.
- 5.2 The appeal hearing:
- 5.2.1 All the parties with hearings that have been set down must report at the premises of the CMS one hour before the hearing is scheduled to take place.
 - 5.2.2 The first hearing will start at 9:00 or as soon thereafter as the matter can be heard.
 - 5.2.3 The schedule of matters for the day will be available in the waiting area, but the time slots allocated to each matter should only be used as a guideline the Appeals Committee may need to deviate from the time slots as indicated.
 - 5.2.4 All the documents that form part of the appeal bundle can be considered as read on the day of the appeal. The hearing is used mainly to clarify certain issues, and the parties need not repeat all the facts. In general, 45 minutes are allocated to each matter and each party has 15 minutes to present their case. The time allocation may be extended at the discretion of the chairperson of the Appeals Committee.
 - 5.2.5 The proceedings must be recorded by an independent recording company.
 - 5.2.6 The chairperson determines the procedure during the hearing.
 - 5.2.7 No additional documents will be accepted during the hearing, except on good cause shown by the party handing up the document(s) and unless so determined by the chairperson of the Appeals Committee.
- 5.3 After the hearing
- 5.3.1 The chairperson of the Appeals Committee must forward the ruling of the Appeals Committee to the secretary within 30 calendar days after the hearing

or as soon as possible thereafter.

5.3.2 The secretary of the Appeals Committee must forward the ruling to the relevant parties within seven calendar days of having received it, and must inform the parties of their right to lodge an appeal to the Appeal Board in terms of section 50 to the Act should they be dissatisfied with the outcome.

5.3.3 The ruling must be published on the CMS website (www.medicalschemes.com).

6. Incidental matters

6.1 Once a matter has been set down for hearing, a postponement or removal of a matter will only be granted by written agreement between the parties

6.2 Matters will not be postponed based on the availability of legal counsel.

6.3 The notification of the postponement or removal of a matter must be submitted to the secretary of the Appeals Committee at least five calendar days prior to the hearing.

6.4 The secretary must inform the Appeals Committee of the postponement of a matter at least three calendar days prior to the hearing.

6.5 If there is no written agreement between the parties, the party requesting the postponement must direct the request for a postponement to the Appeals Committee for consideration on the date of the hearing.

6.6 If a party fails to attend an appeal hearing without any notice to the secretary of the Appeals Committee, the hearing may continue in his/her absence.

6.7 Each party should be present or represented at the appeal hearing in person. The teleconferencing facilities may only be made available to parties if good cause can be shown; such arrangements must be made with the secretary well in advance of the hearing.

6.8 The citation of parties to the appeal should always include the name of the member of the medical scheme. When a third party acts on behalf of such a member, it should be so indicated.

7. Costs

7.1 The Act does not provide for any cost orders.

7.2 Each party is responsible for his/her own costs.

8. Failure to comply with rulings of the Appeals Committee

- 8.1 If a party fails to comply with a direction in a ruling of the Appeals Committee, the aggrieved party should report the non-compliance to the secretary of the Appeals Committee.
- 8.2 The secretary must then refer the matter to the Compliance & Investigations Unit of the CMS for enforcement within seven calendar days of having been made aware of the non-compliance.