



CIRCULAR

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CIRCULAR 37 OF 2011: GUIDELINE FOR THE PREPARATION OF ADMINISTRATION AGREEMENTS IN COMPLIANCE WITH THE REGULATORY REQUIREMENTS

The guideline for the preparation of administration agreements in compliance with Regulation 18 and the accreditation standards (Version 4) is hereby published.

Medical schemes, third party medical scheme administrators and any other relevant contracting parties are urged to consider this guideline when negotiating and drafting administration agreements.

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Guideline for the preparation of administration agreements in compliance with Regulation 18 and the administration standards

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1. OVERVIEW

The Medical Schemes Act, 1998 (Act no 131 of 1998) ("the Act") and the Regulations thereto ("the Regulations") stipulate the requirements of providing administration services to medical schemes. One of the requirements in respect of administration arrangements between medical schemes ("schemes") and administrators is that there must be a written agreement that regulates the relationship and which must be duly signed by authorised persons from both parties. This includes all amendments thereto.

A comprehensive, and properly drafted administration agreement ensures that both parties are fully aware of their respective rights and obligations in terms of the agreement. It also assists both parties in identifying and resolving any disputes with regards to the execution of the agreement.

2. REGULATORY REQUIREMENTS

Listed below are the specific requirements in respect of administration arrangements which are prescribed but also deemed to be essential and appropriate for inclusion in each administration agreement:

2.1. Regulation 18

Below is a list of the requirements as per the Regulations to the Act:

Reference	Requirement
Reg 18	"Agreement in respect of administration – (1) Prior to an administrator commencing administrative functions with regard to a particular medical scheme, the medical scheme must enter into a written agreement with the administrator in which the terms and conditions of the administration of the medical scheme are recorded (2) The agreement referred to in subregulation (1) must provide – (a) for the scope and duties of the administrator; (b) that the administrator must, on behalf of the medical scheme, administer the business of a medical scheme in accordance with the Act and as provided for in the rules of the medical scheme;

Reference	Requirement
	<p>(c) for the basis on which the administrator is to be remunerated;</p> <p>(d) for the termination of the agreement at the instance of either party after notice in writing of not less than three calendar months and not more than twelve calendar months;</p> <p>(e) that all registers, minute books, records and all other data pertaining to the medical scheme, must at all times remain the sole property of the medical scheme concerned, and that no lien may be held over them by the administrator.</p> <p>(3) Any changes to the agreement referred to in subregulation (1) must be in writing and must be effected by way of an addendum to the existing agreement or a new agreement between the administrator and the medical scheme.</p>

2.2. Administrator accreditation requirements (Administration standards – Version 4)

Standard reference	Standard description / requirement
1.1.2.1	Signed administration agreements are in place for all medical schemes for whom administration services are provided.
1.1.2.2	The agreements confirm the scope and duties of the administrator for each specific scheme.
1.1.2.3	The agreement provides that all administration services, undertaken by the administrator on behalf of the medical scheme, will be in full compliance with the Act and the rules of the scheme.
1.1.2.4	The agreement contains full details of fees payable by the medical scheme, including basis of determination, reconciliation and payment.
1.1.2.5	Any amendments to the initial agreement are in writing and signed by the parties in terms of Regulation 18(3) of the Act.

Standard reference	Standard description / requirement
1.1.2.6	Termination arrangements are clearly defined in the agreement and conform to the requirements of the Act, with particular regard to the format and integrity of data and information to be transferred on termination.

2.3. Other

The following requirements, in addition to the requirements already mentioned above, must also be provided for in the admin agreement:

Requirement
1. The service level agreement (SLA) contains details of the service to be provided, the agreed upon service level, the performance measures and relating penalties/remedies available to the parties in case of non-performance.
2. Where applicable, the admin agreement provides for the sub-contracting of admin functions by the administrator to another party.
3. The duration of the contract and termination arrangements are clearly defined and conform to the requirements of the Act.
4. The transfer of data procedures to be followed upon termination is clearly defined with particular regard to the timing, format and cost thereof.
5. The agreement contains details of how confidentiality of data is to be maintained.
6. The agreement contains details on procedures to be followed in instances of breach of contract.
7. The agreement confirms that the administrator will take out or has in place the required fidelity and indemnity insurance.

3. GENERAL CONSIDERATIONS

- An example of the provisions to be included in the admin agreements and the wording thereof can be found on the CMS website at www.medicalschemes.com under "Publications", "Administrators", "Requirements for administration of medical schemes" policy document under "third party administration agreements".

- The administration agreements should be comprehensive, well drafted and unambiguous.
- Medical schemes must apply their minds when contracting with an administrator in terms of the administration services contracted to a third party and the related administration fees.
- The administration agreement must be in the best interest of the medical scheme's beneficiaries at all times.
- The full names and designations of the persons signing the agreements on behalf of the contracting parties must be clearly indicated.
- Each party should retain copies of the signed agreements at their registered offices.
- Regular reporting on the administrator's performance in terms of the agreement and the detailed service level agreement should be provided to the medical scheme on a regular basis.
- Annual fee amendments must also be affected by way of written addenda signed by both parties.