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DEPARTMENT OF HEALTH

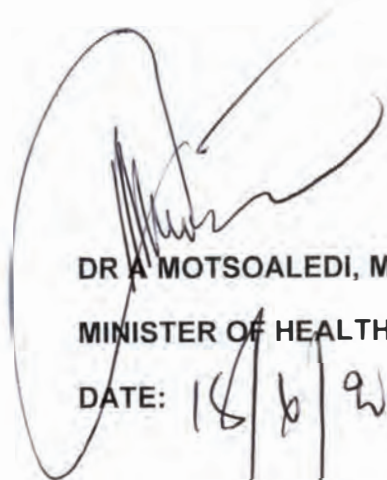
NO. 636

21 JUNE 2018

MEDICAL SCHEMES AMENDMENT BILL, 2018

I, Dr Aaron Motsoaledi, Minister of Health, having obtained Cabinet approval, hereby publish the draft Medical Schemes Amendment Bill, 2018 for broader public comment.

Interested persons are invited to submit any substantiated comments or representation on the proposed Bill to the Director-General of Health, Private Bag X 828, Pretoria, 0001 (for the attention of Deputy Director-General: National Health Insurance, Dr Anban Pillay or e-mail: Anban.Pillay@health.gov.za, within three months of the publication of this Notice.



DR A MOTSOALEDI, MP
MINISTER OF HEALTH
DATE: 18/6/2018

REPUBLIC OF SOUTH AFRICA

MEDICAL SCHEMES AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 41726 of 21 June 2018) (The English text is the official text of the Bill)

(MINISTER OF HEALTH)

[B - 2018]

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.

BILL

To amend the Medical Schemes Act, 1998; so as to exclude the application of the Consumer Protection Act, 2008, in relation to matters governed by the Medical Schemes Act; to extend the functions of the Council; to insert a new section 8A in terms of which the Council may require information from medical schemes concerning the services rendered by the health care providers to beneficiaries; to insert a new Chapter 3A providing for the creation of a Central Beneficiary Register and the management of that register by the Registrar and to establish risk measurement methodology; to re-determine the provisions relating to the admission of beneficiaries to a medical scheme and the cancellation of membership; to insert a new Chapter 5B, in relation to the various requirements applicable in determining the contributions payable to a medical scheme by its members; to provide for a Health Care Providers Register to be kept and maintained by the Registrar; to repeal certain sections; to re-determine the provision dealing with the

establishment of the Appeal Board; to introduce an enhanced system of governance of medical schemes under the new chapter 11A; to empower the Council to determine broker fees from time to time and define the circumstances in which a medical scheme may receive payment of broker fees due by its members to a broker; to declare the carrying on of the business of a medical scheme by a person not registered as a medical scheme to be a separate offence, to prescribe the criminal penalties that may be imposed on persons convicted of that offence; and to provide for matters connected 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, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of "administrator" of the following definition:

"administrator" means any person who has been accredited by the Council in terms of section 58 [, and shall, where any obligation has been placed on a medical scheme in terms of this Act, also mean a medical scheme];";

- (b) by the insertion after the definition of "Appeal Board" of the following definitions:

'audit', where used as a noun, has the meaning ascribed to it by the Auditing Profession Act, 2005 (Act No. 26 of 2005), and the verb 'audit', in whatever tense or form, will be construed accordingly;

'auditor' means an individual or firm that is a registered auditor as defined in section 1 of the Auditing Profession Act, 2005;";

- (c) by the substitution for the definition of "beneficiary" of the following definition:

"'beneficiary' means a member or a person admitted as dependent of a member, and includes any person who is eligible for services provided through the National Health Insurance Fund;";

- (d) by the substitution for the definition of "broker" of the following definition:

"'broker' means a person whose business, or part thereof, entails providing broker services on a commercial basis, but does not include—

(a) an employer or employer representative who provides services or advice exclusively to the employees of that employer on a non-commercial basis;

(b) a trade union or trade union representative who provides services or advice exclusively to members of that trade union on a non-commercial basis; or

