A5

PIASA
Pharmaceutical Industry Association of South Africa

Comments by the Pharmaceutical Industry Association of South Africa on the Demarcation of Health Insurance Policy and Medical Schemes, 23 April 2012

Reasons for demarcation

The differentiation between health insurance policy (short and long-term insurance policy) and medical scheme cover is necessary in order to eliminate ambiguity and uncertainty. Such demarcation is necessary to protect the consumer from believing that the health insurance policy offers the same protection as a medical scheme, when in fact, the protection is partial or conditional and that the health insurance policy is a medical scheme. The proposed demarcation regulations, however, go way beyond "demarcation" and actually prohibit insurance products that are, and should be, different to medical scheme cover.

PIASA is also of the view that medical schemes should not be protected by means mechanisms that are different to that designed for medical schemes. Medical schemes legislation should address issues with medical schemes, and not insurance legislation. The challenges currently experienced in the medical schemes environment have everything to do with schemes, and not with the existence (or not) of health insurance products.

PIASA supports mechanisms to truly demarcate health insurance (e.g. per diem hospital cover or dread disease cover) from medical scheme cover, but does not support a prohibition on such products that cover the health event or health events, instead of just being income replacement cover. PIASA also supports measures to ensure that the extent of the cover is portrayed in a transparent manner by both medical schemes and health insurance products. Misleading promises or statements are found in both sectors, for example many schemes would indicate they provide hospitalization at "designated service providers", but fail to make clear that these services are then only available at state healthcare facilities.

PIASA
Pharmaceutical Industry Association of South Africa

Why the demarcation is likely to be unreasonable and irrational in constitutional terms

Medical schemes are one of the ways in which access to healthcare is, by means of "reasonable legislative and other measures" progressively realized (section 27, SA Constitution). Nothing in section 27 requires only one type of insurance, or mandates a choice between social health insurance (i.e. medical scheme cover) and health insurance (i.e. gap-, dread-disease and hospital per day cover). Moreover, if it is known that patients also use, or opt to use, the one of the other, the access rights of such patients may be diminished should the product offerings designed to assist in the healthcare rights' realization, be limited.

In order to illustrate that this particular legislative measure is reasonable, PIASA would support the disclosure of studies showing that the existence of health cover by means of the long- and/or short terms insurance frameworks lead to the demise of-, or a reduction of medical scheme beneficiaries.
Medical schemes do not cover all conditions, and in many instances additional cover is necessary to ensure, for example, access to innovative products, such as biologics. The Medical Schemes Act does not require of medical schemes to fund all conditions, and only requires "funding in full" for listed conditions, and then only to the extent that such listing is described in Annexure A to the medical scheme regulations. Even for the prescribed conditions, patients often have to fight (through a lengthy complaints and appeals process at the Council for Medical Schemes) before they are able to access the care they require for the listed conditions.

A survey undertaken by PIASA and IMSA (both pharmaceutical trade associations), shows that in 40% of cases, schemes declined treatment recommended by medical practitioners, and that in more than half the cases patients had to submit a motivation or was recommended by the scheme to change their medication. Moreover, the survey shows that 45% of motivations were declined, and 21,7% were approved, but with a co-payment, with only 26.7% approved without a co-payment. This is in spite of the vast majority of cases falling within the list of prescribed conditions that schemes should fund without co-payment. The survey also indicated that circumstances that are exceptional and which should have triggered an exemption to the strict More alarming, however, was the fact that respondents reported that in 63% of cases patients were classified as, in the end, not being "not fine".

With health insurance products, the benefit is not a specific medicine or a specific treatment, and hence the administration and frustration that accompanies medical scheme cover are absent. It allows patients freedom of

choice, but also freedom to top-up for cover not provided, or not provided in full by medical schemes, and thereby it constitutes an important element of ensuring persons have access to healthcare. Moreover, the survey shows that perhaps the need for gap- and dread disease cover, etc relates far more to the way in which the medical schemes law is designated and implemented.

Health insurance products do not, and should not, make promises in terms of the treatment for specific conditions – it is up to the policy beneficiary to decide how s/he would spend the money to cover for the specific heath event upon its realization (or upon its partial payment by, for example, a medical scheme or, in future, the NHI). As such, these type of health insurance products preserve choice – not only choice in terms of the manner in which someone wishes to cover for health events, but choice in terms of treatment modalities. Moreover, South Africans should be able to buy top-up cover in cases where their medical scheme cover is not sufficient, or does not cover a particular disease or condition (such as cancers not listed or not within the definition of "treatable" in medical schemes legislation, cover for stays in a private health facility (where the scheme only covers treatment in a state facility), or cover for equipment, implants, etc. beyond what is available in the state sector, or where specific implants or equipment are accompanied by a monetary cap.

Furthermore, certain sectors are unable to buy medical scheme cover at the level of that offered by medical schemes or in the form that it is offered. Being able to visit a general practitioner, and access to primary healthcare were shown by a study that was commissioner in view of the possible so-called "low-income medical scheme" (LIMS) project was more important to some population groups that catastrophic cover or having one's baby in a private hospital. Some groups also have only occasional employment, such as in the construction sector or seasonal employees. For these groups classic medical scheme cover provides no solution.

It is also not clear why cover for HIV, frail care and emergency travel healthcare can be provided, but policies for other conditions, such as cancers, etc., cannot be provided. The rationale for this distinction is not clear and might not pass constitutional muster in the form of equal protection and benefit of the law (section 9).

A further section 9- and competition law issue may relate to the possible unfair protection of medical schemes from competition by health insurance products in the market, and reserving the spot to provide complementary/supplementary cover under an NHI to medical schemes, thereby prohibiting health insurers from providing such top-up cover.

PIASA
Pharmaceutical Industry Association of South Africa

Conclusion

Globally private health insurance is permitted and provides cover over- and above, or as alternatives to, social health insurances schemes, whether provided through medical schemes-like mechanisms, or through national social health- or national health insurance schemes as social security measures. It is not clear why South Africa is planning to institute a national health insurance scheme, and similarly, start a process of prohibiting private health insurance products.

Insofar as the draft regulations have built in a review process (Registrar and registrar of Medical Schemes) which will prevent short/long-term insurance companies from selling products that are virtually the same or similar to medical schemes, it is supported. Insofar as it prohibits health insurance products that do not promise specific health cover in the form of a guaranteed payment for specific treatments, irrespective of the type of treatment, but merely provides a Rand-value cover, or gap cover, to supplement medical scheme cover, or to provide products classically not within the scope and ambit of medical schemes cover (e.g. primary care cover), the draft regulations are not supported.

PIASA also supports making sure that, where such health cover is provided, it is subject to strict marketing and advertising rules. Finally, it does make the public aware of the differences between short/long-term insurance and medical schemes. The regulation clearly states that the insurance policies will not replace medical schemes.

The demarcation regulation addresses the concern regarding the migration of younger, healthier members away from medical schemes and also protects the public from making uninformed decisions about health care cover.