

Legislation Update



- Medicines Pricing Legislation
- The Medical Schemes Amendment Bill
- NHRPL Regulations
- Private Healthcare Indaba



Medicines Pricing Legislation

- Increases
 - Minister of Health notifies manufacturers regarding increases and the % cap.
 - Manufacturers must notify National Dept. of Health before taking an increase
 - Manufacturers cannot use MMAP system to take increase through MediKredit
- Litigation
 - Currently around the quantum of the dispensing fee for pharmacists
 - Does not relate to SEP. SEP applies.
 - BHF working with NDOH to get SEP list into the public domain.




Medicines Pricing Legislation

- International Benchmarking
 - IB Task Team of the Pricing Committee currently working on recommendations around a system of international benchmarking.
 - IB will compare prices locally with those sold in other countries with a similar regulatory environment to ensure prices in SA are not excessive.
- Logistics fees
 - Medicine Pricing regulations give Minister of Health power to cap logistics fee, but this has not yet been done since the Pricing Committee did not recommend it.
- OTC medicines (schedule 0)
 - Usually exempt from provisions of Medicine Pricing Legislation.



Medical Schemes Amendment Bill

- Bill has been signed by Minister of Health
 - Will now go to State Law Advisors for certification of constitutionality
 - Will then service before the Parliamentary Portfolio Committee on Health.
 - PPCH will have public hearings. (This will be when we ascertain whether comments have been taken into account)
 - Not certain whether it will go through Parliament this year
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Medical Schemes Amendment Bill

- Key areas in the BHF submission
 - REF
 - Corporate governance and the relative powers of the Principal Officer and the BOT
 - Manner in which trustees are elected



Medical Schemes Amendment Bill

➤ **REF**

- Bill allows Act to be implemented prior to REF transfers. If this occurs, schemes will be required to comply with the 'basic' benefit framework whilst no risk equalisation takes place.
- This will exaggerate current risk selection behaviour.
- Benefit framework in the draft bill must not be implemented prior to full REF transfers



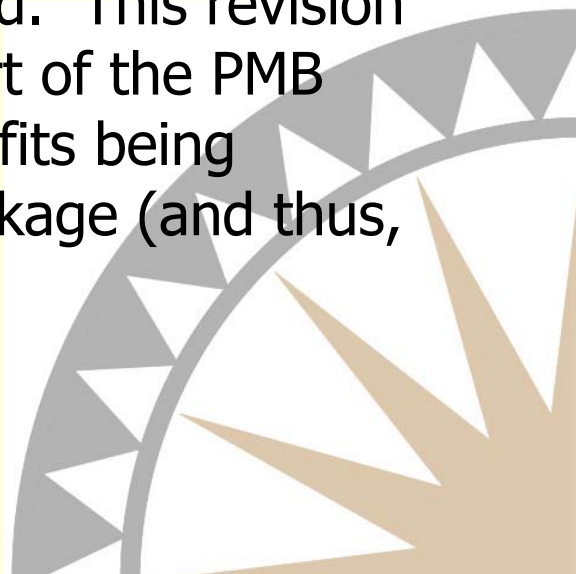
Medical Schemes Amendment Bill

➤ REF

- Introduction of 'basic' benefit framework and risk equalisation will increase the cost of lower benefit options. Hence, it is recommended that LIMS be introduced no later than the Draft Bill framework. (unless PMBs are revised to the BHF proposed EHP)
- One of the main objectives of introducing the revised framework is to, as Circular 8 states "remove risk selection activity iro essential healthcare". Including non-risk equalised benefits (non pmb) into the common benefit package and enforcing community rating will result in risk rating (cream skimming). Thus there will still be sufficient motivation to risk rate.

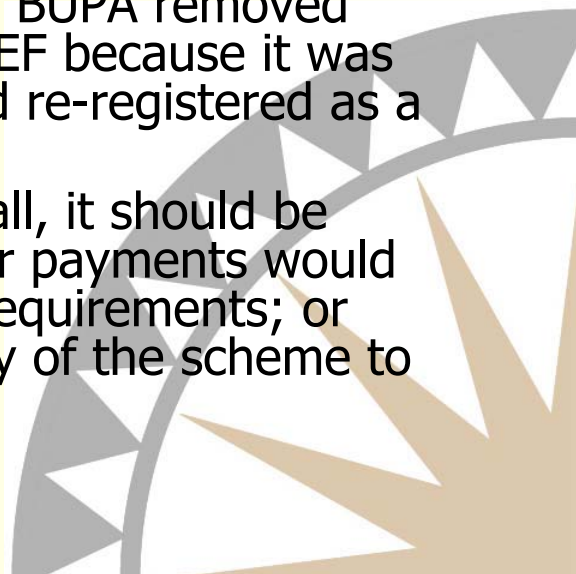
Medical Schemes Amendment Bill

➤ **REF**

- Problem of risk selection will always occur where community rating is enforced and where the benefits are not risk equalised. This is endorsed by international experts and the REF International Review Panel.
 - A formal review of the PMB is recommended. This revision could result in all essential benefits being part of the PMB (and thus, risk-equalised) with all other benefits being absorbed into the supplementary benefit package (and thus, risk rated)
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Medical Schemes Amendment Bill