(c) a person who provides services or advice exclusively for the purposes of performing his or her normal functions as a member of a board of trustees, or as the chief executive officer, chief

financial officer, employee or administrator of a medical scheme, on a non-commercial basis;";

- (e) by the insertion after the definition of "broker" of the following definition:

"**broker fees** means the fees for broker services that a broker charges a member in terms of an agreement between the broker and the member, or between the broker and an employer who acts on behalf of members in his or her employ with their explicit consent;";

- (f) by the substitution for the definition of "broker services" of the following definition:

"**broker services** means—

- (a) the provision of **[service]** services or advice in respect of the introduction or admission of members to a medical scheme; or
- (b) the ongoing provision of **[service]** services or advice **[in respect of]** regarding access to, or benefits or services offered by, a medical scheme, but does not include any service regarded as a normal or ordinary administrative service provided or to be provided by a medical scheme or an administrator;";

- (g) by the deletion in paragraph (b) of the definition of "business of a medical scheme" of the word "and" at the end of paragraph (b); by the insertion of the word "or" at the end of paragraph (c) of the said definition; and by the addition in the said definition, of the following paragraph:

"(d) to undertake any combination of the activities referred to in paragraphs (a) to (c);";

- (h) by the insertion after the definition of "business of a medical scheme" of the following definitions:

"**chief executive officer**" means the chief executive officer appointed for a medical scheme under section 56K;

'**chief financial officer**' means the employee of a medical scheme charged with the management of the financial affairs of the medical scheme;"

- (i) by the substitution for the definition of "condition-specific waiting period" of the following definition:

"**condition-specific waiting period**" means a period during which a beneficiary is not entitled to claim benefits in terms of this Act—

(a) in respect of a condition for which medical advice, diagnosis, care or treatment was recommended or received within the twelve-month period ending on the date on which an application for membership was made; or

(b) in respect of a further condition the primary cause of which is a condition referred to in paragraph (a);"

- (j) by the insertion after the definition of "condition-specific waiting period" of the following definitions:

"**contribution**" means a recurrent payment to a medical scheme made by or on behalf of a member in accordance with a contribution table for the purpose of qualifying for benefits offered by the medical scheme in terms of its rules;

'**contribution table**' means a table forming part of the rules of a medical scheme which indicates the contributions determined by the

scheme for the year in question and the allocations of such contributions by the scheme;

- (k) by the substitution for the definition of "dependant" of the following definition:

"**dependant**", in relation to a member, means—

(a) the spouse or life partner, dependent child, and dependent grandchild, as well as any other relative of the member in respect of whom the member—

(i) in law is under a duty to provide family care and life maintenance or income support; and

(ii) in fact provides such family care and life maintenance or income support; and

(b) any other person who, under the rules of the medical scheme, is recognised as a dependant of a member;

- (l) by the insertion after the definition of "dependant" of the following definition:

"**designated service provider** means a health care provider or group of health care providers selected and formally contracted by a medical scheme as its preferred service provider or providers to provide relevant health care services to its members;

- (m) by the insertion after the definition of "financial year" of the following definition:

"**Fund**" means the National Health Insurance Fund referred to in the National Health Insurance Act;

- (n) by the insertion after the definition of "general waiting period" of the following definitions:

"**health care provider**" bears the same meaning as defined in section 1 of the National Health Act, 2003 (Act No. 61 of 2003);

'Health Care Providers' Register' means the register of health care providers established by the Registrar in terms of section 32J;

'health services' bears the same meaning as defined in section 1 of the National Health Act, 2003 (Act No. 61 of 2003);

'key management personnel', in relation to any entity, means the persons having the authority and capacity and charged with the responsibility for planning, directing and controlling the activities of the entity, either directly or indirectly, and includes, without limitation of the foregoing—

- (a)** in the case of a medical scheme, the chief executive officer and chief financial officer, but does not include the members of its board of trustees;
- (b)** in the case of any other association of persons, whether corporate or incorporate, the members of its governing body as well as its chief executive functionary and, where such an association also has a chief financial functionary, also that chief financial functionary;
- (c)** every partner of an entity that is a partnership; and
- (d)** in the case of a business undertaking operated by an individual as a sole proprietorship, the sole proprietor of that undertaking;

