
NEW DATE FOR RELEASE OF FINAL REGULATIONS ON THE DEMARCATION BETWEEN HEALTH INSURANCE POLICIES AND MEDICAL SCHEMES

National Treasury (“NT”) and the Department of Health (“DoH”) hereby announce a postponement in the publication of the final Demarcation Regulations (“the Regulations”) till the second quarter of 2015. The final regulations were originally scheduled for release at the end of 2014.

The postponement is as a result of the time required to process the numerous and extensive public comments received during the second public consultation.

The Regulations will specify which types of health insurance policies are permissible under the Long-term Insurance Act, No. 52 of 1998 (“LTIA”) and Short-term Insurance Act, No. 53 of 1998 (“STIA”), and accordingly excluded from regulation under the Medical Schemes Act, No. 131 of 1998, despite such health insurance policies meeting the definition of the business of a medical scheme.

Implementation timelines

The Final Regulations are expected to be published by the second quarter of 2015 together with a response document to comments raised during the consultation process. It is the intention that the effective date of implementation will be within 90 days after the Final Regulations are published.

All new health insurance policies written after the Final Regulations come into operation must be aligned with the requirements set out in the Final Regulations. Existing health insurance policies will be expected to align to the Final Regulations requirements upon renewal of the health insurance contract.

The Council for Medical Schemes is also working on an alternative affordable medical scheme solution to accommodate low income households. Further details on this initiative will be announced in 2015.

Background to public comments received on the Second Draft Demarcation Regulations

Over 446 submissions were received after the release of the Second Draft Regulations on 30 April 2014. Of the 446 submissions, 401 were from brokers, 17 insurers, 2 medical schemes, 8 industry associations, 12 individuals, 1 hospital group, 2 non-profit organisations, 1 bargaining council and 2 were from consultants.

The following is a summary of the key issues raised:

- **Matters of principle:** A number of submissions did not raise concerns specific to the Regulations, but were rather concerned about the constitutionality, the grounds for placing restrictions on health insurance in the absence of a low cost medical scheme option, and some also challenged the ambit of the Regulations.
- **Consultation:** A few submissions questioned the public consultation process followed and seek clarity on the technical basis for some of the positions reached in the second draft Regulations.
- **Primary healthcare insurance:** Concern was noted that employer groups and bargaining council members will not have access to affordable primary healthcare insurance once the Regulations take effect, as these products will fall outside the scope of the Regulations.
- **Commission:** Brokers expressed concern about the practicality of aligning commission payable on the sale of health insurance to medical schemes.
- **Benefit caps:** Comments were noted that restrictions on benefit caps for Gap cover and Hospital Cash Plan insurance are not adequate to deal with shortfalls in expenses.
- **Product limitations:** Commentators suggested that the requirement to restrict unfair discrimination without being accompanied by provisions for maximum age of entry, exclusions/premium penalties and longer waiting periods will result in anti-selection.
- **Reporting of information:** Insurers were concerned that the retrospective reporting requirements are too onerous.

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