➤ **REF Exemption**

- Draft bill makes allowances for 'newly registered schemes to be exempted from REF transfers. This undermines the principles and rationale for the REF and should not be allowed.
 - Exempt schemes will be able to cream skim young and healthy lives and it is reasonable to expect that only schemes with healthier lives would require exemption.
 - This will increase REF cost for PMB for non-exempt schemes.
 - A good example recently occurred in Ireland when BUPA removed itself from the market with the introduction of an REF because it was required to pay in, But BUPA was simply bought and re-registered as a new scheme with exemption.
 - If exemptions from the REF should be granted at all, it should be restricted to certain criteria. For e.g. Where transfer payments would result in the scheme's failure to meet its reserving requirements; or where transfer payments would result in the inability of the scheme to pay member claims.
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Medical Schemes Amendment Bill

➤ **Other issues relating to the REF**

- The current wording in the bill implies that the CMS could outsource the management and administration of the fund to a third party. The fact that the REF can make or break the medical schemes industry means it is too important to entrust its management and administration to an outsider.
 - If the REF will be operated on a zero sum game approach, why will there be a need to invest money standing to the credit of the REF.
 - The fund should not be used as a storage vehicle for money other than that paid into it for purposes of risk equalisation.
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Medical Schemes Amendment Bill

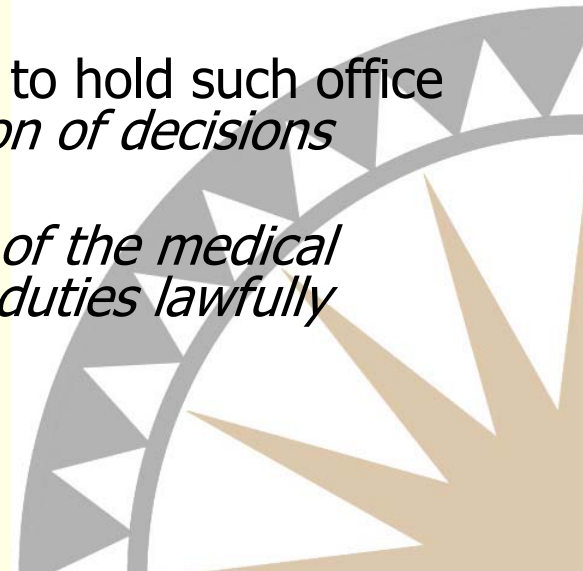
➤ **Corporate governance and the relative powers of the Principal Officer and the BOT**

- If, as the bill suggests, the principal officer or chief executive officer, is to take on some responsibilities of the BOT, then the Bill should be amended accordingly. If this is the case, BHF argues, that this will diminish the accountability of the BOT wrt management and governance of schemes.

- If it is the intention that the PO is equivalent to that of CEO, the following wording should be used

"...principal officer who is a fit and proper person to hold such office and whose primary duty is to ensure the execution of decisions taken by the

BOT within the context of the MSA and the rules of the medical scheme and to exercise any powers or fulfill any duties lawfully delegated to him or her by the Board..."

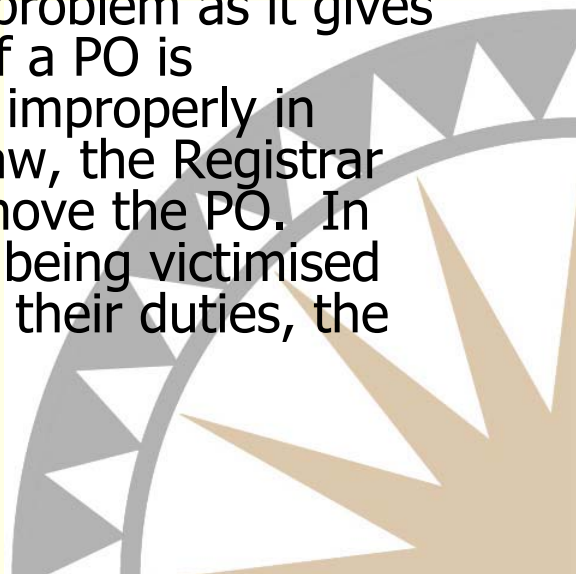


Medical Schemes Amendment Bill

➤ **Corporate governance and the relative powers of the Principal Officer and the BOT**

- In terms of whether or not a person is 'fit and proper' to be a principal officer, it is the view of BHF members that it is preferable to list in legislation those qualities which are undesirable or unacceptable in a PO or BOT rather than give the CMS the power to vet persons who are appointed as POs or trustees as to their suitability for the position.

