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GOVERNMENT NOTICE

DEPARTMENT OF HEALTH**No. 611****2 June 2008****PUBLICATION OF BILLS IN TERMS OF PARLIAMENTARY RULES (NA RULE
241 / NCOP RULE 186)**

The Minister of Health intends to table the bills following hereunder in Parliament this year. The Bills and their respective memorandums setting out the objects of the Bills are hereby published as required by National Assembly Rule 241(1) and the National Council of Provinces Rule 186(1).

1. The Medical Schemes Amendment Bill, 2008
2. The National Health Amendment Bill, 2008; and
3. The Medicines and Related Substances Amendment Bill, 2008.


DR ME TSHABALALA-MSIMANG
MINISTER OF HEALTH

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

DRAFT BILL

To amend the Medical Schemes Act, 1998, so as to provide for risk equalisation among medical schemes; to amend and insert certain definitions; to provide for the establishment of a risk equalisation fund; to extend the functions of the Council for Medical Schemes in relation to risk equalisation; to provide for the application of risk equalisation to medical schemes; to provide for the provision of information by medical schemes to the Council for Medical Schemes for purposes of risk equalisation; to provide for the methodology and procedures for risk equalisation; to amend the provisions relating to benefits and contributions provided by medical schemes; to amend the provisions relating to the composition of boards of trustees and eligibility of persons to serve as trustees or principal officers; to define the respective functions of boards of trustees and principal officers; to specify the powers of the High Court in relation to election processes; to amend the provisions relating to disclosure of trustee remuneration; to provide for good corporate governance guidelines and associated disclosure requirements; to amend the provisions relating to the powers of the Minister to make regulations; to amend the provisions relating to offences; to rearrange some of the existing sections; and to provide for matters in connection therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: —

Amendment of section 1 of Act 131 of 1988, as amended by section 1 of Act 55 of 2001, section 1 of Act 62 of 2002, section 40 of Act 65 of 2002, and section 25 of Act 52 of 2003.

1. Section 1 of the Medical Schemes Act, 1988 (hereinafter referred to as the principal Act), is hereby amended by the —

(a) insertion after the definition of “Appeal Board” of the following definition:

“ **‘basic benefits’** means those benefits contemplated in section 32J(1);”

(b) insertion after the definition of “beneficiary” of the following definitions:

“ **‘benefit’** means the liability accepted by a medical scheme to render a relevant health service or to defray fees or charges in respect of provision of relevant health service;

‘supplementary benefit option’ means those additional benefits offered by a medical scheme in respect of which its members may choose to enroll;”

(c) insertion after the definition of “dependant” of the following definition:

‘financial transfer’ means a financial transfer from the Fund to a medical scheme or from a medical scheme to the Fund, as the case may be;”

(d) insertion after the definition of “Master” of the following definition:

“ **‘material relationship’** means a relationship with, or interest in, a natural or juristic person which, in the view of a reasonable person would interfere with the independent judgment of

“ ‘material relationship’ means a relationship with, or interest in, a natural or juristic person which, in the view of a reasonable person would interfere with the independent judgment of the officer of the medical scheme or prejudice the interests of the medical scheme or its members.”;

(f) substitution for the definition of “principal officer” of the following definition:

“ ‘principal officer’ means [the principal officer] a person appointed in terms of section [57(4)(a)] 57C(1).”;

(g) insertion after the definition of “restricted membership scheme” of the following definitions:

“ ‘risk equalisation’ means the system of financial transfers to ensure the sharing of expected costs of providing benefits contemplated in section 19B;

‘risk equalisation risk factor’ means a risk factor to be used in the calculation of financial transfers, as contemplated in section 19L(1);

‘risk equalised benefits’ means the benefits in respect of which risk equalisation will take place, as contemplated in section 19B.”;

(h) insertion after the definition of “Service” of the following definitions:

‘supplementary benefit option’ means those additional benefits offered by a medical scheme in respect of which its members may choose to enroll.”;

“ ‘the Fund’ means the bank account contemplated in section 19C(1).”;

(i) substitution for the definition of “this Act” of the following definition:

“ ‘this Act’ includes the regulations[.]”;

Amendment of section 7 of Act 131 of 1998, as amended by section 2 of Act 55 of 2001.

2. Section 7 of the principal Act is hereby amended by the insertion of the following paragraphs after paragraph (f):

“ (fA) manage the administration of the Fund in accordance with the provisions of this Act;

(fB) consult on a regular basis with relevant stakeholders in relation to the implementation of risk equalisation.”;

Amendment of section 13 of Act 131 of 1998

3. Section 13 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The financial year of the Council shall end on [31 December] 31 March in each year.”

Insertion of Chapter 3A in Act 131 of 1998

4. The principal Act is hereby amended by the insertion after section 19 of the following Chapter:

**“CHAPTER 3A
RISK EQUALISATION**

*Part 1: General provisions***Scope and purpose of risk equalisation**

19A. (1) Subject to the provisions of this Chapter, risk equalisation shall apply to each medical scheme and each such medical scheme shall comply with the terms and conditions of risk equalisation.

Risk equalised benefits

19B. The benefits in respect of which risk equalisation will apply shall be those prescribed in terms of section 67(1)(g), subject to such limitations as may be prescribed.

*Part 2: Risk Equalisation Fund***Establishment of Risk Equalisation Fund**

19C. (1) The Council shall cause a bank account, to be known as the “Risk Equalisation Fund,” to be opened at a financial institution.

(2) The Council must annually report on the Fund as part of the report contemplated in section 14.

(3) The costs of managing the Fund shall be paid for from the revenue of the Council raised in terms of section 12(1) and the Council for Medical Schemes Levies Act, 2000 (Act No. 58 of 2000), and not from financial transfers to the Fund.

Fund to vest in and to be administered by Council

19D. (1) Money in the Fund shall vest in the Council.

(2) The Fund is under the control and management of the Council, which —

- (a) must utilise the money in the Fund in accordance with section 19F only;
- (b) is responsible for accounting for money received in, and payments made from, the Fund; and
- (c) must cause the necessary accounting and other related records to be kept.

Revenue of Fund

19E. The Fund shall consist of—

- (a) financial transfers paid to the Fund in terms of section 19O;
- (b) interest and dividends derived from the investment of money standing to the credit of the Fund;
- (c) administrative penalties paid in terms of section 19S; and
- (d) other money lawfully paid into the Fund.

Allocation of money in Fund

19F. (1) All money paid to the Fund shall be appropriated for expenditure by the Council in accordance with subsection (2).

(2) The Council must appropriate expenditure for financial transfers to medical schemes in accordance with the risk equalisation methodology set out in this Chapter.

(3) With the exception of claims by medical schemes in respect of financial transfers, no person shall in respect of any liability of the Council have or obtain recourse or any right against money standing to the credit of the Fund.

Investment of money not immediately required

19G. (1) Any money of the Fund which is not required for immediate allocation may be invested in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999) and may be withdrawn when required.

(2) Any unexpended balance of the money of the Fund at the end of any financial year shall be carried forward as a credit to the next financial year.

Separate financial records and financial statements

19H. (1) The Council must cause separate accounting records for the Fund to be maintained must prepare separate annual financial statements for the Fund in accordance with general accepted accounting practice.

(2) The Fund and the records referred to in subsection (1) must be audited by the Auditor-General.

(3) The audited records referred to in subsection (1) must be incorporated into the report contemplated in section 14.

Part 3: Information required for risk equalisation

Information for calculation of financial transfers

19L. (1) Every medical scheme must at such intervals and in the form determined by the Registrar submit to the Registrar such information as may be necessary for purposes of:

- (a) ascertaining the number of beneficiaries of each medical scheme;
- (b) allocating beneficiaries to various age categories;
- (c) allocating beneficiaries to various risk equalisation risk factors;
- (d) auditing the correctness of information supplied by the medical scheme; and
- (e) preventing fraud.

