

BHF INDUSTRY MEETING

26th November 2010



Dr Clarence Mini : BHF Chairman

OPENING AND WELCOME



Ms Heidi Kruger

**UPDATE ON THE APPLICATION FOR
A DECLARATOR ORDER ON
REGULATION 8**



Interim Relief Order

- BHF will apply on an urgent basis on **1 December 2010** for an interim order interdicting CMS from enforcing their interpretation of Regulation 8(1) that payment in full means payment in full on the invoice of the healthcare service provider, pending the final adjudication of BHF's application for a declaratory order, that payment in full means payment in full to the beneficiary as provided for in the rules of a medical scheme.
- Court papers were served on CMS and the Minister of Health on Friday afternoon, 12 November 2010.

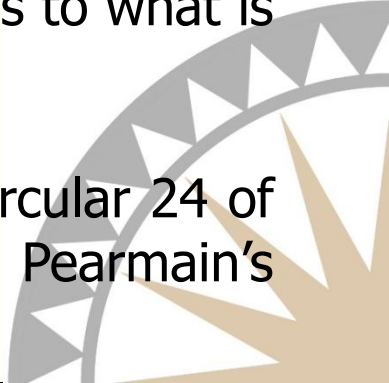


Contents of Affidavit

- An affidavit by Humphrey Zokufa is used in support of the application.
- Reference is made to Circular 56 of 2010 dated 27 October 2010 in which CMS referred to the Code of Conduct completed by the PMB Task Team on 31 July 2010 and stated that in respect of the “payment in full” provisions of Regulation 8, on which the Code of Conduct is silent, CMS will continue to enforce the requirements stipulated in the Regulations and to follow the interpretation given by the appeal board to the effect that “payment in full” means as per invoice, and not at scheme rate.



Contents of Affidavit


- It is submitted on behalf of BHF that the interpretation relied on by CMS is incorrect and will lead to illegal payments being made by a medical scheme.
 - The history of the whole PMB saga is set out, starting with Circular 37 of 2009 issued by CMS on 15 December 2009.
 - Reference is made to the two appeal board decisions and the fact that the Medical Schemes Act does not provide for a further appeal to the High Court.
 - Following the two appeal board decisions, Dr Debbie Pearmain gave a legal opinion, disputing the interpretation by CMS as to what is meant by “payment in full”.
 - Subsequent thereto on 28 August 2009, CMS issued Circular 24 of 2009 disputing the correctness and/or validity of Dr Pearmain’s opinion.
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Contents of Affidavit

➤ It is also stated that BHF is aware that Medscheme, an administrator and a member of the BHF, independently from the BHF obtained counsel's legal opinion on this matter during January/February 2010. In that opinion it was concluded that the interpretation of Regulation 8(1) can mean nothing other than payment in terms of the rules of the medical scheme and not payment of the full costs claimed by the service provider. This opinion is based on exactly what is set out with regard to the applicable statutory enactments further on in the founding affidavit.



Contents of Affidavit


- The establishment of the PMB Task Team, following Circular 9 of 2010 issued on 25 February 2010 is discussed in the affidavit, which “stalled” the “necessity to obtain clarity on the interpretation of Regulation 8(1)”.
 - The workings of the PMB Task Team are then discussed with reference to the Code of Conduct, particularly emphasizing the fact that consensus could not be reached on the problems related to the “payment in full” provisions in Regulation 8 and the request to CMS to consider that it might be in the best interest of members to avoid any punitive action in respect of these provisions and instead focus on, inter alia, addressing the uncertainty in respect of tariffs subsequent to the High Court ruling in respect of RPL.
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Contents of Affidavit


➤ It should accordingly be clear that there is uncertainty in the health industry, particularly in the medical schemes industry, as to what is the correct interpretation of Regulation 8 with regard to “payment in full”.

➤ This uncertainty is exposing medical schemes to complaints laid at CMS against medical schemes for failure to pay the service provider on invoice and it has become apparent that more and more decisions by CMS are given in favour of the service providers, compelling the schemes to make payment of the costs charged on invoice by the service providers, contrary to what is provided for in the rules of the medical schemes.

The result of this is that for the period 2009/2010 claims to medical schemes outweighed members’ contributions by R2.5 billion, forcing schemes to dip into their reserves to pay claims; **in turn compelling members to pay more for their medical scheme premiums.**



Contents of Affidavit


- BHF then decided to apply for a declaratory order and sent a letter to the Minister of Health on 21 September 2010. A meeting was held with the BHF's legal representatives on 7 October 2010 where it was decided to brief counsel to obtain a declaratory order. The matter was kept in abeyance pending a further meeting arranged with the Minister for 18 October 2010 in which the Minister was advised of the decision to apply for the declaratory order.
 - On 19 October 2010 a meeting was held with the BHF's legal representatives and the instruction given to proceed with the application. The intention was to launch the application during November 2010 as certain information, particularly regarding the financial implication on medical schemes if payment has to be made on invoice, still had to be obtained from different medical schemes and/or administrators.
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Contents of Affidavit

- The matter became urgent because of Circular 56 of 2010 issued on 27 October 2010, from which it is clear now that CMS will, in regard to all complaints submitted to it by healthcare service providers against medical schemes for failure to pay for care costs on invoice, deal with such complaints in favour of the service providers.
- The relevant statutory provisions are then discussed from which the conclusion should be drawn that the interpretation of Regulation 8(1) can mean nothing other than payment in terms of the rules of the medical scheme and not payment of the full costs claimed by the service provider.



