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GOVERNMENT NOTICES

NATIONAL TREASURY**No. R. 325****29 April 2014****PUBLICATION OF PROPOSED AMENDMENTS TO DRAFT DEMARCATION REGULATIONS MADE UNDER SECTION 70 OF THE SHORT-TERM INSURANCE ACT, NO. 53 OF 1998**

The Minister of Finance, in accordance with section 70(2B) of the Short-term Insurance Act, No. 53 of 1998, hereby publishes for public comment, proposed amendments to the draft Demarcation Regulations made under section 70 of the Short-term Insurance Act No. 53 of 1998 and published under GNR. 1493 of 27 November 1998, to be made under sections 70(1) and 70(2A) of the Short-term Insurance Act No. 53 of 1998.

The amendments proposed in this draft Demarcation Regulation takes into account comments received in response to the first draft Demarcation Regulation that was published in GNR.193 of 2 March 2012.

Comments on the proposed amendments to this draft Demarcation Regulation are invited from all interested stakeholders. Written comments should be sent to Ms Reshma Sheoraj at STdemarcation@treasury.gov.za or faxed to 012 315 5206 on or before **7 July 2014**.

The draft Demarcation Regulations, explanatory memorandum and summary of public comments are also available on the National Treasury's website at <http://www.treasury.gov.za>, and the Financial Services Board's website at <http://www.fsb.co.za>.

1. Amendment of Part 5 in the Regulations under the Short-term Insurance Act, 1998 as published in GN R1493 of 1998 and amended by GN R462 of 2008 and GN R1076 of 2011:

Regulation 5.3 of the Regulations is hereby substituted for the following:

“Maximum commission payable

5.3 (1) No commission shall exceed, in respect of -

- (a) a motor policy, 12,5 per cent of the premium payable under the policy;
- (b) any other short-term policy, other than a contract identified as an accident and health policy under Part 7 of the Regulations, 20 per cent of the premium payable under the policy.

(2) Commission payable in respect of a contract identified as an accident and health policy under Part 7 of the Regulations is subject to the maximum compensation and other requirements prescribed under regulation 28 of the Regulations made under the Medical Schemes Act, 1998 (Act No. 131 of 1998) pursuant to section 65(2) of that Act, 1998 (Act No. 131 of 1998) .”.

2. Substitution of Part 7 in the Regulations under the Short-term Insurance Act, 1998 as published in GN R1493 of 1998 and amended by GN R462 of 2008 and GN R1076 of 2011:

Part 7 of the Regulations is hereby substituted for the following Part:

**“PART 7
CONTRACTS IDENTIFIED AS ACCIDENT AND HEALTH POLICIES UNDER PARAGRAPH
(b) OF THE DEFINITION OF ACCIDENT AND HEALTH POLICY**

Definitions and interpretation

7.1 In this Part 7, unless the context indicates otherwise -

“insurer” means a short-term insurer or a Lloyd’s underwriter;

“medical scheme” has the meaning assigned under section 1 of the Medical Schemes Act;

“Medical Schemes Act” means the Medical Schemes Act, 1998 (Act No. 131 of 1998);

“member” has the meaning assigned under section 1 of the Medical Schemes Act;

“policy” means a short-term policy;

“related” has the meaning assigned in the Companies Act, 2008 (Act No. 71 of 2008);

“relevant health service” has the meaning assigned under section 1 of the Medical Schemes Act;

“this Part” means this Part 7.

Categories of contracts identified as accident and health policies under paragraph (b) of the definition of accident and health policy

7.2 (1) A contract is an accident and health policy under paragraph (b) of the definition of accident and health policy if that contract matches any of the categories of contracts, and meets the criteria and provides for the policy benefits associated with that category, as set out in the table below.

Category	Name	Policy benefits	Criteria
1	Medical expense shortfall cover	Covers the costs or expenses of a relevant health service that in respect of the minimum benefits provided for under Regulation 8 of the Regulations made under section 67 of the Medical	<ul style="list-style-type: none"> ▪ Policy benefits are one or more sums assured stated in the contract in Rand terms. ▪ Policy benefits may not exceed the maximum amount referred to in sub-regulation (3) per day per insured