(2) Information collected in terms of subsection (1) shall include, in respect of every beneficiary of a medical scheme —

- (a) personal particulars, including full names, gender, identity number or passport number in the case of a non-resident, date of birth and, where applicable, date of death;
- (b) the unique medical scheme number of the beneficiary and any other unique identifier assigned to the beneficiary for purposes of risk equalisation;
- (c) details of beneficiary status, including whether the beneficiary is a principal member, adult dependant or child dependant and relationship to the principal member, where applicable;
- (d) date and details of the enrolment and, where applicable, termination of enrolment of the beneficiary, including details of the medical scheme from or to which the member transferred, where applicable;
- (e) the name of the benefit option on which the beneficiary is enrolled and date and details of change of benefit option, where applicable;
- (f) details of any waiting periods applicable to the beneficiary;
- (g) information related to the health status and claims history of beneficiaries, specifically in relation to health conditions or other factors identified as risk equalisation risk factors in terms of section 19L(1).

(3) The Registrar shall ensure that —

- (a) personally identifiable information is subject to strict confidentiality;
- (b) health status data and personally identifiable information are never submitted simultaneously by a medical scheme in terms of section (1) and are stored and maintained in a manner that prevents simultaneous access to health status and personally identifiable information.

(4) A request for access to information submitted in terms of this section shall be dealt with in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), provided that the information provided in terms thereof shall under no circumstances be capable of being personally identified.

Verification of information

19J. (1) The Registrar may in relation to information provided in accordance with section 19I, on written notice require a medical scheme to submit to him or her -

- (a) the information as specified in the notice; or
- (b) a report by an auditor or by any other person with appropriate professional skill, designated by the Registrar, on any matter specified in the notice.

(2) The Registrar may at any time inspect the business of a medical scheme if the Registrar has reason to believe that information submitted by a medical scheme in accordance with section 19I is incorrect or false. The provisions of section 44, with the necessary changes, apply to an inspection under this subsection.

(3) (a) Despite the provisions of any other law, the auditor of a medical scheme must inform the Registrar in writing of any matter relating to the affairs of a medical scheme of which the auditor became aware of in the performance of his or her functions as auditor of that medical scheme, that, in the opinion of the auditor relates to the medical scheme's participation in the risk equalisation fund or may negatively impact on the medical scheme's ability to pay a financial transfer which it may be required to pay in terms of this Chapter.

(b) An auditor must inform the principal officer of a medical scheme of any information referred to in paragraph (a), provided to the Registrar.

(c) The furnishing in good faith by an auditor of information in terms of paragraph (a) may not be held to constitute a contravention of any provision of the law or breach of any provision of a code of professional conduct to which such auditor may be subject.

Part 4: Risk equalisation methodology

Formula for risk equalisation

19K. (1) The Minister shall, in consultation with the Minister of Finance, prescribe the formula for the determination of the quantum of financial transfers.

(2) The formula prescribed in terms of subsection (1) shall –

(a) provide for a method of determining the expected cost per beneficiary in a medical scheme of providing the risk equalized benefits, taking into consideration:

- (i) the prevalence of risk equalisation risk factors amongst the beneficiaries, identified in accordance with the criteria published in terms of section 19M(1)(b); and
- (ii) the weighted values assigned to these risk factors, as published in terms of section 19M(1)(a);

(b) provide for a method of determining the expected cost per beneficiary among all medical schemes of providing the risk equalized benefits taking into consideration the factors in subparagraphs (a)(i) and (ii) above;

(c) as far as reasonably possible, result in the expected cost to a medical scheme, per beneficiary, of providing the risk equalized benefits, being equivalent to the average expected cost per beneficiary among all medical schemes, assuming a reasonable level of efficiency in the delivery of those benefits.

Risk equalisation risk factors

19L. (1) The Minister shall from time to time prescribe the risk factors to be used in the calculation of financial transfers, which shall be demographic variables, health status indicators and other factors capable of predicting the cost to medical schemes of the risk equalised benefits.

(2) When prescribing the risk equalisation risk factors, the Minister shall take into consideration for those factors to –

- (a) be objective, repeatable and auditable;
- (b) be measurable without significant measurement errors;
- (c) be measurable using data that are readily available to medical schemes;
- (d) not readily be susceptible to manipulation, and

- (e) discourage the selection by a medical scheme of beneficiaries with only preferred risks.

Publication of information related to risk equalization risk factors

19M. (1) The Council shall from time to time after consultation with the Minister—

- (a) assign and publish weighted values to each of the risk equalization risk factors based upon their importance in predicting costs of risk equalized benefits; and
 (b) publish criteria to identify and verify the existence of a risk equalisation risk factor in a beneficiary, taking into account the need, as far as possible, to —
 (i) accurately identify beneficiaries with one or more of the risk equalisation risk factors; and
 (ii) prevent opportunities for misrepresentation and manipulation of the risk equalisation system.

Determination of amount of financial transfers

19N. (1) The Registrar shall evaluate and assess the information submitted to him or her in terms of the Chapter and applying the formula prescribed in terms of section 19K, determine the amount of financial transfers payable by a medical scheme to the Fund or by the Fund to a medical scheme, as the case may be.

(2) The Registrar may adjust the amount of a financial transfer calculated in terms of this section to

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- (a) correct an error;
 (b) take account of the outcome of an appeal;
 (c) take account of more accurate information obtained in relation to the number of beneficiaries and prevalence of risk factors within a medical scheme; or
 (d) distribute interest accrued on monies standing to the credit of the Fund or administrative penalties which have been paid into the Fund proportionate to the value of financial transfers payable in respect of medical schemes.
- (3) If a medical scheme fails to submit the information it is required to submit to the Registrar in terms of section 19(I)(1), or the Registrar has reason to believe that the information submitted by the medical scheme is incomplete or incorrect such that an accurate calculation of the financial transfer in respect of that medical scheme is not possible, the Registrar may make a determination of the amount of a financial transfer to be paid in respect of that medical scheme taking into consideration one or more of the following factors—
 (i) the most recent previous uncontested data submission of the medical scheme;
 (ii) the industry average of the relevant data;
 (iii) the age profile of the medical scheme; and
 (iv) any other factor the Registrar may reasonably consider relevant to the determination.
- (4) Notwithstanding the provisions of this section —
 (a) the liability of the Council in relation to financial transfers payable to medical schemes shall not under any circumstances exceed the amount standing to the credit of the Fund at the time that such financial transfers are paid; and
 (b) if, due to bad debt from medical schemes or for any other reason, the amount standing to the credit of the Fund is insufficient to pay a medical scheme the full quantum of a financial transfer calculated in terms of this section:
 (i) the amount of a financial transfer payable from the Fund to the medical scheme will be adjusted downwards proportionately to the amounts that would otherwise have been paid to it; and
 (ii) to the extent that the monies owed to the Fund are subsequently partially or fully recovered, such monies will at that stage be paid to the medical scheme proportionately to the amounts which it would otherwise have been due in terms of this section.

Effecting of financial transfers

19O. (1) Financial transfers shall be effected on a quarterly basis, based upon the cumulative assessments of the three months in that quarter, or if the Registrar provides 12 months' written notice to medical schemes, financial transfers shall take place on a monthly basis.

(2) Every medical scheme must pay the financial transfers as determined by the Registrar to the Fund on being notified by the Registrar in writing of the amount of the financial transfer, within the period and in the manner stated in the notice.

(3) The Registrar shall, within such period as may be prescribed following the date on which financial transfers to the Fund are due in terms of subsection (1), make the required financial transfers to those medical schemes to which payments are due.

(4) Interest at the rate determined by the Minister of Finance under the Public Finance Management Act, is payable on any late payments by a medical scheme of a financial transfer.

(5) If a medical scheme fails to pay a financial transfer or pay it within the specified period, the Registrar may, by way of civil action in a competent court recover the amount owed by the medical scheme.

Progressive implementation of financial transfers

19P. The Council may recommend to the Minister a schedule for the progressive implementation of financial transfers, taking into account the potential impact of the financial transfers on the financial soundness and viability of medical schemes in general.

Projections on financial transfers

19Q. The Registrar must annually 4 months before the start of a calendar year, inform each medical scheme of the projections on financial transfers relating to that medical scheme for that calendar year.

Part 5: Appeals and Penalties

Appeals

19R. Notwithstanding the provisions of this Act or any other law, if an appeal is lodged against a decision made in terms of the provisions of this chapter, such appeal shall not suspend any obligation to pay a financial transfer determined in terms of section 19N pending the outcome of an appeal.