'managed health care' means clinical and financial risk assessment and management of health care, with a view to facilitating appropriateness and cost-effectiveness of relevant health services within the constraints of what is affordable, through the use of rules-based and clinical management-based programmes;

'managed health care organisation' means an entity accredited in accordance with the provisions of this Act, which performs managed health care functions, and may also be a medical scheme, an administrator, a provider, or any other entity;"

- (o) by the insertion after the definition of "Master" of the following definition:

"'medical savings account' means a savings facility provided to a member within a benefit option, which—

- (a) is owned by the member;
- (b) is held in trust by the medical scheme for the member;
- (c) is operated and managed by the medical scheme;
- (d) does not form part of the assets or liabilities of the medical scheme; and
- (e) is subject to the Financial Institutions (Protection of Funds) Act, 2001 (Act 28 No. of 2001);"

- (p) by the substitution for the definition of "medical scheme" of the following definition:

"'medical scheme' means any person or entity registered in terms of section 24 to carry on or operate the business of a medical scheme;"

- (q) by the insertion after the definition of "medical scheme" of the following definition:

"'medical scheme tariff' means the unit of value, generally corresponding to provider fees, including directly negotiated provider fees, that is used by a medical scheme to determine the extent to which it will directly or indirectly compensate a member in respect of a relevant health service received by the beneficiary;"

- (r) by the substitution for the definition of "officer" of the following definition:

"officer' in relation to a medical scheme, means any member of a board of trustees, the chief executive officer, the chief financial officer and any manager, [principal officer, treasurer] clerk or other employee of the medical scheme, but does not include the auditor of the medical scheme;"

- (s) by the insertion after the definition of "officer" of the following definition:

"open medical scheme' means any medical scheme other than a restricted membership scheme;"

- (t) by the substitution for the definition of "prescribed" of the following definition:

"prescribed' means prescribed by the Minister by regulation in terms of section 67, and "prescribe" must be construed accordingly;"

- (u) by the deletion of the definition of "principal officer";

- (v) by the insertion after the definition of "principal officer" of the following definition:

"provider fees' means the individual unit price, fee or tariff, or any equivalent, that is chargeable to a member by the provider of any relevant health service in respect of the provision of that health service to the beneficiary;"

- (w) by the insertion after the definition of "relevant health service" of the following definition:

"reportable irregularity' means any unlawful act or omission committed by any person responsible for the management of a medical scheme, which—

- (a) has caused or is likely to cause material loss to the medical scheme;
 - (b) is fraudulent or amounts to theft or an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998); or
 - (c) represents a material breach of any fiduciary duty owed by such person to the medical scheme;";
- (x) by the substitution for the definition of "restricted membership scheme" of the following definition:

"restricted membership scheme" means a medical scheme the rules of which restrict **[the]** eligibility for membership by reference to—

- (a) employment or former employment, or both employment **[or]** and former employment, in a profession, trade, industry or **[calling]** occupation;
- (b) employment or former employment, or both employment **[or]** and former employment, by a particular employer, or by **[an]** any employer included in a particular class of employers;
- (c) membership or former membership, or both membership **[or]** and former membership of a particular profession, professional association or trade union; or
- (d) any other **[prescribed matter]** basis of exclusivity as prescribed, but which may not include exclusivity directly or indirectly restricting or limiting an individual's membership on the basis of age, race, gender, sexual orientation or health status or

the risk profile of a group of persons of which the individual is a member;";

- (y) by the insertion after the definition of "restricted membership scheme" of the following definition:

"risk-pooled benefits' means those benefits that are designed to achieve a significant cross-subsidy of high-claiming members by low-claiming members in a benefit option over a 12 month period;";

- (z) by the substitution for the definition of "this Act" of the following definition:

"this Act' includes [the] any regulations made under section 67;";

and

- (aa) by the substitution for subsection (2) of the following subsection:

