



PRESS RELEASE

Reference: CMS welcomes ruling on DHMS rule amendment case
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Press release 9 of 2016: CMS welcomes ruling on Discovery rule amendment case

The Council for Medical Schemes (CMS), has welcomed the Appeal Board's ruling on the rule amendment appeal lodged by the Discovery Health Medical Scheme (DHMS). The ruling in the CMS' favor, upholds the open-enrolment principle, which forms one of the pillars of the Medical Schemes Act, 131 of 1998. In terms of this provision any person can join any open medical scheme of their choice. The effect of the ruling is that members who were previously terminated due to non-disclosure may now re-apply to join the same medical scheme.

Non-disclosure of material information is a ground for the termination or suspension of membership in terms of section 29(2)(e) of the Medical Schemes Act (the Act). If membership is terminated the contract between a member and a medical scheme is null and void, which means that parties must be placed in the same position they would have been in had the contract never been concluded. Subsequently all the member's contributions is paid back and all claims paid by the scheme on behalf of the member is reversed. This provision of the Act does not distinguish between fraudulent and honest non-disclosure where an applicant merely omitted to disclose material information, however section 66(1) states that it is a criminal offence to knowingly make false representations to a medical scheme. When a member rejoins any scheme following termination due to non-disclosure the scheme may apply underwriting in terms of section 29A of the Act.

On 31 October 2016 the Appeal Board dismissed the appeal lodged by the DHMS regarding the issue of whether it is lawful for the rules of a medical scheme to make provision for the scheme to decline an application for re-instatement of membership for a certain period of time, or in perpetuity, in an instance where the scheme has cancelled such membership due to fraud or non-disclosure of material information by a member. The appeal followed an earlier ruling by the Appeals Committee where the Committee ruled that a medical scheme is obliged to immediately re-accept a member whose membership has previously been terminated due to non-disclosure.

The ruling by the Appeals Committee, and subsequently the Appeal Board, supports the Registrar's decision not to approve and register the DHMS' proposed amendments to its rules (rule submission in terms of section 31 of the Act). The scheme proposed a rule in terms of which it would have the sole discretion to set out the circumstances for which a member could be accepted on re-application for membership, once such membership has been terminated due to non-disclosure; and also, to subject the re-accepted member to a waiting period of up to three years.

In its ruling, the Appeal Board found that as an open scheme, the DHMS is subject to the open-enrolment principle as provided for in terms of the Act, which allows members to re-apply for membership to an open scheme where such membership had been terminated before due to non-disclosure. In such an instance, the Act makes provision for the scheme to apply statutory waiting periods as provided for in section 29A to protect the scheme against abuse. Any person who has been without medical scheme coverage for a period of at least 90 days may receive a 3 month general waiting period and a 12 months condition specific waiting period which includes Prescribed Minimum Benefits (PMBs) conditions.

Commenting on the ruling, Dr Humphrey Zokufa, Chief Executive & Registrar of the CMS said: "The CMS applauds the ruling by the Appeal Board. We are happy with it as it allows members whose medical aid membership has been terminated due to an honest mistake in their application forms, to apply for re-acceptance by the same scheme, thus ensuring that such members are not indefinitely left without medical cover".

The Appeal Board is an independent body whose members are appointed by the Minister of Health. In terms of section 50 of the Act, any party who is aggrieved by a decision of the Appeals Committee of the Council, may lodge an appeal to the Appeal Board.

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