Administrative penalties

19S. (1) Notwithstanding the fact that adjustments may be made to financial transfers to take account of errors in calculations of financial transfers, a medical scheme shall also be liable to pay a penalty equivalent to 5% of the difference between the amount of an erroneously calculated financial transfer made in respect of that medical scheme and the correct amount of the financial transfer that ought to have been paid if it is determined that the erroneous calculation of the amount of the financial transfer was as a result of –

- (a) the non-submission by that medical scheme of information required in terms of section 19I;
- or
- (b) the submission by that medical scheme of incomplete or incorrect information required in terms of section 19I.

(2) An administrative penalty imposed or payable under this section must be paid within the period specified by the Council.

(3) If a medical scheme fails to pay an administrative penalty within the specified period, the Registrar may, by way of civil action in a competent court, recover the amount of the administrative penalty from the medical scheme.

(4) The Council shall pay any penalties received in terms of this section into the Fund.”

Amendment of section 29 of Act 131 of 1998, as amended by section 9 of Act 55 of 2001

5. Section 29 of the principal Act is hereby amended by the —

- (a) substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“[(1)] The Registrar shall not register a medical scheme under section 24, and no medical scheme shall carry on any business, unless provision is made in its rules for the following matters, subject to the provisions of this Act.”;

- (b) substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) **[Subject to the provisions of this Act, the]** The manner in which and the circumstances under which a medical scheme shall be terminated or dissolved.”;

- (c) substitution in subsection (1) for paragraph (n) of the following paragraph:

“(n) The terms and conditions applicable to the admission of a person as a member and his or her dependants, which terms and conditions shall provide for the determination of contributions **[on the basis of income or the number of dependants or both the income and the number of dependants, and shall not provide for any other grounds including age, sex, past or present state of health, of the applicant or one or more of the applicant’s dependants, the frequency of rendering of relevant health services to an applicant or one or more of the applicant’s dependants other than for the provisions as prescribed]** in accordance with the provisions of Chapter 5B.”;

- (d) substitution in subsection (1) for paragraph (p) of the following paragraph:

“(p) **[No limitation shall apply to the re-imbursment of any relevant health service obtained by a member from a public hospital where this service complies with the general scope and level as contemplated in paragraph (o) and may not be different from the entitlement in terms of a service available to a public hospital patient]** The reimbursement for services obtained from a public hospital in accordance with the provisions of section 34A.”

- (e) deletion in subsection (1) of paragraph (r);

- (f) substitution in subsection (1) for paragraph (s) of the following paragraph:

“(s) The **[continuation, subject to such conditions as may be prescribed, of the membership of a member, who retires from the service of his or her employer or whose employment is terminated by his or her employer on account of age, ill-health or other disability and his or her dependants]** admission and continuation of membership of members and dependants contemplated in subsection (1) of section 32C, in accordance with the provisions of that section.”

- (g) deletion in subsection (1) of paragraphs (t) and (u); and

- (h) deletion of subsections (2) and (3).

Deletion of section 29A in Act 131 of 1998

6. The principal Act is hereby amended by the deletion of section 29A.

Insertion of Chapter 5A in Act 131 of 1998

7. The principal Act is hereby amended by the insertion after section 32 of the following Chapters:

**“CHAPTER 5A
ADMISSION OF BENEFICIARIES**

Open enrolment

32A. A medical scheme shall not –

- (a) exclude any applicant or a dependant of an applicant, subject to the conditions as may be prescribed, from membership except for a restricted membership scheme as provided for in this Act;
- (b) exclude any applicant or a dependant of an applicant who would otherwise be eligible for membership to a restricted membership scheme; or
- (c) impose waiting periods other than as provided for in section 32B.

Waiting periods

32B. (1) A medical scheme may impose upon a person in respect of whom an application is made for membership or admission as a dependant, and who was not a beneficiary of a medical scheme for a period of at least 90 days preceding the date of application –

- (a) a general waiting period of up to three months; and
- (b) a condition-specific waiting period of up to 12 months.

(2) A medical scheme may impose upon any person in respect of whom an application is made for membership or admission as a dependant, and who was previously a beneficiary of a medical scheme for a continuous period of up to 24 months, terminating less than 90 days immediately prior to the date of application –

- (a) a condition-specific waiting period of up to 12 months, except in respect of any treatment or diagnostic procedures covered within the prescribed minimum benefits;
- (b) in respect of any person contemplated in this subsection, where the previous medical scheme had imposed a general or condition-specific waiting period, and such waiting period had not expired at the time of termination, a general or condition-specific waiting period for the unexpired duration of such waiting period imposed by the former medical scheme.

(3) A medical scheme may impose upon any person in respect of whom an application is made for membership or admission as a dependent, and who was previously a beneficiary of a medical scheme for a continuous period of more than 24 months, terminating less than 90 days immediately prior to the date of application, a general waiting period of up to three months, except in respect of any treatment or diagnostic procedures covered within the prescribed minimum benefits.

(4) A medical scheme may not impose a general or a condition-specific waiting period on a beneficiary who changes from one benefit option to another within the same medical scheme unless that beneficiary is subject to a waiting period on the current benefit option, in which case any remaining period may be applied.

(5) A medical scheme may not impose a general or a condition-specific waiting period on a child-dependant born during the period of membership.

(6) A medical scheme may not impose a general or condition-specific waiting period on a person in respect of whom application is made for membership or admission as a dependant, and who was previously a beneficiary of a medical scheme, terminating less than 90 days immediately prior to the date of application, where the transfer of membership is required as a result of –

- (a) change of employment; or
- (b) an employer changing or terminating the medical scheme of its employees, in which case such transfer shall occur at the beginning of the financial year, or reasonable notice must have been furnished to the medical scheme to which an application is made for such transfer to occur at the beginning of the financial year.

(7) A medical scheme may require an applicant to provide the medical scheme with a medical report in respect of any proposed beneficiary only in respect of a condition for which medical advice, diagnosis, care or treatment was recommended or received within the 12 month period ending on the date on which an application for membership was made.

(8) In respect of members who change medical schemes in terms of subsection (6), where the former medical scheme had imposed a general or condition-specific waiting period and such waiting period had not expired at the time of termination, the medical scheme to which the person has applied may impose a general or condition-specific waiting period for the unexpired duration of such waiting period imposed by the former medical scheme.

Continuation membership

32C. (1) A medical scheme shall allow —

- (a) the continuation, subject to such conditions as may be prescribed, of the membership of a member, who retires from the service of his or her employer or whose employment is terminated by his or her employer on account of age, ill-health or other disability and his or her dependants;
- (b) the continued membership of a member's dependants, subject to conditions as may be prescribed, after the death of that member, until such dependant becomes a member of, or is admitted as a dependant of a member of another medical scheme.

(2) If the members of a medical scheme who are members of that medical scheme by virtue of their employment by a particular employer terminate their membership of the said medical scheme with the object of obtaining membership of another medical scheme or of establishing a new medical scheme, such other or new medical scheme shall admit to membership, without a waiting period or the imposition of new restrictions on account of the state of his or her health or the health of any of his or her dependants, any member or a dependant of such first mentioned medical scheme who is a person contemplated in subsection (1).

Cancellation or suspension of membership

32D. A medical scheme shall not cancel or suspend a member's membership or that of any of his or her dependants, except on the grounds of —

- (a) failure to pay, within the time allowed in the medical scheme's rules, the membership fees required in such rules;
- (b) failure to repay any debt due to the medical scheme;
- (c) submission of fraudulent claims;
- (d) committing any fraudulent act; or
- (e) the non-disclosure of material information.

CHAPTER 5B CONTRIBUTIONS

Community rating requirement

32E. A medical scheme shall apply community rating in the determination of its contributions, which for the purposes of this Act means —

- (a) the medical scheme does not determine contributions on the basis of :
 - (i) the age of a person, except to the extent allowed in this Chapter; and
 - (ii) the gender, race, marital status, ethnic or social origin or sexual orientation of a person;
and
 - (iii) pregnancy or disability of a person; and
 - (iv) state of health of a person or frequency of utilization of relevant health services.
- (b) the only discounts available, if any, are discounts allowed under section 32H;

- (c) contributions may be differentiated on the basis of income categories only to the extent that this does not result in direct or indirect contravention of the requirements set out in paragraph (a);
- (d) the contribution payable to the medical scheme meets the contribution requirements in sections 32F and 32G.