"(2) For the purposes of this Act —

(a) any reference to a medical scheme must be construed either as a reference to the medical scheme itself or as a reference to its board of trustees, whichever may be appropriate in the context;

(b) the administration of a medical scheme, whether by the medical scheme itself or through an intermediary, encompasses the administration and management of the various matters which constitute a business of a medical scheme. Without detracting from the generality hereof, such administration manifests itself in the rendering of *inter alia* the administrative services with regard to—

(i) the management of the routine and everyday affairs of a medical scheme, including claims administration, the management of beneficiary information and membership

- applications and cancellations, and the communication with beneficiaries regarding their benefits and claims;
- (ii) the annual determination of benefits and the management of benefits and claims;
- (iii) the financial management of the medical scheme;
- (iv) the management of rule amendments;
- (v) liaison with brokers;
- (vi) the marketing of the medical scheme under members of the public;
- (vii) the operation and management of a call centre for the medical scheme;
- (viii) contracting and conducting fee negotiations with the providers of relevant health services;
- (ix) the operation and management of a website for the medical scheme;
- (x) the communication of information to members, the Registrar and the Council regarding benefits and contributions under the medical scheme and the functioning and operations of the medical scheme; and
- (c) a member or his or her spouse or life partner will be deemed to provide income support to a relative contemplated in paragraph (a)(i) of the definition of "dependant" if the member or that spouse or life partner bears more than 50 per cent of the life maintenance costs of that relative or otherwise makes a

substantial, material and indispensable contribution to that life maintenance, albeit less than 50 per cent."

Insertion of section 2A in Act 131 of 1998

2. The following section is hereby inserted in the principal Act after section 2:

"Application of Consumer Protection Act, 2008

2A. The Consumer Protection Act, 2008 (Act No. 68 of 2008), does not apply with reference to—

- (a) the matters that are governed or regulated by or in terms of this Act;
- (b) medical schemes and the other persons that are subject to regulation by or under this Act; and
- (c) the exercise or performance by the Council and the Registrar of the powers, functions and duties conferred or imposed on them by or in terms of this Act."

Amendment of section 3 of Act 131 of 1998

3. Section 3 of the principal Act is hereby amended by the addition of the following subsections:

"(5) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the Council.

(6) The Council is the accounting authority and must fulfil its responsibilities in terms of Chapter 6 of the Public Finance Management Act."

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

4. Section 7 of the principal Act is hereby amended—

(a) by the substitution for paragraph (e) of the following paragraph:

"(e) collect and disseminate information about any aspect of private health care, including information about the prices, utilisation and costs of relevant health services;";

(b) by the substitution for paragraph (f) of the following paragraph:

"(f) make rules and issue Circulars, not inconsistent with the provisions of this Act for the purpose of the performance of its functions and the exercise of its powers;"; and

(c) by the insertion after paragraph (f) of the following paragraphs:

"(fA) establish, maintain and administer a Central Beneficiary Register;

(fB) establish, maintain and administer a central register of Health Care Providers and health care establishments;".

Insertion of section 7A in Act 131 of 1998

5. The following section is hereby inserted in the principal Act after section 7:

"Relationship with the Fund

7A. The Council shall—

- (a) support the Fund in fulfilling its objectives;
- (b) cooperate with the Fund in making recommendations to the Minister on service benefits;
- (c) share available resources, expertise and processes with the Fund;
- (d) cooperate with the Fund on any other matter as determined by the Minister."

Insertion of section 8A in Act 131 of 1998

6. The following section is hereby inserted in the principal Act after section 8:

"Council's power to require certain information

8A. (1) The Council may, from time to time, require medical schemes to furnish the Council in writing with such information as may be required by the Council, in relation to the services rendered by the health care providers, including the following:

- (a) Practice Number of the health care provider;
- (b) HPCSA Number;
- (c) Number of unique beneficiary visits or admissions;

(d) Total amount claimed by the health care provider;

(e) Amount paid from risks;

(f) Amount paid from savings;

Provided that no personal medical information or diagnosis may be required from the medical schemes, in relation to the services rendered by the health care providers.

