



## **BHF Southern African Conference**

### **THE DEMARCATION DEBATE – WHERE ARE WE NOW?**

**ROSEANNE DA SILVA – ROSEANNE DA SILVA & ASSOCIATES South Africa**

**ADREANUS VUGHS – NAMFISA (Namibia Financial Institution Supervisory Authority)**



## **Council for Medical Schemes & Financial Services Board shared the Agreement on the “Demarcation between the Business of a Medical Scheme and Health Insurance”**

Joint Statement 7 September 2000

### **Both bodies recognised**

#### **Key Features Medical Scheme as:**

- The business of a Medical Scheme was the fact that it *indemnifies individuals against health care expenses, in full or in part.*
- The Medical Schemes Act governs medical scheme business

#### **Key Features Health Insurance as:**

- A voluntary cover paid from after-tax income to protect individuals against *unforeseen health events.*
- Governed by the Long - and Short Term Insurance Acts

## Medical Scheme Business

- Voluntary cover partly paid out of before-tax income, which aims to indemnify people against the actual expenses incurred in respect of a relevant health service
- It involved the undertaking of a liability to grant assistance in defraying expenditure incurred in connection with the rendering of any relevant health service, then that business constitutes medical scheme business.
- This includes situations where a fixed sum per day is paid for a hospital stay, or where benefits are determined with reference to medical procedures or services

The Council and FSB further emphasised that at any time where policy benefits take the form of hospitalisation and/or the payment of medical costs, that business will be regarded as medical scheme business.

## Health Insurance Business

- Was based on a health event which should only be triggered by the diagnosis of a health condition.
- the amount of the benefit payable on health insurance must not be retrospectively determined, but must be determinable at the occurrence of the event.
- The benefits payable by a health policy therefore could not relate directly to the cost of treatment of the event or the condition.
- Health insurers may not offer cessions to service providers.
- Benefits must be paid to the policyholder and may not be paid to service providers in return for services rendered.
  
- Intentions was that Health insurers were not allowed to sell on a conditional basis to members of a medical scheme.
- Nor could any reference to a medical scheme be made in the *marketing or sale of health insurance products*.

- **Council and FSB** committed themselves *to properly monitor the environment* to ensure
- That *no products are created that will infringe on the agreed demarcation.*
- **Registrar of Medical Schemes and the Registrar of Insurance** have agreed *to develop a Memorandum of Understanding* that will guide effective implementation of the agreed demarcation.
- **Council and the FSB** confirmed their commitment to ensure the *legitimate rights of policyholders are secured.*

**Recognised that the Demarcation Document of 7 September 2000  
identified the key principles of:**

**Health Insurance as**

- voluntary cover purchased with after tax income to protect individuals against unforeseen health events;
- That Health insurance may not be sold on a conditional basis to members of a medical scheme. No reference to a medical scheme can be made in the marketing or sale of health insurance products.

**Medical Scheme as**

- Key feature of the business is the fact that it indemnifies individuals against medical expenses and so .....
- the benefits payable by a health policy must therefore be seen not to relate to the cost of treatment of the event or the condition.

- The need for “Chapter 2“ has arisen as a result of the publication of the “Agreement On The Demarcation between the Business Of A Medical Scheme and Health Insurance” on 7 September 2000.
- “Had to stipulated a number of guidelines which have been found to be difficult to interpret.”

Was published by Council for Medical Schemes/Financial Services Board  
and the Life Offices’ Association

Main objective was to provide clarity to all stakeholders on the definition of the “business of a medical scheme” as defined in the Medical Schemes Act (MSA)

- Indemnity business falls under the business of a medical scheme.
- Health insurance business is supplementary to medical scheme membership
- **Definition of health insurance should be based on:**
  - Diagnosis of a health condition (or occurrence of health event)
  - Benefits payable are determined prospectively
  - Benefit payments are made directly to the insured.
  - Severity groupings should be permissible where they are related to covering a contingency other than medical expenses
- The intention of Code of Conduct (19 November 2004) was to clear up some of the uncertainty that surrounds health insurance in South Africa.
- That may affect the interests of policyholders both holding such policies, and those seeking coverage.
- It also recommended that a dispute resolution mechanism to address possible future disputes