Category	Name	Policy benefits	Criteria
		Schemes Act, 1998 (Act No. 131 of 1998) as published in GN R1262 of 1999, as amended from time to time, – (a) does not constitute a minimum benefit; or (b) constitutes a minimum benefit not paid in full by a medical scheme.	<p>person.</p> <ul style="list-style-type: none"> ▪ Insured person/s must be a member/s of a medical scheme. ▪ Contract must provide for an annual term and monthly premiums.
2	Lump sum or income replacement policy benefits payable on a health event	Covers loss of income and contingency expenses associated with an insured person experiencing a specified health event.	<ul style="list-style-type: none"> ▪ Policy benefits are one or more sums assured stated in the contract in Rand terms. ▪ The aggregate of the policy benefits payable under all policies issued by an insurer and its related parties to a specific person may not exceed the maximum amount referred to in sub-regulation (4) per day per insured person. ▪ Contract must provide for an annual term and monthly premiums. ▪ An elimination or deferred period may apply before policy benefits are paid.
3	Motor: Third Party Liability	Covers insured persons for the costs of a relevant health service following the injury of a third party (other than the insured persons) as a result of an accident.	<ul style="list-style-type: none"> ▪ Policy benefits may be linked to actual costs or expenses of a relevant health service.
4	Property: Third Party Liability	Covers insured persons for the costs of a relevant health service following the injury of third parties (other than the insured persons) while at the property of the insured persons.	<ul style="list-style-type: none"> ▪ Same as for category 3.
5	HIV and Aids	Covers expenses for HIV-related testing and HIV and Aids treatment on an employee group	<ul style="list-style-type: none"> ▪ Policy benefits may be paid in kind or to a provider of a relevant health service.

Category	Name	Policy benefits	Criteria
		basis for employees and their dependents.	<ul style="list-style-type: none"> ▪ Policy benefits may be linked to actual costs or expenses of a relevant health service. ▪ Cover may be offered on a pre-funded or immediate needs basis. ▪ An elimination or deferred period may apply before policy benefits are paid.
6	International travel insurance	Covers costs associated with a relevant health service incurred while travelling outside of the Republic of South Africa, as a result of a health, disability or death event that occurs while not in the Republic.	<ul style="list-style-type: none"> ▪ Policy benefits may be payable in kind or to a provider of a relevant health service. ▪ Policy benefits may be linked to actual costs or expenses of a relevant health service. ▪ Cover may be offered on a pre-funded or immediate needs basis.
7	Domestic travel insurance	Covers costs associated with a relevant health service incurred as a result of a health, disability or death event that occurs while travelling – (a) inside the Republic of South Africa; and (b) in a province other than the province in which the insured persons and their dependants are not ordinarily resident.	Same as for category 6.
8	Emergency Evacuation or Transport	Covers guaranteed access to and utilisation of specialised medical transportation and / or guaranteed hospital admission to ensure that the policyholder or insured persons are admitted to an emergency treatment facility and stabilised.	<ul style="list-style-type: none"> ▪ Policy benefits may be payable in kind or to a provider of a relevant health service. ▪ Policy benefits may be linked to actual costs or expenses of a relevant health service.

- (2) A contract referred to under sub-regulation (1) may not -
- (a) unfairly discriminate directly or indirectly against any person on any of the following or similar grounds: race, age, gender, marital status, ethnic or social origin, sexual orientation, pregnancy, disability and state of health;
 - (b) provide for waiting periods exceeding 6 months;
 - (c) entitle the insurer to refuse any claim for policy benefits on the grounds that the policyholder or insured person had experienced a health event prior to the commencement of the applicable cover;
 - (d) provide for the cancellation, variation or non-renewal of the contract by the insurer as a result of the health or claims experience of a policyholder or insured person; and
 - (e) in relation to a contract referred to in category 2 in the table under sub-regulation (1), provide policy benefits that are fully or partially related to indemnifying the policyholder against medical expenses incurred in respect of a relevant health service; or
 - (f) in relation to a contract referred to in categories 1, 2, 3 or 4 in the table under sub-regulation (1), allow for the cession or payment of any policy benefits payable under the contract to a provider of a relevant health service; or
 - (g) in relation to a contract referred to in categories 2 to 8, provide that the policyholder or insured person must be a member of a medical scheme.
- (3) A contract referred to under sub-regulation (1) must –
- (a) provide for a 90-day notice of termination period to a policyholder if an insurer no longer will be offering contracts that relate to the same or similar policy benefits, or the same event as part of its short-term insurance business;
 - (b) if that contract is a contract referred to in category 1 that relates to a relevant health service that is not a prescribed minimum benefit, provide for a 90-day notice of termination period to a policyholder if the relevant health services becomes a prescribed minimum benefit because of any amendment made under the Medical Schemes Act, 1998 as to what constitutes minimum benefits;
 - (c) in clear and in easily understood language –
 - (i) identify those representations made by or on behalf of the policyholder or an insured person to the insurer which were regarded by that insurer as material to its assessment of the risks under the policy;

- (ii) state the premiums payable and the policy benefits to be provided under the policy; and
- (iii) state the events in respect of which the policy benefits are to be provided and the circumstances (if any) in which those benefits are not to be provided.

(4) The maximum amount referred to under category 1 in the table under sub-regulation (1) is R 3 000,00 (three thousand Rand) and category 2 in the table under sub-regulation (1) is R 50 000,00 (fifty thousand Rand), which amounts escalate annually from the effective date of this Part by the Consumer Price Index (CPI) annual inflation rate published by Statistics South Africa (as defined in section 1 of the Statistics Act, 1999 (Act No. 6 of 1999)).