Contributions requirement for basic benefits

32F. (1) The contributions payable in respect of the basic benefits of a medical scheme shall be based on the average expected costs of providing the basic benefits to the beneficiaries of the scheme, taking into account projections of financial transfers contemplated in section 19Q, subject to such regulations relating to categories of beneficiaries as may be prescribed.

(2) Regulations contemplated in subsection (1) shall not allow variations in contribution which result in unfair discrimination as contemplated in section 24(2)(e).

Contribution requirement for supplementary benefit options

32G. (1) The contributions payable in respect of a supplementary benefit option of a scheme shall be based on the average expected costs of providing the basic benefits to the beneficiaries participating in that supplementary benefit option, subject to such regulations relating to categories of beneficiaries as may be prescribed.

(2) Regulations contemplated in subsection (1) shall not allow variations in contribution which result in unfair discrimination as contemplated in section 24(2)(e).

Discounts for choice of provider

32H. A medical scheme may provide in its rules for a discount to apply off the contribution payable by a member in respect of the basic benefits or a supplementary benefit option because the member agrees to the choice of a particular provider or provider network for the provision of specified services to that member and his or her dependants, provided that —

- (a) such choice promotes greater efficiency in the delivery of benefits and does not give rise to unfair discrimination against beneficiaries of the medical scheme; and
- (b) the discount shall be disclosed in the rules of a medical scheme as a uniform percentage of the relevant contributions and is approved by the Registrar in terms of section 33.”

Amendment of heading of Chapter 6 in Act 131 of 1998

8. The principal Act is hereby amended by the substitution for the heading of Chapter 6 of the following heading:

“CHAPTER 6
[BENEFIT OPTIONS] BENEFITS”.

Insertion of section 32J in Act 131 of 1998

9. The principal Act is hereby amended by the insertion in Chapter 6, immediately preceding section 33, of the following section:

“Basic benefits and supplementary benefit options

32J. (1) A medical scheme shall provide to every beneficiary of the medical scheme:

- (a) benefits which have been prescribed in terms of section 67(1)(g); and
- (b) any additional benefits which the medical scheme offers in respect of services rendered to a beneficiary while that beneficiary is an in-patient in a hospital.

(2) A medical scheme may offer to its members the choice of enrolling in a supplementary benefit options, provided that —

- (a) a supplementary benefit option does not offer benefits contemplated in subsection (1); and
(b) the dependants of a member shall enroll in the same supplementary benefit option as the member.”

Amendment of section 33 of Act 131 of 1998

10. Section 33 of the principal Act is hereby amended by the —

- (i) substitution for subsection (1) of the following subsection:

“(1) A medical scheme shall apply to the Registrar for the approval of its basic benefits and any supplementary benefit option [if such a medical scheme provides members with more than one benefit option].”;

- (j) deletion in subsection (2) of paragraphs (a) and (b);

- (k) substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) will not jeopardise the financial soundness of the medical scheme or of any **[existing]** supplementary benefit option within the medical scheme.”.

Insertion of section 34A in Act 131 of 1998

11. The principal Act is hereby amended by the insertion after section 34 of the following section:

“Services obtained from public hospitals

34A. (1) A medical scheme shall not apply any limitation to the reimbursement of any relevant health service obtained by a beneficiary from a public hospital where this service complies with the general scope and level as contemplated in paragraph (o) of section 29.

(2) If a beneficiary obtains a service contemplated in paragraph (o) of section 29 from a public hospital, the entitlement of the beneficiary to receive this service may not be different from the entitlement in terms of a service available to a public hospital patient.”.

Amendment of section 35 of Act 131 of 1998, as amended by section 12 of Act 55 of 2001

12. Section 35 of the principal Act is hereby amended by the substitution in subsection (12) for the words preceding paragraph (a) of the following words:

“(12) The Registrar may, when he or she has received the information referred to in subsection (11)[, and in concurrence with the Council] —”.

Amendment of section 36 of Act 131 of 1998, as amended by section 13 of Act 55 of 2001

13. Section 36 of the principal Act is hereby amended by the —

- (a) substitution for subsection (4) of the following subsection:

“(4) The approval of an auditor of a medical scheme by the Registrar shall not lapse if an auditor of a medical scheme is a firm as contemplated in the **[Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)] Auditing Professions Act 2005 (Act No. 26 of 2005)**, whose membership of the firm has changed, if not fewer than half of the members after the change, were members when the appointment of the firm was first approved by the Registrar.”;

(b) substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) whenever he or she furnishes a report or other document of particulars as contemplated in section [20(5)(b) of the Public Accountants’ and Auditors’ Act, 1991] 45(1) of the Auditing Professions Act, 2005, also furnish a copy thereof to the Registrar;”;

(c) substitution in subsection (5)(c) for subparagraph (ii) of the following subparagraph:

“(ii) if he or she would, but for that termination, have had reason to submit to the medical scheme a report as contemplated in section [20(5)(b) of the Public Accountants’ and Auditors’ Act, 1991] 45(1) of the Auditing Professions Act, 2005, submit such a report to the Registrar, and”;

(d) substitution in subsection (8) for paragraph (a) of the following paragraph:

“(a) in respect of a return or statement which he or she is required to examine in terms of this Chapter, certify whether that return or statement complies with the requirements of this Act and whether the return or statement, including any annexure thereto, presents fairly the matters dealt with therein as if such return or statement were a financial statement contemplated in section [20 of the Public Accountants’ and Auditors’ Act, 1991] 44 of the Auditing Professions Act, 2005; and”

Amendment of section 37 of Act 131 of 1998, as amended by section 14 of Act 55 of 2001

14. Section 37 of the principal Act is hereby amended by the —

(a) substitution for subsection (3) of the following subsection:

“(3) The annual financial statements of a medical scheme shall, subject to the provisions of the [Public Accountants’ and Auditors’ Act, 1991] Auditing Professions Act, 2005, be audited by an accountant and auditor registered in terms of that Act except where such accounts are to be audited by the Auditor-General in terms of any law.”;

(b) substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) be prepared in accordance with [general accepted accounting practice] International Financial Reporting Standards, which is the set of accounting standards issued from time to time by the International Accounting Standards Board.”.

Amendment of section 44 of Act 131 of 1998, as amended by section 17 of Act No 55 of 2001

15. Section 44 of the principal Act is hereby amended by the —

(a) substitution for subsection (2) of the following subsection:

“(2) The Registrar, or such other person authorized by him or her, shall in addition to the powers and duties conferred or imposed upon him or her by this Act, have all the powers and duties conferred or imposed upon an inspector under section 2 of the Inspection of Financial Institutions Act, [1984 (Act No. 38 of 1984)] 1988 (Act No. 80 of 1998), as if he or she has been appointed an inspector under that Act.”;

(b) substitution for subsection (3) of the following subsection:

“(3) Any reference in this Act to an inspection made under this section shall also be construed as a reference to an inspection made under the Inspection of Financial Institutions Act, [1984] 1998.”;

(c) substitution in subsection (6) for the words preceding paragraph (a) of the following words:

“(6) The Registrar may direct that any statement furnished to him or her under subsection [(4)] (5), or any document so furnished and which relates to the financial affairs of that medical scheme, shall be accompanied by a report thereon by the auditor of the medical scheme, and in which the auditor shall state —”;

(d) substitution for subsection (7) of the following subsection:

“(7) The Registrar may, if he or she, on account of any statement, document or information furnished to him or her by virtue of subsection [(4)] (5), deems it necessary in the interests of the members of the medical scheme concerned, [and, after consultation with the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990),] by notice in writing direct the medical scheme to furnish to him or her a report compiled by an actuary, in the form and relating to the matters specified by the Registrar in the notice.”;

(e) substitution in subsection (10) for the words preceding paragraph (a) of the following words:

“(10) The Registrar may, for the purposes of paragraph (a) of subsection [(8)] (9), by notice in writing direct the medical scheme concerned —”;

(f) substitution for subsection (11) of the following subsection:

“(11) The Registrar may, if a medical scheme fails to amend its rules as directed by the Registrar under subsection [(9)] (10)(a) within the period specified in the notice concerned, amend such rules, and such amendment shall be deemed to be an amendment within the meaning of section 31.”

