



CIRCULAR

Reference: CMS_708650_2019/04/05
Contact person: Alicia Schoeman
Tel: 012 431 0500
Fax: 0866865390
E-mail: legal@medicalschemes.com
Date: 2019/11/01

CIRCULAR 76 OF 2019: EXCESSIVE CO-PAYMENTS AND THE APPOINTMENT OF DESIGNATED SERVICE PROVIDERS

This Circular seeks to give feedback to the industry on a draft notice published in the Government Gazette during June 2017 regarding the practices by medical schemes to impose excessive or punitive co-payments on members who elect not to obtain relevant health services from designated service providers (DSPs). The notice was publicized after the Appeal Board of the Council for Medical Schemes (the CMS) directed the CMS to commence with a section 61(2) process in terms of the Medical Schemes Act, (Act 131 of 1998); following a complaint lodged by the Independent Community Pharmacy Association (the ICPA).

The ICPA's complaint was based on the allegation that medical schemes excluded small independent pharmacies by imposing excessive co-payments on members who obtained services from their pharmacies even though they were able to provide the services and medication at the same price as the DSP pharmacies. A further allegation was that schemes unilaterally determine the criteria to appoint DSPs.

The CMS received a substantive number of written comments following the publication of the draft Undesirable Business Practice Declaration (UDBP) from a wide range of industry players, including medical schemes, funder associations, different disciplines of healthcare providers and other regulated entities. The report generated from the submissions indicated that the different disciplines of providers had different concerns with penalty co-payments while the funder side indicated how punitive co-payments curb fraud, waste and abuse and manage high healthcare costs. The funders further indicated that a formal tender process is not always workable and that service providers who met the criteria of the scheme are included. As a general rule, service providers contract with medical schemes in return for patients/members being channeled to their practices. Without this incentive there would be no reason to render services to medical schemes members at lower rates.

The Registrar and the Council, with the concurrence of the Minister of Health, considered all the facts and resolved not to publish an UDBP at this point. The above-mentioned considerations indicated that further investigations will need to be conducted with regards to the different disciplines of providers, where the original notice focused on a complaint by a pharmaceutical stakeholder. At the same time the Medical Schemes Amendment Bill as well as the Health Market Inquiry (HMI) had not been

finalised at the time and the Council thought it prudent to wait for these two very important projects to reach finality, to see how it would impact the UDPB.

The final report of the HMI was launched on the 30th of September 2019 and handed over to the Minister of Trade and Industry. The report will also be shared with the Minister of Health. The CMS has taken notice of the recommendations regarding contracts with facilities and practitioners and will give due consideration to the recommendations in this regard. The fact that the HMI also divided its findings on providers into different categories supports the view of the CMS not to impose a one fits all declaration on medical schemes.

The CMS remains committed to the protection of beneficiaries at all times. Regulation 8(3) to the Medical Schemes Act provides that members' prescribed minimum benefit (PMB) conditions must be funded in full if a member involuntarily uses the services of a non-DSP.

Any contravention of the Medical Schemes Act will be investigated and action taken to ensure that all regulated entities comply with the Act and Regulations.

Co-payments currently form part of the registered rules of a medical scheme and must be approved by the Registrar prior to registration. Rules will only be registered if they are compliant with the Medical Schemes Act and if the Registrar is satisfied that the registration of such rules would not be unfair towards members.



Dr Siphon Kabane
Chief Executive and Registrar
Council for Medical Schemes