



**Healthcare providers
Medical Schemes
Administrators**

Circular 24 of 2009

Ref: CMS/BHF
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Circular to clarify the meaning of payment in full provided for in Regulation 8(1)

It has been brought to the attention of the Acting Registrar of Medical Schemes (“the Acting Registrar”) that some confusion has arisen over the meaning of the obligation of a medical scheme to pay medical costs ‘*in full*’ as contemplated by Regulation 8(1) of the Regulations promulgated in terms of Medical Schemes Act, 131 of 1998. Part of what may have led to this confusion is a legal opinion that was circulated by the Board of Healthcare Funders of Southern Africa (“the BHF”) dated July 2009 dealing, inter alia, with this question.

It is necessary to record that the legal opinion of the BHF was distributed without the prior acquiescence of the Acting Registrar and the Council for Medical Schemes (“the Council”) and that the legal opinion does not represent the views of the Acting Registrar and the Council. With the exception of the observations contained in this circular, it is not intended to directly address or comment on the conclusions and views expressed in the BHF legal opinion.

As the industry is aware, the Appeal Board of the Council for Medical Schemes (“the Board”) issued a ruling on the 11th November 2008 in which the Appeal Board considered the obligation of a Medical Scheme to pay in full the fee charged by a service provider in respect of treatment for the resuscitation, ventilation, incubation and neo-natal intensive care. The Appeal Board found that so long as the service providers’ fees were not unreasonable or unprofessional the medical scheme involved was obliged to pay those fees in full without any co-payment or the use of deductibles in respect of diagnosis and treatment that is a prescribed minimum benefit. The Appeal Board ruled that the condition (i.e. for the resuscitation, ventilation, incubation and neo-natal intensive care) was a prescribed minimum benefit and that therefore the medical scheme was obliged to pay for the cost of that treatment in full.

An important feature of the Appeal Board decision was that the treatment in question was covered by Regulation 8(2)(b) in that the service was involuntarily obtained from a non-designated service provider.

The Appeal Board is a body constituted and created in terms of the Medical Schemes Act, 131 of 1998. As such, both the Acting Registrar and the Council are bound by the decision of the Appeal Board and are obliged to follow the directives of the decisions of the Board where the facts of any particular situation coincide with or are analogous to the facts that formed the basis of the decision of the Appeal Board.

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

Chairperson: Prof. W Pick Acting Registrar & CEO: P Matshidze



The decision of the Appeal Board was not challenged before any higher judicial authority and medical schemes are accordingly bound by the decision. If the BHF legal opinion differs from the reasoning and ruling of the Appeal Board, medical schemes will be expected to apply and adhere to the decision of the Appeal Board and not to the BHF opinion.

As the BHF opinion covers issues that are not dealt with in this circular, Medical Schemes are encouraged to satisfy themselves regarding the correctness or otherwise of the contents of that opinion.

Patrick Matshidze
ACTING REGISTRAR & CEO