(2) The Council may delegate the powers conferred on it by this section to the Registrar, but will not by reason of such a delegation be divested of those powers or be precluded from exercising those powers itself, and the Council may withdraw such a delegation at any time."

Amendment of section 12 of Act 131 of 1998

7. Section 12 of the principal Act is hereby amended by the addition of the following subsection:

"(7) Any money payable to the Council in terms of this Act is a debt due to the Council and recoverable by the Registrar."

Repeal of section 13 of Act 131 of 1998

8. Section 13 of the principal Act is hereby repealed.

Repeal of section 14 of Act 131 of 1998

9. Section 14 of the principal Act is hereby repealed.

Insertion of Chapter 3A in Act 131 of 1998

10. The following chapter is hereby inserted in the principal Act after section 19:

"CHAPTER 3A

CENTRAL BENEFICIARY REGISTER

Establishment and purpose of Central Beneficiary Register

19A. (1) The Council must, by notice in the *Gazette*, establish and maintain a register to be known as the Central Beneficiary Register, containing such information with regard to beneficiaries as may be prescribed: Provided that such information may not provide for the beneficiaries' identity, including his or her names, date of birth, address, identity number, medical scheme membership number or health status of the beneficiaries.

(2) The purpose of the Central Beneficiary Register is to establish a database for the purpose of identifying and assessing risks within medical schemes and the Fund and ultimately, for better managing the rights and obligations of beneficiaries of medical schemes.

(3) The Central Beneficiary Register must be managed by the Registrar and he or she must, in consultation with the Council, determine standards for the operation of the Central Beneficiary Register.

(4) For the purposes of subsection (1), medical schemes and the Fund may be required to furnish the Registrar with the information contemplated in subsection (1).

Verification of information

19B. The Registrar may, in writing, direct the medical scheme concerned or the Fund, as the case may be, to provide such explanations or further information or particulars, in relation to any information provided, pursuant to the provisions of section 19A(1)."

Repeal of section 29A of Act 131 of 1998, as inserted by section 10 of Act 55 of 2001

11. Section 29A of the principal Act is hereby repealed.

Amendment of section 31 of Act 131 of 1998

12. Section 31 of the principal Act is hereby amended—

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

"(4) The Registrar may, in writing, direct a medical scheme to amend its rules within a period of 30 days after the date of such a directive, in the manner required by the Registrar in that directive."; and

(b) by the addition of the following subsection:

"(5) (a) Where a medical scheme fails to amend its rules in compliance with the directive issued under subsection (4), the Registrar may proceed to effect the necessary amendment to those rules.

(b) Any amendment of the rules of a medical scheme by the Registrar under paragraph (a) is for all purposes in law deemed to have been effected by the medical scheme itself."

Insertion of Chapter 5A and Chapter 5B in Act 131 of 1998

13. The following chapters are hereby inserted in the principal Act after section 32:

"CHAPTER 5A

ADMISSION OF BENEFICIARIES AND CANCELLATION OF MEMBERSHIP

Open enrolment

32A. (1) Subject to section 32D(6)—

(a) an open medical scheme may not refuse to enrol or admit any applicant as a member or to enrol, admit or recognise any dependent of a member; and

(b) a restricted membership scheme may not refuse to enrol or admit any eligible applicant as a member or to enrol, admit or recognise any dependent of a member.

(2) No medical scheme may refuse to re-enrol or re-admit any applicant as a member of a medical scheme following the termination of that applicant's membership for any of the grounds listed in section 32D.

Waiting periods

32B. (1) A medical scheme may impose on a person in respect of whom an application is made for enrolment or admission as a member or for enrolment, admission or recognition as a dependant, and who has not been a beneficiary of a medical scheme in the Republic for a period of at least 90 days preceding the date of the application, a general waiting period of up to three months.

(2) A medical scheme—
(a) may not impose any waiting period in respect of any child; and
(b) must enrol, admit or recognise any such child as a dependent upon receipt of an application by the member.