Amendment of section 51 of Act 131 of 1998, as amended by section 19 of Act 55 of 2001

16. Section 51 of the principal Act is hereby amended by the —

(a) substitution in subsection (5) for paragraph (d) of the following paragraph:

“(d) order that the medical scheme be placed under judicial management in terms of section 52; [or]

(b) substitution in subsection (5) for paragraph (e) of the following paragraph:

“(e) order that the whole or any part of the business of the medical scheme be wound up in terms of section 53[.]; or”;

(c) insertion in subsection (5) of the following paragraph after paragraph (e):

“(f) in the case of an application brought on the basis of material irregularities relating to the conduct of elections for trustees of a medical scheme —

(i) declare the results of the election to be flawed in certain material respects and issue such directions to the medical scheme concerned as the High Court may deem desirable to remedy such flaws; or

- (ii) declare the results of the election to be invalid and order the medical scheme concerned to hold another election subject to such conditions as the High Court may deem desirable.”.

Amendment of section 56 of Act 131 of 1998, as amended by section 22 of Act No. 55 of 2001

17. Section 56 of the principal Act is hereby amended by the —

- (a) substitution for subsection (2) of the following subsection:

“(2) The provisions of the [Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984)] Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), insofar as those provisions relate to the appointment of a curator in terms of the said Act, and insofar as they are not inconsistent with the provisions of this Act, shall apply with the necessary changes to the appointment of a curator of a medical scheme in terms of this section.”;

- (b) substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) In the application of the [Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984)] Financial Institutions (Protection of Funds) Act, 2001, as provided for by subsection (1) —”;

- (c) substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) a reference to a company and the registrar in section 1 of the [Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984)] Financial Institutions (Protection of Funds) Act, 2001, shall be construed as a reference also to a board of trustees and the Registrar, respectively;”

Amendment of heading of Chapter 12 of Act 131 of 1998

18. The principal Act is hereby amended by the substitution for the heading of Chapter 12 of the following heading:

“CHAPTER 12
[GENERAL] GOVERNANCE”.

Insertion of Part 1 heading in Chapter 12 of Act 131 of 1998

19. The principal Act is hereby amended by the insertion, immediately preceding section 57, of the following Part heading:

“Part 1: Board of Trustees”

Amendment of section 57 of Act 131 of 1998, as amended by section 23 of Act 55 of 2001

20. Section 57 of the principal Act is hereby amended by the —

- (a) substitution for the heading of section 57 of the following heading:

“57. [General provisions on governance] Governance by board of trustees”;

- (b) substitution for subsection (1) of the following subsection:

“(1) Every medical scheme shall have a board of trustees consisting of persons who are fit and proper to [manage] direct the business contemplated by the medical scheme in accordance with the applicable laws and the rules of such medical scheme.”;

(c) substitution for subsection (2) of the following subsection:

“(2) **[At least 50 per cent of the members of the board of trustees shall be elected from amongst members]** The board of trustees of a medical scheme is accountable for the performance of its functions and those of its principal officer, to —

(a) the members of the medical scheme; and

(b) the Council and the Registrar, to the extent provided for in this Act.”;

(d) deletion of subsections (3), (4), (5), (6), (7) and (8).

Insertion of sections 57A and 57B in Act 131 of 1998

21. The principal Act is hereby amended by the insertion after section 57 of the following sections:

“Composition of board of trustees

57A. (1) At least 50 per cent of the members of the board of trustees shall be elected by members of the medical scheme from amongst members of the medical scheme.

(2) Members of a board of trustees who are not elected in terms of subsection (1) shall —

(a) in the case of restricted membership schemes, be appointed in terms of the rules of the medical scheme; and

(b) in the case of all other medical schemes, be appointed by those members of the board of trustees who were elected in terms of subsection (1).

(3) The election of a trustee by the members of a medical scheme shall not be valid unless all the members of the medical scheme had reasonable opportunity to vote in the election of that trustee.

(4) A person shall not serve as a trustee for more than a total of six years in any one medical scheme.

(5) A person shall not be a member of the board of trustees of a medical scheme if that person —

(a) is an employee, director, officer, consultant or contractor of any person contracted by the medical scheme to provide administrative, marketing, or managed health care services, or of the holding company, subsidiary, joint venture or associate of such person;

(b) is a broker or an employee, director, or officer of a person which provides broker services; or

(c) otherwise has a material relationship with any person contracted by the medical scheme to provide administrative, marketing, broker, managed health care or other services, or with its holding company, subsidiary, joint venture or associate.”

Duties of board of trustees

57B. The duties of the Board of trustees shall be to —

(a) provide strategic direction and oversight to the medical scheme;

(b) ensure that —

(i) the resources of the schemes are used in an effective, efficient, economical and transparent manner;

(ii) proper registers, books and records of all operations of the medical scheme are kept, and that proper minutes are kept of all resolutions passed by the board of trustees;

(iii) proper control systems are employed by or on behalf of the medical scheme;

- (iv) adequate and appropriate information is communicated to the members regarding their rights, benefits, contributions and duties in terms of the rules of the medical scheme;
- (v) all reasonable steps are taken for contributions to be paid timeously to the medical scheme in accordance with this Act and its rules;
- (vi) an appropriate level of professional indemnity insurance and fidelity guarantee insurance is taken out and maintained;
- (vii) the rules, operation and administration of the medical scheme comply with the provisions of this Act and all other applicable laws; and
- (viii) all reasonable steps are taken to protect the confidentiality of medical records concerning any member's state of health;
- (c) approve the budget, policies and procedures in terms of which the operational and financial management of the medical scheme is carried out;
- (d) approve all contracts and expenditure with a value above levels predetermined by the Board of trustees;
- (e) where applicable, negotiate and enter into contracts for the administration of the scheme by an intermediary accredited in terms of section 58 and for the provision of managed health care by an intermediary accredited in terms of regulation 15B of the General Regulations made in terms of this Act;
- (f) obtain expert advice on legal, accounting and business matters as required, or on any other matter of which the members of the board of trustees may lack sufficient expertise; and
- (g) monitor the performance of the principal officer of the medical scheme and hold the principal officer accountable for the functions delegated to him or her by the Board of trustees.

Insertion of Parts 2 and 3 in Chapter 12 of Act 131 of 1998

22. The principal Act is hereby amended by the insertion after section 57B of the following Parts of Chapter 12:

“Part 2: Principal Officers

Appointment of principal officer

57C. (1) The board of trustees shall —

- (a) appoint a principal officer who is a fit and proper person to hold such office; and
- (b) within 30 days of such appointment, give notice thereof in writing to the Registrar.

(2) A person shall not be a principal officer of a medical scheme if that person —

- (a) is an employee, director, officer, consultant or contractor of any person contracted by the medical scheme to provide administrative, marketing, or managed health care services, or of the holding company, subsidiary, joint venture or associate of such person;
- (b) is a broker or an employee, director, or officer of a person which provides broker services;
- (c) is the principal officer of another medical scheme; or
- (d) otherwise has a material relationship with any person contracted by the medical scheme to provide administrative, marketing, broker, managed health care or other services, or with its holding company, subsidiary, joint venture or associate.

(3) The principal officer of a medical scheme may participate in all meetings of the board of trustees, or any of its committees, but shall not be a voting member of the board of trustees.

Responsibilities of principal officer

57D. (1) A principal officer is responsible under the authority of the board of trustees of the medical scheme for the executive management of the business of the medical scheme.

(2) The Board of trustees of a medical scheme shall, in writing, delegate to the principal officer such duties as may be necessary to enable the principal officer to effectively manage the business of the medical scheme.

