

of SOUTHERN AFRICA

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under Section 21
Registration number
2001/003387/08)

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Submission to the Portfolio Committee on Transport

Road Accident Fund Second Amendment Bill 2003

14th October 2003

Preamble

Mr Chairman, honourable members of the Portfolio Committee, the
Director-General of Transport, Ladies and Gentlemen.

In 1999, the national assembly passed a resolution to mark the launch of a new trade body for medical schemes, the Board of Healthcare Funders of Southern Africa (BHF). Its vision of 'a private healthcare funding system that ensures lifetime access to comprehensive and affordable healthcare for the family of the average working person' guides its overarching task of, amongst other things, addressing the challenges of transformation, the constant cost spiral within the private healthcare sector and the HIV/AIDS pandemic which is currently facing our continent.

BHF enjoys the membership of 95% of medical schemes throughout SA, Namibia, Zimbabwe, Swaziland and Botswana, equating to 149 medical schemes and 7.5million members.

As a measure of its transformational progress, the last election for the twenty Directors through universal member franchise, yielded a Board that positively resonates with the culture of our new democracy.

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BHF has subscribed to strong principles of corporate governance in the pursuit of a seamless integration of solidarity and enterprise in healthcare.

BHF has been consulted by its members in respect of the ramifications proposed by the Road Accident Fund Second Amendment Bill 2003.

Of particular concern to all medical aid schemes and their members is the provisions of Sections 3(b), 3(c) and 8(3) of the proposed bill.

THE Present System



Presently, most medical schemes have an exclusion clause contained in their rules, in terms of which schemes are not obliged to effect payment of medical expenses in instances, where there is a third party from whom such expenses might be recovered.

The strict implementation of this clause by schemes could have dire consequences for members who would be faced with financing treatment arising from such cases, hence in practice, should the scheme be satisfied that there is a reasonable prospect of the recovery from the party liable for compensating the member, the scheme could loan or provide bridging finance to the member on the proviso that the member and his attorney provide the scheme with an

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undertaking to refund the full amount recovered from the liable party.

In some instances the schemes' rights to be reimbursed flow from motor vehicle accidents in which their members were injured. Accordingly schemes have disbursed millions of rands on behalf of members' accident related hospital and medical expenses on the understanding that the present RAF system of compensation would lead to the recovery of such amounts disbursed in terms of the Road Accident Fund Act.

The Effects of the Proposed Amendment on Members and on Schemes;
Section 17(b) – The Prescribed Benefit



In terms of the proposed amendment of Section 17(b) of the Act, the Road Accident Fund will only be liable for medical expenses in accordance with the "*prescribed medical tariff*" which will be retrospective in effect. As at date hereof, the tariff the Road Accident Fund intends to utilise, has not been made available, but should the tariff be less than the amount actually disbursed, the members (victims of the road accidents) would be liable for the payment of the difference to the schemes in settlement of their loans. It is, therefore, ***of paramount importance that the prescribed tariff is not less that the appropriate BHF scale of benefits applied at the time of the treatment.***

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Had schemes known of the proposed amendment and the prescribed tariff values, they would in all likelihood not have disbursed monies in excess of the prescribed tariff, or alternatively, they could have adjusted their rules, business plans, budgets, and contribution levels.

For these reasons, even if the prescribed tariff is in accordance with the tariff intended to be published in terms of the National Health Bill (as has been mooted), it is possible that members of certain schemes would still stand to lose substantial sums in respect of current claims not yet finalised, should the tariffs applied retrospectively not cover their loans. This would happen if schemes apply the conditions of the loan agreements to recover the full amounts of the loans. Members would then be out of pocket for the difference between the amounts charged by medical / hospital service providers the prescribed tariff, and the members would no doubt have to effect payment of the difference by deducting same from their other heads of damages.



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Collateral Benefits

Section 17(C);

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It is envisaged that the bill should render collateral benefits deductible. This is in contradiction with the "Assessment of Damages Act" as same provides for certain benefits which may not be deducted from the claimant's common law damages. Accordingly a claimant who has for years taken out medical insurance, life insurance, and disability cover, would be prejudiced to the extent of the cover that s/he took out, and the costs of such cover.

The wording of the proposed bill is open to various interpretations and, depending on the precise terms of the relevant loan agreements, and whether the proposed prescribed tariff covers such loans, could result in schemes not being able to recover the medical expenses paid on behalf of members for treatment of accident related injuries. The net effect of the foregoing is that some schemes might lose millions of rands already disbursed on behalf of members in accordance with the present legislation.

Had schemes known of such provisions in advance, such knowledge would have influenced their business and financial strategies.

Effects of the Proposed Amendments on the Public and the Economy

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If, because of inadequate prescribed tariffs, schemes are unable to recover their disbursements; schemes would in future almost

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certainly not offer loans to members to cover medical expenses arising from motor vehicle accidents. This would result in members having to pay for medical expenses up front from their own resources, or alternatively, to receive treatment at the expense of the state.

The consequences of the latter option is that state departments including finance, health and public works would be faced with an extra burden of providing health care to Road Accident Fund victims. The following aspects to be considered in respect of persons seeking treatment at state expense, include:

- Already overcrowded state facilities facing a further burden which would cause delayed treatment, excessive waiting lists, etc.
- Hospitals requiring increased financing, more equipment, staff etc.
- Declining standards of treatment if due attention cannot be given.
- Increased litigation against the state, particularly in respect of medical negligence claims.

SUMMARY

In summary, the BHF strongly advocates that the proposed amendments to the Road Accident Fund **Act take into**

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**BOARD of
HEALTHCARE
FUNDERS**
of SOUTHERN AFRICA

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consideration the adverse effects, described herein, of an inadequate prescribed tariff system.

Failure to do so may inevitably lead to approaches to the various courts of the country by various stakeholders to interpret the amendments and to rule on the constitutionality of the proposed amendments as well as the retrospectivity thereof -- something which can be avoided by proper consideration and consultation.

It is accordingly the BHF's submission that the proposed legislation should **not be implemented in its present form until the implications of any proposed prescribed tariff be thoroughly investigated and affected parties have been given** sufficient opportunity to comment thereon.

Yours sincerely,



Thiru Appasamy (on behalf this Office)



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