(3) A medical scheme may not require a medical history report in respect of any prospective beneficiary other than a report about condition referred to in paragraph (a) of the definition of "condition-specific waiting period."

Continuation of membership

32C. (1) A medical scheme must allow—

- (a) the continuation of the membership of any member who retires from the service of the relevant employer or whose employment is terminated by the employer on account of age, ill-health or other disability; and the dependants of that member; and
- (b) the continued membership of a dependant of a member after the death of the member, until any such dependant becomes a member or becomes a beneficiary of another medical scheme.

(2) If a person who is a member of a medical scheme (hereafter called the first scheme) by virtue of employment by a particular employer, terminate membership of the first scheme with the intention of obtaining membership of another medical scheme, or of establishing a new medical scheme, that other or new medical scheme must admit—

- (a) as a member, any applicant who is a person who so terminated his or her membership of the first scheme; and
- (b) as a dependant, any person who, at the time of such termination, is a dependant of such applicant,

without imposing a waiting period or any new restrictions on account of that applicant's state of health or the state of health of any such dependant.

Cancellation or suspension of membership

32D. (1) A medical scheme may cancel the membership of any member or the enrolment or recognition of any of the member's dependants, or suspend the membership or enrolment or recognition as a dependant for period not exceeding six months, on account of—

- (a) failure to pay any contributions due in terms of the rules, after having been afforded a reasonable opportunity to pay the outstanding contributions;
- (b) failure to repay any amount due and payable to the medical scheme in respect of the member or a dependant of the member after reasonable demands for payment have been issued;
- (c) the submission of a fraudulent claim;
- (d) the commission of any other fraudulent act in relation to the medical scheme; or
- (e) the non-disclosure of material information in accordance with the guidelines issued by the Council.

(2) During the period of suspension imposed in terms of subsection (1)—

- (a) the member concerned shall remain liable to pay full contributions to the medical scheme; and
- (b) the medical scheme shall not be obliged to provide benefits to the member or dependant concerned.

(3) If during the period of suspension imposed in terms of paragraph (a) or (b) of subsection (1), the member concerned in compliance with paragraph (a) of subsection (2) pays or repays the amount due to the medical scheme which led to his or her suspension—

- (a) the medical scheme shall forthwith reinstate the membership of the member or the enrolment or recognition of the dependant; and

(b) notwithstanding paragraph (b) of subsection (2), such person or dependant shall become entitled to benefits from the start of the period of his or her suspension.

(4) If, within a period of six months after the expiry of the period of suspension imposed in terms of paragraph (a) or (b) of subsection (1), the member concerned pays or repays the amount due to the medical scheme which led to the suspension and pays any unpaid amounts due to the medical scheme under paragraph (a) of subsection (2), then, notwithstanding paragraph (b) of subsection (2), such person or dependant shall become entitled to benefits during the period of his or her suspension.

(5) A medical scheme may not cancel or suspend the membership of a member or the enrolment or recognition of any of the member's dependants except in accordance with this section.

(6) Where a medical scheme has cancelled the membership of any member or the enrolment or recognition of any of the member's dependants in terms of this section and the member or the member's dependant reapplies for membership to the medical scheme concerned, the medical scheme may impose a reasonable administration penalty on such a person which does not exceed an amount equal to that person's monthly contribution.

CHAPTER 5B

CONTRIBUTIONS

Community rating

32E. A medical scheme must not determine contributions on the basis of—

- (a) the age of a person or a group of persons, except to the extent permitted by this Chapter;
- (b) any of the other grounds specified in section 9(3) of the Constitution of the Republic of South Africa, 1996;
- (c) the state of health of a person or a group of persons;
- (d) the frequency of the utilisation by a person or a group of persons of relevant health services; and
- (e) any other factor which may indicate that a person or a group of persons may pose an adverse financial risk to the medical scheme.