Part 3: General provisions on governance

Corporate Governance

57E. (1) The board of trustees and principal officer of a medical scheme shall establish and maintain an adequate and effective process of corporate governance, which shall be consistent with the nature, complexity and risks inherent in the activities and the business of the medical scheme concerned.

(2) The Council may, from time to time, publish in such manner as it deems fit —

- (a) guidelines for good corporate governance to assist the trustees and principal officers of medical schemes to establish and maintain adequate and effective processes of corporate governance, as contemplated by subsection (1); and
- (b) requirements for the periodic disclosure by the board of trustees of a medical scheme to the Registrar and the members of the medical scheme of the extent to which those guidelines have been met, together with reasons for failure to comply with those guidelines.

(3) A medical scheme shall, at such intervals and in such manner and format as the Council may from time to time determine, make such disclosures as are contemplated in paragraph (b) of subsection (2)."

Duty of care

57F. The board of trustees and principal officer shall —

- (a) take all reasonable steps to ensure that the interests of beneficiaries in terms of the rules of the medical scheme and the provisions of the Act are protected at all times;
- (b) act with due care, diligence, skill and good faith;
- (c) take all reasonable steps to avoid conflicts of interest; and
- (d) act with impartiality in respect of all beneficiaries.

Disclosure

57G. (1) The members of the Board of trustees and principal officer shall disclose annually in the annual financial statements of the medical scheme details of any payments, gifts or considerations made to them in that particular year by —

- (a) the medical scheme concerned;
- (b) any person contracted by the medical scheme to provide administrative, marketing, brokerage, managed care or other services, or the holding company, subsidiary, joint venture or associate of such person; and
- (c) and any other person if such payments, gifts or considerations were made by virtue of their holding office within the medical scheme.

(2) A disclosure as contemplated in subsection (1) shall include:

- (a) the identity of the source of the payment, gift or consideration;
- (b) the reason for the payment, gift or consideration;
- (c) the date on which the payment, gift or consideration was given; and
- (d) the quantum of money or otherwise the value of the payment, gift or consideration.

Suspension or removal from office

57H. (1) If a Board of trustees suspends or removes from office the principal officer or trustee of a medical scheme and that principal officer or trustee believes that the suspension or removal from office is as a result of him or her duly performing his or her functions in terms of this Act, or exposing inappropriate or unlawful conduct on the part of any officer of the medical scheme or any

third party contracted to provide services to the medical scheme, the principal officer or trustee concerned may complain in writing to the Registrar.

(2) On receipt of a written complaint in terms of subsection (1) –

- (a) the Registrar shall investigate the basis of the complaint; and
- (b) if he or she finds that the complaint has merit, the Registrar or the Council shall take such steps as may be necessary in terms of the powers provided for by this Act to address the concerns raised in the complaint.”.

Notices to medical scheme

57I. Any notice required or permitted to be given to a medical scheme in terms of this Act shall, if given to the principal officer, be deemed to have been duly given to the medical scheme.

Insertion of heading for Chapter 13 in Act 131 of 1998

23. The principal Act is hereby amended by the insertion, after section 57I, of the following Chapter heading:

“CHAPTER 13
GENERAL”

Amendment of section 63 of Act 131 of 1998, as amended by section 25 of Act 55 of 2001

24. Section 63 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No transaction involving the amalgamation of the business of a medical scheme with any business of any other person [irrespective of whether that other person is or is not a medical scheme] or the transfer of any business from a medical scheme to any other [medical scheme] person (irrespective of whether that other person is or is not a medical scheme) or the transfer of any business from any other person to a medical scheme, shall be of any force, unless such amalgamation or transfer is carried out in accordance with the provisions of this section.”.

Amendment of section 66 of Act 131 of 1998, as amended by section 27 of Act 55 of 2001

25. Section 66 of the principal Act is hereby amended by the –

- (a) substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) renders a statement, account or invoice to a member or any other person, knowing that such statement, account or invoice is false and which may be used by such member or other person to claim from a medical scheme any benefit or a benefit greater than that benefit to which he or she is entitled in terms of the rules of the medical scheme [; or].”;

- (b) substitution in subsection (1) for the words following paragraph (e) of the following words:

“shall, subject to the provisions of [subsection] subsections (1A) and (2), be guilty of an offence, and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and imprisonment.”;

- (c) insertion after subsection (1) of the following subsection:

“(1A) Notwithstanding the provisions of subsection (1), any person who –

- (a) in any way unlawfully obstructs or attempts to delay or prevent a payment being made from a medical scheme to the risk equalisation fund;
- (b) makes or causes or allows to be made any false entry or statement to the Council which may affect the quantum of a financial transfer, or signs off on or submits any such

statement or entry to the Council without reasonable grounds for believing the same to be true;

- (c) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records of falsifies or authorises the falsification of any books of account or other records, which causes, may cause or is intended to cause an error in the value of a financial transfer; or
- (d) in any other way makes use of any fraud, art or contrivance whatsoever, or authorizes the use of any such fraud, art or contrivance which causes, may cause or is intended to cause an error in the value of a financial transfer,
shall be guilty of an offence and is liable on conviction to a fine not exceeding R1000000 or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.”

Amendment of section 67 of Act 131 of 1998, as amended by section 28 of Act 55 of 2001 and section 3 of Act 62 of 2002

26. Section 67 of the principal Act is hereby amended by the —

(check consequential amendments)

- (a) insertion in subsection (1) of the following paragraphs after paragraph (o):

- “ (oA) duties of a principal officer;
 (oB) requirements and criteria for the determination of the fit and proper status of a trustee, principal officer and any other person required to be fit and proper to perform any function or duty in terms of this Act;
 (oC) the conduct of elections for members of the board of trustees of a medical scheme, including conditions and requirements relating to —
 (i) oversight of election processes;
 (ii) timing and location of elections;
 (iii) processes for the nomination of persons standing for election as trustees;
 (iv) advance notice to members concerning elections and voting processes; and
 (v) any other matter affecting the fairness of elections;
 (oD) the sound operation of risk equalization, including:
 (i) limitations to the benefits in respect of which risk equalisation will apply, as contemplated in section 19B;
 (ii) the formula for the determination of the quantum of financial transfers, as contemplated in section 19K;
 (iii) periods within which the Registrar shall make financial transfers to medical schemes, as contemplated in terms of section 19O(3); and
 (iv) the amounts of administrative penalties as contemplated in terms of section 19S(3);
 (oE) the determination of contributions for basic benefits and supplementary benefit options, as contemplated in sections 32F and 32G.”

- (b) insertion after subsection (1) of the following subsection:

- “(1A) The Minister may prescribe variations from the requirements of the regulations prescribed in terms of subsection (1) to be applied to medical scheme products which cater specifically for low income persons, provided that the variations so prescribed are —
 (a) reasonably necessary to create conditions for the emergence of such medical scheme products in the market; and
 (b) in the best interests of low income consumers.”

Insertion of Schedule 3 of Act 131 of 1998

27. The principal Act is hereby amended by the insertion after Schedule 2 of the following Schedule:

“Schedule 3

TRANSITIONAL ARRANGEMENTS RELATING TO AMENDMENTS EFFECTED BY MEDICAL SCHEMES AMENDMENT ACT, 2007

Definitions

1. In this Schedule —

“the amending Act” means the Medical Schemes Amendment Act, 2007;

“the principal Act” means the Medical Schemes Act, 1998.

Trustees

1. A person who, immediately prior to commencement of the amending Act was lawfully a trustee of a medical scheme but who is not eligible to serve as a trustee of the medical scheme as a consequence of amendments to the principal Act by the amending Act, shall vacate such office within a period of twelve calendar months after the commencement of the amending Act.

2. A board of trustees which, immediately prior to commencement of the amending Act was lawfully constituted, but which is no longer lawfully constituted as a consequence of amendments to the principal Act by the amending Act shall, within a period of twelve calendar months after the commencement of the amending Act —

- (a) change the constitution of the board of trustees to comply with the principal Act as amended by the amending Act; and**
- (b) to the extent necessary, amend the rules of the medical scheme accordingly.**

Principal officers

3. A person who immediately prior to commencement of the amending Act was lawfully a principal officer of a medical scheme but who is not eligible to serve as a principal officer of the medical scheme in terms of section 57C of this Act as a consequence of amendments to the principal Act by the amending Act, shall vacate such office within a period of twelve calendar months after the commencement of the amending Act.”

