



Reference: Clinical Review Committee
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Circular 75 of 2016: Non-compliance with protocols and recommended treatment by members

The Council for Medical Schemes (CMS) previously informed all the medical schemes that non-compliance with specific clinical protocols and recommended treatment by members may not result in the non-payment of claims. All the Prescribed Minimum Benefits (PMB) conditions must still be funded according to the PMB Regulations. However, the medical scheme may impose a co-payment as specified in the Regulations 8(4) and (5) of the Medical Schemes Act, 131 of 1998, as extracted below:

(4) Subject to subregulations (5) and (6) and to section 29 (1) (p) of the Act, these regulations must not be construed to prevent medical schemes from employing appropriate interventions aimed at improving the efficiency and effectiveness of health care provision, including such techniques as requirements for pre-authorisation, the application of treatment protocols, and the use of formularies.

(5) When a formulary includes a drug that is clinically appropriate and effective for the treatment of a prescribed minimum benefit condition suffered by a beneficiary, and that beneficiary knowingly declines the formulary drug and opts to use another drug instead, the scheme may impose a co-payment on the relevant member.

Medical schemes should note that such co-payments must be specified in the medical scheme rules and be clearly communicated to their members in simple straightforward language.

- Refusal of Hospital Treatment (RHT):

The Clinical Review Committee (CRC) received an enquiry from a third party administrator with regards to the payment of PMB in cases where a member refuses hospital treatment. The CRC previously communicated that in cases where a member refuses hospital treatment, the medical scheme is not liable to fund the claims regardless of whether the member's condition is a PMB or not. The specific enquiry and argument from the third party administrator was investigated in detail by the CRC.

The concept of "Informed consent" does not only apply to treatment agreement and the cost of such treatment, but also to the refusal of treatment, or the choice of alternative treatments. Mentally capable members and beneficiaries have the right to refuse treatment, even when the refusal may result in disability or death. The principle of informed consent would be pointless if it does not protect the member's right to refuse a proposed course of treatment in or out of hospital at any time.

In view of the above, the CRC came to the conclusion that refusal of hospital treatment is a form of non-compliance and needs to be managed in accordance with best ethical practices, the same manner as non-compliance with any other medical treatment or protocol.

The CRC has reviewed the previous decision where medical schemes were not obliged to pay for refusal of hospital treatment and withdraws such previous decision. Subsequently, all claims with regards to the payment of PMB in cases where a member refuses hospital treatment must be funded in accordance with Regulation 8, taking into account the provisions specified in Regulations 8(4) and (5). Claims with regards to the payment of Non-PMB in instances where a member refuses hospital treatment must be funded according to the registered medical scheme rules.

- Cotinine (Nicotine) tests for Chronic Obstructive Pulmonary Disease (COPD):

The CRC was further informed that a number of medical schemes request cotinine (nicotine) tests prior to authorisation and funding of oxygen therapy for members who suffer from COPD. If the cotinine test results are positive the medical schemes deny the authorisation or funding for oxygen therapy. The CRC would like to inform all stakeholders that lifestyle choices form part of non-compliance and need to be managed in the same manner as non-compliance with any other medical treatment or protocol.

Subsequently, all claims with regards to the payment of PMB in cases where a member does not adhere to lifestyle changes must be funded in accordance with Regulation 8, taking into account the provisions specified in Regulations 8(4) and (5).



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