- The proposed amendment to section 29(c) is a problem as it gives the Registrar power to override the labour law. If a PO is disciplined for not carrying out duties or doing so improperly in accordance with recognized principles of labour law, the Registrar should not be able to override the decision to remove the PO. In order to protect POs and individual trustees from being victimised by dishonest or corrupt BOT for trying to perform their duties, the functions of the PO should be set out in the Bill.



Medical Schemes Amendment Bill

➤ **Corporate governance and the relative powers of the Principal Officer and the BOT**

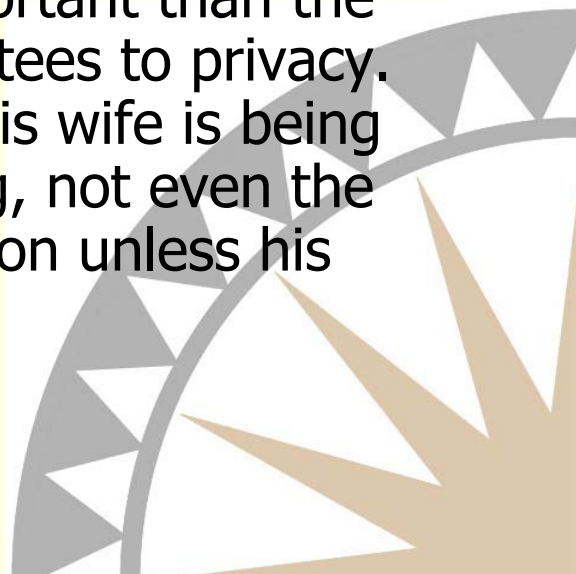
- For example: exercise the powers and perform the functions assigned to him or her in terms of this Act and the rules of the medical scheme in respect of which he/she is appointed.

Act with fidelity, honesty, integrity and in the best interest of the members of the medical scheme in performing his/her duties.

-To be on the safe side, the Act could contain a provision to the effect that any person who obstructs the PO from performing his or her duties shall be guilty of an offence and liable on conviction to imprisonment or a fine.

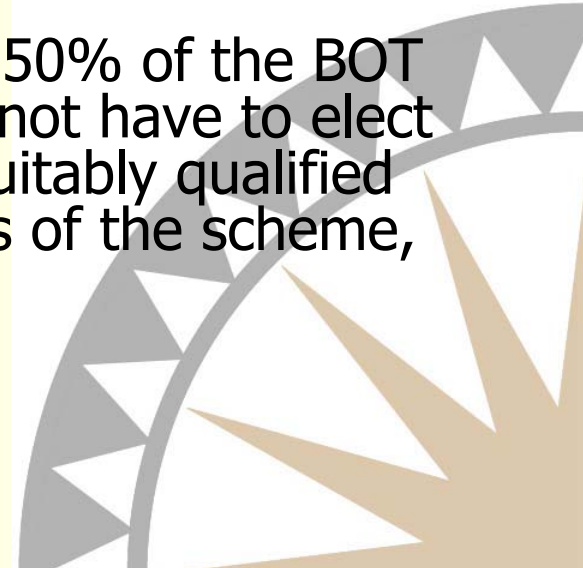


Medical Schemes Amendment Bill

- **Corporate governance and the relative powers of the Principal Officer and the BOT**
 - The requirement that trustees must disclose details concerning the claims paid iro their registered beneficiaries could infringe the constitutional right of such beneficiaries to privacy.
 - The question here is whether the need for sound corporate governance of medical schemes is more important than the consitutional right of the beneficiaries of trustees to privacy. For example, should a trustee disclose that his wife is being treated for an ovarian cyst? Legally speaking, not even the trustee himself has the right to this information unless his wife agrees.
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Medical Schemes Amendment Bill

- **Corporate governance and the relative powers of the Principal Officer and the BOT**
 - More thoughtful consideration needs to be given to than deciding simply to apply international financial accounting standards en bloc to medical schemes. Section 57 of the MSA dictates that at least 50% of trustees are elected from the membership. If no scheme member wants to be a trustee, then there can be no board of trustees!
 - BHF members proposed that while at least 50% of the BOT should be elected BY members, they should not have to elect from amongst themselves. They can elect suitably qualified persons who they trust to manage the affairs of the scheme, whether they are members or not.



Medical Schemes Amendment Bill

➤ **Corporate governance and the relative powers of the Principal Officer and the BOT**

- Conflicts of interest. Instead of listing all of the possible contractees of a medical scheme, rather find criteria to determine whether or not a particular relationship would create unacceptably high levels of conflicts of interest on a regular basis.
 - For occasional conflicts, the trustee can simply recuse him/herself
 - There is a severe shortage of all sorts of expertise in SA. It is important not to lose sight of this when making provision for sound corporate governance.
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Questions?