Application of this Act

28. Subject to the transitional clauses contained in schedule 3 inserted in Act 131 of 1998 by section 27 of this Act, the amendments effected by this Act to Act 131 of 1998 shall apply to all relevant contractual or other business activities or arrangements notwithstanding the fact that such contractual or other business activities or arrangements may have been initiated or entered into prior to the coming into operation of any provision of this Act.

Short title and commencement

29. (1) This Act is called the Medical Schemes Amendment Act, 2008, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

(3) Notwithstanding the coming into effect of this Act, financial transfers shall not commence until such time as the Minister of Health, in concurrence with the Minister of Finance, provides written approval therefor after consideration of:

- (a) the adequacy of the systems in place in the Council for Medical Schemes to effectively manage risk equalisation transfers;**
- (b) the quality of data available for purposes of administering the risk equalisation fund; and**
- (c) any other matter relevant to such approval.**

EXPLANATORY MEMORANDUM ON THE OBJECTS OF THE MEDICAL SCHEMES AMENDMENT BILL, 2008

1. The Medical Schemes Amendment Bill 2008 (“the Bill”), seeks to amend the Medical Schemes Act, 1998 (Act No.131 of 1998) (“the principal Act”) to provide for —
 - (a) the establishment of a risk equalisation fund, and for the implementation of risk equalisation among medical schemes;
 - (b) a benefit structure within medical schemes that reduces complexity and facilitates greater cross-subsidisation across the membership of the medical scheme;
 - (c) revisions to the governance framework within medical schemes to promote improved corporate governance;
 - (d) certain measures to facilitate the emergence of risk-pooled medical scheme products for low income beneficiaries; and
 - (e) various incidental matters.

2. CLAUSE BY CLAUSE ANALYSIS OF THE BILL

Clause 1

Clause 1 deals with definitions and inserts the definitions of basic benefits, benefit, supplementary benefit option, financial transfer, material relationship, risk equalisation, risk equalisation risk factor, risk equalised benefits, and the Fund. The definition of principal officer is amended to make reference to the section which places an obligation on trustees to appoint a principal officer (see discussion of Chapter 12, Part 2, below).

Clause 2

Clause 2 amends section 7 of the principal Act, by extending the functions of the Council for Medical Schemes (CMS), to include control of the management and administration of the Risk Equalisation Fund (the Fund) in accordance with the provisions of the Act, and to place an obligation on the Council to engage in effective consultation in relation to the implementation of the REF.

Clause 3

The financial year of the Council is changed from 31 December to 31 March in order to bring the Act in line with the requirements of the Public Finance Management Act (PFMA).

Clause 4

In clause 4, the Bill inserts a new chapter 3A in the principal Act, which becomes sections 19A to 19S. The Chapter is divided into 5 Parts: 1: General Provisions; 2: Risk Equalisation Fund; 3: Information Required for Risk Equalisation; 4: Risk Equalisation Methodology; and part 5: Appeals and Penalties.

PART 1**Section 19A**

Section 19A makes it clear that risk equalisation shall apply to schemes and schemes have a consequent obligation to comply with the requirements of risk equalisation.

Section 19B

Section 19B provides for prescribed minimum benefit, that these are prescribed by the Minister.

PART 2

Part 2 of Chapter 3A (sections 19C to 19H) deals with the institutional framework of the Fund, with specific focus on ensuring proper governance, control and accountability for the administration of the Fund.

Section 19C

The Council is required to establish a Fund, and open a bank account for the Fund. The Council's statutory requirements for reporting are also extended to include reporting on the Fund.

Section 19D

The section provides that the money in the Fund shall be managed by the Council.

Section 19E

Section 19E defines the sources of revenue which may lawfully form part of the Fund.

Section 19F

Section 19F provides that the moneys in the Fund may be appropriated only for risk equalisation transfers.

Section 19G

Section 19G provides for investment of monies not immediately required and for unexpended balances of the Fund to be carried forward to successive financial years.

Section 19H

Section 19H provides for separate accounting records to be kept by the Council in respect of the Fund, and for audits to be conducted by the Auditor-General.

PART 3

Section 19I

Section 19I requires medical schemes to submit information to the Registrar, which may be required for purposes of risk equalisation. The section also protects personal information.

Section 19J

Section 19J provides for various measures to allow for proper verification of information submitted by schemes for purposes of risk equalisation, including: the submission of additional information by medical schemes, reports by an auditor, and conducting of inspections. Specific duties of auditors are also set out in this clause.

PART 4

Section 19K

The section enables the Minister to prescribe a formula for the determination of the quantum of financial transfers.

Section 19L

The section provides for the publication by the Council of information relating to risk equalisation risk factors.

Section 19M

The section provides for the publication of information related to risk equalisation risk factors.

Section 19N

Section 19N provides for the determination of amounts of financial transfers.

Section 19O

Section 19O provides for the effecting of financial transfers.

Section 19P

Section 19P makes provision for the possibility of the progressive implementation of risk equalisation to be determined by the Minister on the recommendation of the Council. This would entail incremental annual increases in the percentage of financial transfers that are payable, taking into account the interest of the financial soundness and viability of medical schemes in general.

Section 19Q

Section 19Q provides for the Registrar to timeously provide medical schemes with projections on financial transfers.

Section 19R

This provision makes it clear that if an appeal is lodged against a decision made in terms of the provisions of this chapter, such appeal shall not suspend any obligation to pay a financial transfer pending the outcome of an appeal.

Section 19S

Section 19S makes provision for administrative penalties to be imposed by the Registrar on medical schemes for any failure to comply with risk equalisation provisions of the Act.

Clause 5

The clause provides for matters that must be included in rules of medical schemes.

Clause 6

The clause provides for the deletion of section 29A of the principal Act which is replaced by new section 32B.

Clause 7

Clause 7 introduces Chapter 5A which generally provides for admission of beneficiaries. Following hereunder are specific provisions.

CHAPTER 5A: ADMISSION OF BENEFICIARIES**Section 32A**

Section 32A incorporates the existing section 29(3) of the Act, without substantive amendment, providing for open enrolment.

Section 32B

Section 32B incorporates, without amendment, the existing section 29A of the Act, providing for waiting periods.

Section 32C

Section 32C provides for continuation of membership.

Section 32D

Section 32D provides for cancellation and suspension of membership.

Section 32E

Section 32 E provides for community rating by medical schemes.

Section 32F

Section 32F provides for contribution requirements for basic benefits.

Section 32G

Section 32 G provides for contribution requirements for supplementary benefits.

Section 32H

Section 32H provides for discounts for choice of provider.

Clause 8

The clause provides for a new heading to chapter 6.

Clause 9

The clause provides for a new section 32J which provides for basic benefits and supplementary benefit options.

Clause 10.

This clause provides for consequential amendments to section 33.

Clause 11

The clause provides for a new section 34A that provides for matters relating services obtained from public hospitals.

Clause 12

The clause seeks to amend section 35(12) of the principal Act by allowing the Registrar to act in certain matters without the concurrence of the Council.

Clause 13

The clause provides for changes references in section 36 to the now repealed Public Accountants' and Auditors' Act, 1991 to the relevant provisions of the new Auditing Professions Act, 2005.

Clause 14

The amendment to section 37 updates the standards for annual financial statements to come in line with International Financial Reporting Standards.

Clause 15

References in section 44(2) & (3) to the now repealed Inspection of Financial Institutions Act 1984 has been changed to reflect a corresponding reference to the 1998 Act. Erroneous cross references in subsections (6), (7), (10) and (11) of section 44 have also been corrected. These are purely technical corrections.

Clause 16

The clause provides for powers of the High Court in relation to flawed election processes, these powers are now integrated in section 51 of the Act where they are considered to be more appropriately located.

Clause 17

Section 56 of the Act is amended by replacing references to the now repealed Financial Institutions (Investment of Funds) Act, 1984, with references to the Financial Institutions (Protection of Funds) Act, 2001.