Marketing and disclosures

7.3 Any marketing activity or marketing material in respect of a contract referred to under regulation 7.2 must –

- (a) not identify that contract by the term “medical”, “hospital” or any derivative thereof;
- (b) not in any manner create the perception that the contract –
 - (i) indemnifies a policyholder against medical expenses incurred as a result of a relevant health service; or
 - (ii) is a substitute for medical scheme membership;
- (c) display the following statement in clear legible print in a prominent position:
“This is not a medical scheme and the cover is not equivalent to that of a medical scheme. This policy is not a substitute for medical scheme membership.”; and
- (d) clearly disclose and explain in easily understood language the matters referred to in regulation 7.2(3)(c).

Limitation on combination of policies

7.4 An insurer may not alone or with a related party, directly or indirectly, develop or offer to policyholders or potential policyholders accident and health policies referred to in this Part which policies collectively may result in the aggregate of the policy benefits under those policies being contrary to the objectives and purpose of the Medical Schemes Act as set out in that Act, with specific reference to sections 70(2A)(b)(i)(cc)(A) to (C) of the Act.

Reporting of product information

7.5 (1) An insurer must, at least 1 month prior to introducing or launching a new accident and health policy referred to in this Part, submit to the Registrar and Registrar of Medical Schemes –

- (a) a summary of the benefits, terms and conditions and marketing material of that accident and health policy; and
- (b) a summary of the benefits, terms and conditions and marketing material of other accident and health policies referred to in this Part offered by the insurer or a related party of the insurer to policyholders and potential policyholders.

(2) The Registrar of Medical Schemes may, within the month referred to under sub-regulation (1) or at any time thereafter, advise the Registrar that the Registrar of Medical Schemes is of the opinion that the benefits, terms and conditions or marketing material concerned is contrary to the objectives and purpose of the Medical Schemes Act and the principles referred to in sections 70(2A)(b)(i)(cc)(A) to (C) of the Act, and the reasons for this opinion.

(3) The Registrar may within the month referred to under sub-regulation (1) or at any time thereafter, of the Registrar's own accord or after due consideration of an opinion of the Registrar of Medical Schemes referred to under sub-regulation (2), by notice to the insurer object to any of the benefits, terms and conditions and marketing material of an accident and health policy submitted, and –

- (a) prohibit the insurer from introducing or launching the accident and health policy; or
- (b) instruct the insurer to stop offering or renewing those accident and health policies to the public and within 90-days of the date determined by the Registrar, terminate any accident and health policy; or
- (c) require the insurer to amend any of the benefits, terms and conditions and marketing material of an accident and health policy in accordance with the requirements of the Registrar.

Transitional arrangements

7.6 (1) An insurer must, 3 months after this Part comes into operation, submit a summary of the benefits, terms and conditions and marketing material of all existing accident and health policies referred to in this Part introduced or launched on or after 15 December 2008 to the Registrar and Registrar of Medical Schemes.

(2) The Registrar of Medical Schemes may, within the 3 months referred to under sub-regulation (1), or at any time thereafter, advise the Registrar that the Registrar of Medical Schemes is of the opinion that the benefits, terms and conditions or marketing material concerned is contrary to the objectives and purpose of the Medical Schemes Act and the principles referred to in sections 70(2A)(b)(i)(cc)(A) to (C) of the Act, and the reasons for this opinion.

(3) The Registrar may within the 3 months referred to under sub-regulation (1) or at any time thereafter, of the Registrar's own accord or after due consideration of an opinion of the Registrar of Medical Schemes referred to under sub-regulation (2), by notice to the insurer, object to any of the benefits, terms and conditions and marketing material of an accident and health policy submitted under sub-regulation (1), and –

- (a) instruct the insurer to stop offering or renewing those accident and health policies to the public and within 90-days of the date determined by the Registrar, terminate any accident and health policy; or
- (b) instruct the insurer, by a date determined by the Registrar, to amend any of the benefits, terms and conditions and marketing material of an accident and health policy in accordance with the requirements of the Registrar before offering those health policies or renewing any existing accident and health policies to the public.

3. Insertion of Part 7 in the Regulations under the Short-term Insurance Act, 1998 as published in GN R1493 of 1998 and amended by GN R462 of 2008 and GN R1076 of 2011:

Part 8 is hereby inserted after Part 7 of the Regulations:

**“PART 8
TITLE AND COMMENCEMENT**

7.1 These regulations are called the Regulations under the Short-term Insurance Act, 1998.

7.2 (1) Regulations 1 to 5, other than regulation 4.2, came into operation on commencement of the Act. Regulation 4.2 came into operation on 25 April 2008.

(2) Regulation 6 came into operation on 1 January 2011.

(3) Regulation 7 came into operation on *[insert date]*.

(4) Any amendments to regulations 1 to 7 come into operation on the date of publication thereof in the *Government Gazette* or on such other date specified by the Minister in the *Government Gazette* or specified in a regulation.”