



**BROKERS, BROKER ORGANISATIONS,
PRINCIPAL OFFICERS OF MEDICAL
SCHEMES AND MEDICAL SCHEME
ADMINISTRATORS**

Ref: Broker Policy
Enq: Ms F Maphanga
t: (012) 431 0500
f: (012) 431 0620
e: f.maphanga@medicalschemes.com
Date: 26 May 2010

**CIRCULAR NO. 20 OF 2010: CMS LEGAL POSITION ON APPOINTMENT OF BROKERS,
COLLECTION AND PAYMENT OF UNLAWFUL PROFESSIONAL FEES TO BROKERS AND
UNLAWFUL COLLECTION OF FIRST MONTH CONTRIBUTIONS BY BROKERS**

The purpose of this circular is to clarify the legal position of the CMS with regard to the following matters, following numerous enquiries and complaints lodged against the broker fraternity:

1. appointment of brokers by members of medical schemes,
 2. the collection and payment of unlawful professional fees to brokers in terms of the Act, and
 3. the unlawful collection of first month contributions by brokers.
-
1. Appointment of brokers by employers, trade unions, medical schemes and persons other than members

In the interests of clarity, we quote Regulation 28(7) published under the Medical Schemes Act, 1998, (Act Nr 131 of 1998) in its totality:

"A medical scheme shall immediately discontinue payment to a broker in respect of services rendered to a particular member if the medical scheme receives a notice from that member (or the relevant employer, in the case of an employer group), that the member or employer no longer requires the services of that broker".

It is clear from the above regulation that a member may appoint a new broker in place of a broker previously appointed by a member, i.e. there must be an initial appointment prior to a subsequent broker substituting an earlier appointee.

Similarly, when a member has been admitted to a scheme without the assistance of a broker, **no other person** or entity is in a position to assume the role of agent representing the member in appointing a broker thereafter. Failure to comply with this provision undermines the law of agency principle which is enshrined in the Financial Advisory and Intermediary

A statutory body established in terms of the
Medical Schemes Act, 1998 (Act 131 of 1998)

Chairperson: Prof. W Pick Acting Registrar & CE: C Burton-Durham



Services (FAIS) Act as well as the Medical Schemes Act and Regulations framed thereunder. It is therefore necessary to underpin the contractual relationship which exists between a member and the scheme, and strictly between a member and his or her duly appointed broker as agent. In this instance a member may have appointed a broker (via the application form or in terms of a broker note advising a change of broker), without such appointment having been expressly revoked.

Therefore, there is no basis for any medical scheme to seek to overturn such appointment and allocate the client base to another broker merely at the request or instruction of an employer or any other person for that matter who has subsequently appointed a broker on an exclusive basis.

2. Collection and payment of professional fees to brokers

Your attention is drawn to the provisions of Regulation 28(6) (b) which reads as follows:

"The ongoing payment by a medical scheme to a broker in terms of this regulation is conditional upon the broker receiving no other direct or indirect compensation in respect of broker services **from any source**, other than a possible **direct payment to the broker of a negotiated professional fee from the member himself or herself** (or the relevant employer, in the case of an employer group)."

This provision prevents a medical scheme or administrator from offering or undertaking to facilitate any collection and payment of professional fees or other remuneration not prescribed to brokers on behalf of their members. Any failure to comply with this provision will be viewed in a serious light as it constitutes a contravention of prevailing legislation and will become a matter for investigation and likely imposition of statutory penalties against the transgressing broker and the entity/ entities concerned.

3. Unlawful collection by brokers of first month contributions as a professional or administration fee

A number of instances have been reported to this office where members of the public are required by their brokers to pay an amount equal to the first month's contribution upfront to either the broker involved or to the medical scheme when admitting members to certain medical schemes in instances where contributions to such medical schemes are required to be paid in arrears. Failure to disclose the correct facts to unsuspecting clients misleads members to believe that payments made for the benefit of the broker, are in fact payments towards their medical scheme contributions. It is a contravention of the Act and Regulations for brokers to collect any contributions or additional remuneration from clients under such circumstances and the Regulation referred to in paragraph 2 above, applies equally to the payment of such unlawful fees or remuneration to brokers.

The imposition of statutory penalties for failing to comply may include suspension or withdrawal of the accreditation of any errant brokers, after due process has been followed and would also lead this office to review the accreditation status of any entities associated with such conduct.



Members of the public are similarly invited to report such unlawful conduct either to their medical schemes for investigation or to this office to enable the necessary action to be taken against perpetrators to ensure that compliance with the regulatory provisions is enforced.

Yours sincerely

Danie Kolver
Head of Accreditation
Council for Medical Schemes