Clause 18

Clause 18 amends the heading of Chapter 12 from "General" to "Governance". The Chapter heading "General" is reinserted by clause 23 after section 57 I.

Clause 19

Clause 19 inserts the heading for Part 1: Board of Trustees.

Clause 20

The amendment to section 57(1), consistent with the governance model described above, are intended to emphasise the governance role of trustees, as opposed to management, by the Board. The amendment to section 57(2) establishes the accountability of the Board to its members and, to the extent provided for in the Act, to the Registrar and the Council.

Clause 21

The clause introduces sections on corporate governance in general and specifically provides for section 57A, which provides for the composition of boards of trustees and section 57B, which provides for duties of board of trustees.

Clause 22

This clause provides for matters relating to principal officers in general and specifically provides for their appointment, corporate governance, duty of care, disclosure, and suspension and removal from office. It is important to note that the amendment seeks to ensure that a principal officer or trustee who is aggrieved by a suspension or termination, and who believes that it has resulted from him or her duly performing his or her duties, or otherwise exposing inappropriate or unlawful conduct, to complain in writing to the Registrar. The Registrar then has a duty to investigate and, if there is found to be merit in the complaint, invoke such powers as may already be provided for in the Act to remedy the situation.

Clause 23

In accordance with the restructuring of this area of the Act, the Chapter heading for Chapter 13: General is inserted by this clause.

Clause 24

The clause simply seeks to clarify the existing section 63.

Clause 25

Section 66 of the Act is amended to make provision for specific offences and penalties in relation to fraudulent or obstructive measures designed to frustrate or subvert the effective application of risk equalisation among medical schemes.

Clause 26

The amendments to section 67 of the Act create enabling provisions for the Minister to make regulations relating to additional matters.

Clause 27

Clause 27 provides for transitional measures in relation to trustees and principal officers. It also provides for the short title of the Act and the fixing of the commencement date. It also provides for a trigger for the risk equalisation financial transfers to be in the hands of the Ministers of Health and Finance, based on consideration of the adequacy of risk equalisation systems, the quality of data for purposes of risk equalisation and any other relevant matter.

Clause 28

Clause 28 provides for contractual or other business activities or arrangements notwithstanding the fact that such contractual or other business activities or arrangements may have been initiated or entered into prior to the coming into operation of any provision of this Act.

Clause 29

Clause 29 provides for the short title and commencement of the Act, that this Act is called the Medical Schemes Amendment Act, 2008, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments

DRAFT BILL

To amend the National Health Act, 2003, so as to provide for some definitions; the appointment and functions of the Facilitator and Assistant Facilitators; support and remuneration for the Facilitator and Assistant Facilitators; conflict of interest; collective negotiations and individual bargaining on prices; resolution of disputes; limitation of liability; exemption for medicines; short title and commencement of the Act; and matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Insertion of chapter 10A in Act 61 of 2003

1. The National Health Act, 2003 (Act No. 61 of 2003) (“hereinafter referred to as “the principal Act”) is hereby amended by the insertion after chapter 10 of the following chapter:

“Chapter 10A***Definitions***

89A. In this chapter-

- (a) “*prescribed minimum benefits*” mean prescribed minimum benefits as provided for in the regulations made in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998) published under GN R570 of 5 June 2000 as amended; and
- (b) “*prices*” mean tariffs, fees or any form of reimbursement for health services rendered, procedures performed and consumable and disposable items utilised by health establishments, health care providers or health workers.

Objects of Chapter

- 89B. The object of this chapter is to create a framework that-
- (a) enables health care providers, health establishments and medical schemes to-
 - (i) negotiate collectively on prices; and
 - (ii) bargain individually on prices; and
 - (b) ensures transparency and fairness in the determination of prices.

Facilitator, Assistant Facilitators, appointment and functions

- 89C. (1) The Minister shall-
- (a) by notice in the Gazette, invite nominations on the appointment of a Facilitator for Health Pricing (“the Facilitator”);
 - (b) after receiving nominations as contemplated in paragraph (a), appoint a Facilitator and two or more but not exceeding five Assistant Facilitators from such nominations;
 - (c) in an instance where no nominations are received after an invitation, on his or her own accord, appoint the Facilitator and Assistant Facilitators; and
 - (d) ensure that persons appointed as the Facilitator or Assistant Facilitators when severally considered, have qualifications or experience in mediation and dispute resolution, health economics; law; commerce; health or public administration.
- (2) The Facilitator-
- (a) is appointed on a contract with a fixed term; and
 - (b) must not have an direct interest, financial or otherwise in the affairs of any of the parties taking part in the negotiations or bargaining processes contemplated in section 89F..
- (3) The Facilitator must-
- (a) in the prescribed manner-
 - (i) facilitate the collective negotiations contemplated in section 89F(2)(a);

- (ii) record and submit to the Minister for publication agreements reached at such collective negotiations; and
- (b) where called upon by the parties or a party to individual bargaining, assist such parties during the bargaining process.

(4) The Facilitator may at the request of a party to collective bargaining, require any other party to furnish the party requesting information with any specified information to assist the latter party to make informed choices during the bargaining process.

(5) In facilitating the collective negotiation process, the Facilitator must ensure that the process is conducted in a manner that-

- (a) is fair and transparent to the parties involved; and
- (b) enables the parties to share information that is necessary for them to make informed decisions.

(6) The Facilitator shall-

(a) in an instance where parties to collective negotiations fail to agree on prices, confirm that the parties have failed to agree and refer this matter for arbitration in terms of section 89I; and

(b) confirm in writing to the Minister at the end of both collective negotiations and individual bargaining processes that such processes were transparent and fair to the parties involved; and

(7) Assistant Facilitators shall assist the Facilitator in the performance of his or her functions.

Support and remuneration

89D. (1) The Director-General shall, with the concurrence of the Facilitator, designate staff of the national department as the secretariat for the Facilitator.

(2) The Minister must, in consultation with the Minister of Finance, determine remuneration for the Facilitator and Assistant Facilitators.

Conflict of interest

89E. Persons nominated for the position of the Facilitator or Assistant Facilitators must upon request by the Minister, submit to the Minister a written statement in which it is declared whether or not they have any direct or indirect interest financially or otherwise, which-

- (a) may constitute a conflict of interest in respect of their functions; or
- (b) could reasonably be expected to compromise themselves in the performance of their functions.

Negotiations and Bargaining

89F. (1) The Minister must, within 60 days of publication of the reference price lists (RPL) contemplated in section 90(1)(v), by notice in the Gazette, invite health care providers, health establishments and medical schemes (hereinafter jointly referred to as “the parties”) to negotiate and bargain on prices.

- (2) The parties may-
- (a) negotiate collectively in instances where the parties are represented by representative organizations or associations; and
 - (b) bargain individually in instances where the parties represent themselves as individual entities.
- (3) The parties to both collective negotiations and individual bargaining-
- (a) may conduct such negotiations or bargaining separately according to their specific area of interest; and
 - (b) must use the RPL as a source of reference for negotiations and bargaining.

Prescribed minimum benefits

89G. (1) In collective negotiations, the parties must agree on maximum prices that can be charged, using the RPL as a source of reference.

(2) Where the parties to both collective negotiations and individual bargaining have reached agreements on prices, health care providers and health establishments shall not charge prices in excess of those agreed upon if the prices are in respect of prescribed minimum benefits.

(3) In an instance where-

- (i) negotiations or bargaining as contemplated in section 89F(2) fail and the parties are unable to reach agreement on prices; and
- (ii) such prices are in respect of prescribed minimum benefits, the parties must inform the Facilitator who shall then refer the matter for arbitration in terms of section 89H.

(4) A determination made by the arbitrator is also binding in respect of users who are not members or dependants of members of medical schemes.

Non-Prescribed minimum benefits

89H. The parties negotiating and bargaining on prices that do not relate to prescribed minimum benefits must also use the RPL as a source of reference.

Arbitration, resolution of disputes

89I. (1) A party or parties to the bargaining process or the Facilitator may in the prescribed manner refer a dispute arising from the bargaining process to the Minister.

(2) The Minister shall within 30 days of receipt of the notice of the dispute, refer the dispute to an arbitrator agreeable to both parties and appointed by the Minister.