

Press Release:

DRAFT DEMARCATION REGULATIONS THREATENING SURVIVAL OF MEDICAL SCHEMES

28 August 2014; Treasury's latest draft regulations aimed at legislating health insurance products that don't fall within the ambit of the Medical Schemes' Act (MSA) could have major implications for the future sustainability of medical schemes.

The second draft of the Demarcation Regulations that seek to define the difference between medical schemes and health insurance products was gazetted by National Treasury in April, with Treasury indicating that it wants to finalise the process by November this year.

"On the face of it, these proposed regulations could be used to de-facto eliminate the purposes and objectives of the Medical Scheme Act (MSA) merely by defining classes of for-profit insurance business that can do exactly what medical schemes do without having to comply with the provisions of the Act," warned Prof Alex van den Heever, Chair: Social Security Systems Administration and Management Studies at the Wits School of Governance.

Speaking at the 15th annual Board of Healthcare Funders' (BHF) Southern African Conference in Durban, Prof van den Heever said the demarcation process has been characterised by the lack of a definable public purpose and the fact that no technical analysis was performed.

The questions that needed to be asked, Prof van den Heever said, were why National Treasury avoided substantial consultation on the issues and why it didn't allow for any independent evaluation of these proposals given their far-reaching consequences.

For the regulations to be lawful, they need to ensure that the purposes and objectives of the MSA that mandate community rating, open enrolment and cross-subsidisation within medical schemes are not undermined.

"There is a rational framework for demarcation between medical schemes and insurance products because if you have a regulated market in which you are trying to protect people within one regime, you cannot have a parallel regime that is able to circumvent those particular protections and yet compete with the same product," Prof van den Heever pointed out. "If you allow for the creation of anti-selection against a more comprehensive risk pool, the danger is that you will destroy that risk pool."

Specifically referring to the substantial amount of Category 1 products, better known as 'gap cover', that are offered for hospitalisation, Prof van den Heever warned that it will not only cause buy-downs from comprehensive medical scheme options, but will also be in direct conflict with the MSA's objectives and purposes.

"Apart from the regulations being generally confusing with clear errors, the Category 1 products of the Short Term Insurance Act (STIA), allowing for the payment of a lump sum or income replacement, appear to be in conflict with the Act and are likely to face a legal challenge," he said.

“Other categories appear to mix up requirements for application to medical scheme and non-medical scheme members,” added Prof van den Heever.

“The most responsible route forward would be for National Treasury to remove the Category 1 STIA products from consideration in this round and defer them to the Competition Commission’s healthcare market inquiry to properly consider the options,” he concluded.

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Editor’s Notes:

The Board of Healthcare Funders of Southern Africa (BHF) is the representative body for the majority of medical schemes throughout South Africa, Lesotho, Namibia, Botswana, Mozambique and Zimbabwe.

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