- The Constitutional Court has ruled that the Registrar of Medical Schemes and CMS's (Council for Medical Schemes) appeal against Guardrisk's case won in the in the Supreme Court "bears no prospects of success".
- Application was dismissed with costs.
- This despite the fact that the registrar and CMS presented many new arguments in making their appeal to the Constitutional Court.
  - The Constitutional Court order upholds the Supreme Court ruling earlier in 2008 that Guardrisk Products, which cover the short-fall between doctors in-hospital charges and medical aid rates, do not fall within the scope of the Medical Schemes Act,
  - Guardrisk claimed that it was never their intentions to get into medical schemes space
  - Product was structured as an insurance product which enhanced, rather than competed with, medical schemes.
  - The product is complimentary to members of a registered medical scheme.
- It was reported at the time that Council Medical Schemes could seek change in Medical Schemes Act to scrap this type of cover?

- Debates continued (sometime heated) over past years between the Council for Medical Schemes, the FSB, SAIA and the LOA (ASISA)
  - as to who controls the insuring of health risk.
- This escalated to National Treasury for consultation and clarity on which healthcare risks may be undertaken and by which financial services sector.
- National Treasury and the various financial sectors have begun a process of supplying data to National Treasury,
  - in order that clear regulations may be drafted into the Insurance Laws Amendment Act No 27 of 2008.
  - Believe the “initial attempt” at this Act was rejected and opposed by the insurance industry as unworkable.
- Upon the finalisation of such regulations, which shall be as a result of the recommendations of a work group comprising of the FSB, ASISA, SAIA, CMS, Dept of Health, the Treatment Action Campaign and the Aids Law Project, it is expected that a working solution shall be inducted into the Insurance Laws Amendment Act.

- Part of the debate is as to whether Medical Aid Schemes will have to register as Insurers, how the Medical Schemes Act will need to be changed,
  - How the Insurance Laws Amendment Act will again need to be changed.
  - Will Insurers or Medical Aid Schemes offer “top-up” cover to NHI, or will there only be one type of “financial institution” permitted to offer “top-up”?
- The 7th meeting took place on 30 March 2010.
  - At this meeting it was agreed that the South African Insurance Association (SAIA) and the Association for Savings and Investment South Africa (ASISA) must propose a set criteria for exemptions for each of the products which are regarded as medical schemes business.
- The 8th meeting took place on 18 May; unfortunately no representation from the Council for Medical Schemes (CMS) was present.
  - However ASISA and SAIA submitted their findings on the respective product parameters.
  - The work group is awaiting comments for the councils on these documents
- At a FIAS conference held by the Compliance Institute of South Africa during April 2010
  - FSB remarked that. the demarcation issue between health insurance and medical aid is expected to be finalized by the end of 2010

## **Key Features of Medical Scheme:**

- Business of a Medical Scheme is to indemnify Groups/individuals against healthcare expenses, in full or in part.
- Medical scheme not allowed to offer any form of short term insurance cover in addition to medical cover i.e. funeral, premium protection, gap cover etc
- Not allowed to reinsure risks directly with Reinsurer,
- Can insure risk through placement of cover with Long- or Short- Term Insurer
- The Medical Aids Act governs medical scheme business

## **Key Features Health Insurance was that :**

- Health Insurance is a voluntary cover paying healthcare expenses, event and services or treatment of Individuals, in full or part and to service providers and policy holders.
  - for treatment in and out of hospital
- Offer additional short term insurance cover i.e. funeral, premium protection, etc
- Health Insurance governed by the Short Term Insurance Acts

SOURCE: Namaf: Position paper Namfisa Bill

- **No Medical Schemes Act and not regulated**
  - Operate as Society or a Trust
- **Insurance Act regulates Short- & Long-Term**
  - Life/Long-Term offers Add-On's i.e. medical products
  - Cover both Event and Treatment
- **NISFIRA – Non Banking Financial Regulator Authority**
  - In process of set up and consultation
  - Levies debate
  - Regulation come at a cost versus value?
- **Medical Aids Scheme draft Act out**
  - Debate whether should resort under Ministry Health or Finance?