



PROCESS FOR THE RELEASE OF THE ENVISAGED REVISED DRAFT REGULATIONS ON THE DEMARCATION BETWEEN HEALTH INSURANCE POLICIES AND MEDICAL SCHEMES

The draft Demarcation Regulations on health insurance and medical schemes

The National Treasury (“NT”) would like to inform the public of the expected timelines for the release of the envisaged revised draft Demarcation Regulations (“the Regulations”) in response to numerous queries concerning the Regulations. The finalisation of the draft Regulations is a complex process given the need to ensure the principle of solidarity in health funding and the diverse views of the various affected stakeholders.

The first draft Regulations were published for public comment on 2 March 2012. The NT today releases a document titled “*Public Submissions on the Draft Demarcation Regulations*”, which is a summary of the 343 comments received during the initial consultation process. The release of these public comments is meant to inform the public of the challenges in balancing various stakeholder interests and striking a good balance between the regulation of health insurance products and medical schemes. All supporting submissions are contained in a folder titled “Public Submissions” which is available on the NT website www.treasury.gov.za.

The two key proposals in the first draft Regulations which elicited the most public responses relate to the prohibition of Gap Cover and product restrictions on Hospital Cash Plan insurance policies.

The NT and the Department of Health (“DoH”), therefore, consider it prudent to publish revised draft Regulations for a further period of public comment before the Regulations are finalised and gazetted. It is envisaged that the revised second draft Regulations will be published for a further 60 day period of comment by the end of the year, or after the enactment of amendment to the definition of a “*business of a medical scheme*” contained in the Financial Services Laws General Amendment Bill, 2013 (“the Bill”) which is before Parliament. The final Regulations are then expected to be published in the second quarter of 2014, together with a formal response to the public submissions received.

The revised second draft Regulations will acknowledge that while health insurance products have a role in the market place, these products must operate within a framework whereby they complement medical schemes and support the social solidarity principle embodied in medical schemes. It is in this context that the envisaged revised second draft Regulations seek to strike a better balance between health insurance and medical schemes.

The revised second draft Regulations, will therefore, provide for the continued sale of Gap Cover and Hospital Cash Plan insurance within defined regulatory product parameters. These parameters, by explicitly requiring that health insurance products be provided on

similar terms as medical schemes, seek to ensure that medical schemes are not compromised.

Proposal to amend the definition of a “business of a medical scheme”

A proposal to amend the Medical Schemes Act, 1998, definition of a “*business of a medical scheme*” is currently contained in the Bill, which is currently before Parliament. The Bill was approved by Cabinet in February 2012 and published for comment in March 2012. The Bill was tabled in Parliament in September 2012. Public hearings on the Bill were held in April 2013.

The amendment is required to support the final Regulations and address recent court case judgements which widen the interpretation of this definition. The implication of the amendment is that many health insurance products would fall within the ambit of this definition and be required to conform to its requirements, unless explicitly excluded by the envisaged abovementioned revised draft Regulations.

The revised second draft Regulations will provide for the conditions under which certain health insurance policies will be excluded from the definition of a “*business of a medical scheme*”. The conditions will include but are not limited to product standards which define the benefit offering; enhanced product disclosure/marketing requirements; alignment of broker commission between health insurance and medical schemes products; and closer regulatory reporting and monitoring requirements. These conditions are designed to prevent health insurance policies from undermining the business of a medical scheme.

The NT in its report back on the Bill in June 2013 recommended to Parliament that the date of implementation of this amendment be delayed to late 2014, when the final Regulations are expected to take effect.

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