Contents of Affidavit

- The grounds for urgency and the requisites for interim relief are discussed in the affidavit. The BHF is of the opinion that payment of PMBs in accordance with Circular 56 of 2010 would be in conflict with the schemes' rules and is therefore reluctant to advise its members to do so, but is in no position to disregard the guidelines of CMS.
 - May lead to punitive measures being taken and/or the registration of the medical scheme to be suspended or withdrawn.
 - However, should a declaratory order be sought in the normal course of proceedings, it is anticipated that it will be opposed and not finalised within a short time span. Court thus approached on a semi-urgent basis to grant interim relief in order to prevent payments in accordance with the guidelines of the CMS being made until such time as a declaratory order has been obtained in order to resolve the difference of opinion.
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➤ CMS have opposed the application, mainly on 3 grounds:

1. Locus standi
2. No mandate
3. No grounds for urgency

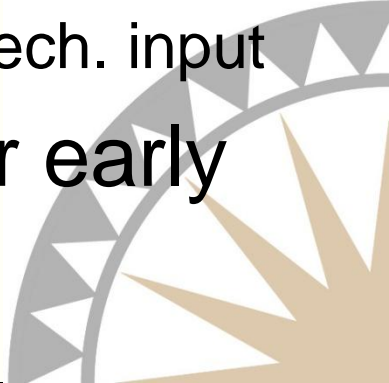


Dr Rajesh Patel

REVISED PMB



Background

- Revise PMB process started Feb 2008
 - Draft 1
 - Draft 2
 - Draft 3
 - Ignored all agreements from Draft 1&2
 - Expanded PMB
 - Inconsistent with Government health policies
 - Questionable clinical and benefit design tech. input
 - Draft regulations referred to Minister early 2010
- 

Current status

- Significant, but welcome, delay in processing of the revised Regulation
 - Significant problems maybe?
 - Regulation 8 and Minister's views



Meeting with Minister

- Oct 2010
 - Need to cleanup Regulation 8
 - Inconsistencies in current PMBs
 - See BHF submission to draft 3
 - Inconsistent with national health policy
 - CDL unconstitutional
 - OA and RA complaint received by Minister
 - **Align NHI and PMB benefit review process**
 - Minister's special advisor asked to investigate...



Revise PMB

- Move focus away from
 - hospital and specialist focus benefit
 - High level curative care
- Focus on
 - Appropriate primary care
 - Preventative care
 - Expanded benefits through...
 - Efficient care and at the correct level of care
- See HQA results...
 - Curative vs preventative
 - Suboptimal outpatient care and benefits



Lead by example!

- Medical schemes to review benefits to include in core benefits
 - preventative care
 - primary care as part of core benefits
(see BHF website for essential HC benefit proposal)
- Some schemes and plans moving in this direction
- BHF to package additional preventative care benefit recommendation (2011)



Questions



Dr Humphrey Zokufa

THE NHI PROCESS



- NHI - Affordability and Implementation
- NHI Implementation ...very crucial
- BHF Discussion document on NHI
- Minister of Health will establish a 'Project Team on NHI' within the Department of Health
- The Minister of Health indicated that BHF will be consulted on NHI issues.
- BHF establishes a NHI Task Team



Dr Humphrey Zokufa

CONSUMER PROTECTION ACT



Dr Humphrey Zokufa

PRICING COMMISSION



Introduction

- BHF 2006 Conference debates.
- Ministerial Healthcare Indaba – September 2007.
- Amendments to the National Health Act in 2008.
- BHF meetings with the Minister of Health – February 2010.
- BHF meeting with the Council for Medical Schemes - September 2010.
- BHF meeting with the Minister of Health – October 2010.
- Announcements of the Pricing Commission Framework by the Director General (Health) – October 2010.
- Publication of the Draft Discussion Document on *“The determination of Health Prices in the Private Sector”*



Rajesh Patel

**DETERMINATION OF HEALTH
PRICES IN THE PRIVATE SECTOR
DISCUSSION DOCUMENT**



Background

- Not a dissertation
- Identify issues at a high level
- Facilitated by Steering Group (collective of regulators)



Proposal

- Negotiation chamber
- Contract arbitration
 - Both positions presented but one chosen
 - Cost borne by parties
 - Risk to funders
- CC risk if withdraw
 - Funders must always be involved
- Interim arrangements
 - 4 month from CC exemption
 - Voluntary
- Regulated framework
 - For 2014 prices
 - Voluntary



Negotiating parties

- Hospitals incl. public sector 10
- Medical 10
- Other professionals 10
- Funders 10



Negotiate

- Provider rate
- PMB rate
- Scheme rate
- Coding & RVU
- Guide to Billing
- Inflator
- Differential rate based on seniority rather than work done
- Balance billing...
- Info on invoice



Other

- Jan to August process
- Decisions are binding to constituency
- Bilateral negotiations for parties not participating (participation is voluntary!)
 - Or use non balance billing price list
 - No unilateral amendment to this list



Issues and decisions

- No provision for consumer representation though mentioned on pg 21
- No consideration for Business/employer representation
- Silent on 1.1.11
- 3 price tiers or single max price
- Arbitration cost borne by parties
 - Risk to funders
 - Involved in all request for arbitration



Issues and decisions

- 10 negotiators incl. 2 leaders
 - Fragmented representation
 - information sharing
 - Make up
 - Technical knowledge, skilled but pragmatic negotiators
 - Mandated
- Mandate BHF to get the united 10
 - Mandate for the united 10 by BHF members



Dr Humphrey Zokufa

PRICING COMMISSION - THE WAY FORWARD



Way forward

10 funding industry representatives

Analyse and formulate
(Risk Advisory Panel – early 2000 : RAMS)

Collect and collate the data
(Centralised)

Schemes

Administrators

Managed Care
Organisation

Funding Industry

Provider
representatives

Provider
representatives

Provider
representatives

Pricing
Commission



Closure

Thank you for attending

~ Please note that there is a finger lunch available in the foyer ~

