



4 May 2012

National Treasury
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By e-mail: LTdemarcation@treasury.gov.za

DRAFT DEMARCATION REGULATIONS

I refer to your Office's kind extension of the deadline for submission of the Actuarial Society's comments on the draft demarcation regulations between medical scheme and insurance business.

It is the considered opinion of the Actuarial Society that the draft demarcation regulations have not been drafted with adequate recognition and research of the needs, implications and consequences for all stakeholders. It is our view that thorough consideration should be taken of all comments to be received in reviewing how such regulations should be drafted. Consideration must also be paid to whether or not there are other regulatory reforms that of their own or in combination with demarcation would better achieve the desired outcomes of affordable, meaningful and fair funding and insurance for healthcare and related risks and services for the various market segments.

In preparation of this response by the Actuarial Society, we have had sight of some other responses drafted by industry stakeholders. It is not our aim to replicate or adjudge these. Whereas such other responses are likely to address principle as well as very detailed and specific comments, our response is limited to comments in principle.

The problems that South Africa is experiencing in the financing and delivery of healthcare have been exhaustively aired by many experts and stakeholders. The Society agrees with the Health Minister on the principle that healthcare is a public good but that there is room for commercialisation. As such a mix of public and private healthcare is a given for South Africa but

the relative mix between the two is the issue. South Africa's proportion of the private part of the total healthcare spend is amongst the highest in the world and this aggravates the situation for South Africa's society at large because of private healthcare being systemically prone to excessive profit-making and hence hyper-escalation of costs. This is evident in the continued escalation ahead of CPI of South Africa's medical scheme contribution rates, which in turn leads to more and more people being unable to afford comprehensive medical scheme membership.

Public healthcare in South Africa is in a dire state and all the commendable efforts to rectify this, including the proposed NHI, are not expected to render tangible improvements for many years to come. The State has an important role to play in regulating the private sector but this can also be used to address some of the shortcomings of the public sector towards the overall vision for healthcare for the country. This is consistent with the social solidarity principle of requiring those that can afford it, to pay for their services. The Actuarial Society sees the demarcation issue as being part of these dynamics.

It needs to be recognised that the medical scheme regulators have been unsuccessful in containing the escalation in costs of medical schemes. Efforts to introduce the low income medical scheme (LIMS) initiative have also been unsuccessful. The Society believes that the following have inter alia contributed to the escalation in medical scheme costs:

- the prescribed minimum benefit regulations,
- failure to introduce the risk equalisation fund,
- scrapping of the National Health Reference Price List,
- no enforcement of primary care which exacerbates the high cost tertiary care and
- failure to introduce proper risk based capital requirements of medical schemes.

Medical schemes can only pay for medical expenses and not for the contingent associated expenses that could be incurred by patients or their families when the patient suffers a major medical condition. Public and private solidarity healthcare funders are unable to fund the entire healthcare their customers can consume and therefore they have limits to the medical expenses cover they provide. A need and opportunity remain for augmenting even the customary medical expenses cover of medical schemes. The market place in South Africa abounds with practices and products outside the medical scheme industry that address shortcomings of medical schemes such as hospital cash products, critical illness policies and the healthcare arrangements of certain bargaining councils to mention a few. These practices and products have a very significant economic footprint in terms of money that is spent, the numbers of customers and the number of jobs as well as real needs of consumers being met. Much of these practices and products are affected negatively by the draft regulations.

The Actuarial Society recognises that some of these practices and products are not treating the customer fairly as evidenced by perceived high profit margins, for example. Some of these practices have arisen as a result of the lack of regulatory clarity which on its part also led to lack of participation by reputable insurers and/or reinsurers in this area. The extent of unfair treatment of customers through either the public healthcare system or the medical scheme industry cannot be dismissed either. In the absence of solid empirical evidence the Society is not convinced of the argument that the products being outlawed by the draft regulations necessarily undermine the solidarity that is required to sustain the medical scheme industry – that is if the medical scheme industry needs to fulfil the public good role in the face of the public sector's difficulties in this regard. The lack of mandatory cover and risk equalisation are factors that probably undermine

solidarity in the medical scheme industry to a greater extent than the existence of insurance products.

It is the Actuarial Society's view that it is unlikely that the draft demarcation regulations will address the primary causes of the unaffordability of medical scheme cover. Unfair treatment of customers in financial services and products is expected to be addressed as part of the TCF regulation being developed.

The Actuarial Society supports clarity in the area of demarcation. A transparent regulatory development process and ultimate clear and unambiguous regulation are desired. The draft regulations that provide for the discretion of the regulator in approving products and no provision for insurers to respond to concerns raised are suboptimal. The Actuarial Society therefore supports a process of developing a clear and transparent regulatory framework to demarcate medical scheme and health insurance business that recognises the role that health insurance plays in protecting consumers from the adverse financial effects of health events. To this end we suggest that the regulations provide clear parameters for acceptable products and a transparent process for appeals and application for exemptions. Furthermore, we wish to express the need for clarity to first be obtained on the regulatory framework that would govern medical schemes in a future NHI environment in order to better understand the role of medical schemes versus insurance products.

The Society is amenable to appointing representatives to participate in a review process similar to the other regulatory reform processes under the auspices of National Treasury that are currently in progress and where the Society is represented.

Kind regards