Permissible and impermissible differentiation of contributions

32F. (1) A medical scheme—

- (a) must determine contributions for mandatory benefits based on income;
- (b) subject to paragraph (c), must not differentiate between the contributions of particular members or dependants for the same benefit options: Provided that a medical scheme may determine in its rules the

maximum number of dependants in respect of whom contributions shall be payable;

(c) must determine different contributions for—

- (i) adult beneficiaries, being all members and all dependants who are older than 30 years of age who are not late-joining beneficiaries referred to in sub-paragraph (iv);
- (ii) young adult beneficiaries, being all dependants who are older than 18 years of age but younger than 30 years of age;
- (iii) child beneficiaries, being all dependants younger than 18 years of age other than the spouses of members; and
- (iv) late-joining beneficiaries, being all applicants who, at the date of application for membership or admission as a dependant, as the case may be, are 35 years of age or older but excludes any beneficiary who enjoyed coverage with one or more medical schemes as from a date preceding 1 April 2001, without a break in coverage exceeding three consecutive months since 1 April 2001.

(2) The contribution payable in respect of—

- (a) a child beneficiary may not exceed 20 per cent of the contribution payable in respect of an adult beneficiary; and
- (b) a young adult beneficiary may not exceed 40 per cent of the contribution payable in respect of an adult beneficiary.

(3) A medical scheme may determine an additional contribution payable by a late-joining beneficiary, which shall not exceed the amount prescribed, having regard to such beneficiary's prior membership of

one or more medical schemes: Provided that a medical scheme may, on good cause shown by a late-joining beneficiary, determine that no additional contribution shall be payable.

Discounts for utilising designated service providers

32G. A medical scheme may provide in its rules for a uniform percentage of discount on the contribution payable by a member within a benefit option where, at the time of selecting the benefit option, the member and the member's dependants elect to have the health care services provided by a designated service provider, if the discount is—

- (a) indicated in the contribution table of the medical scheme; and
- (b) approved by the Registrar in terms of section 33.

Contribution table

32H. The contribution table must specify separately in relation to each benefit option—

- (a) the contributions payable in respect of each class of beneficiary referred to in section 32F(1)(a) and(c);
- (b) the maximum number of dependants in respect of whom contributions shall be payable;
- (c) the discount, if any, determined in terms of section 32G;
- (d) the amount allocated to the risk-pooled benefits;
- (e) the amount allocated to the medical savings account, if any;

- (f) the amount allocated to the other costs of carrying on the business of the scheme; and
- (g) the amount allocated to broker fees, if applicable."

Amendment of heading of Chapter 6 in Act 131 of 1998

14. The heading of chapter 6 of the principal Act is hereby substituted for the following heading:

"BENEFITS [OPTIONS]"

Insertion of sections 32I and 32J in Chapter 6 of Act 131 of 1998

15. The following sections are hereby inserted in chapter 6 of the principal Act before section 33:

"Comprehensive service benefits

- 32I.** (1) The Council shall, in consultation with the Minister and the Fund, by notice in the *Gazette*—
- (a) determine comprehensive service benefits; and
 - (b) specify relevant health services in relation to comprehensive service benefits conditions specified in terms of paragraph (a).

(2) Subject to any limits or conditions as the Council may specify by notice in the Gazette, a medical scheme must pay in full, without co-payment or the use of deductibles—

(a) the costs of any relevant health services determined in terms of subsection (1)(b); and

(b) if no relevant health services have been determined in terms of subsection (1)(b) in relation to a comprehensive service benefit condition determined in terms of subsection (1)(a), the costs of any relevant health services relating to such condition.

(3) Before the Council publishes a notice in terms of subsection (1) or (2), the Council must publish a draft of the notice in the Gazette for written public comment within a stated period of not less than 30 days from the date of publication of the draft notice."

Health Care Providers Register

32J. (1) (a) The Registrar must establish, maintain and administer register of the health care providers and health establishments known as the Health Care Providers Register.

(b) The register must contain at least the following particulars in respect of every health care provider and health establishment:

(i) In case of the service provided by a natural person, the full names and qualifications, field of practice, interest or specialisation, the regulatory authority under which the service is offered, the appropriate number denoting registration of the individual with the relevant authority, and

the name and physical and postal address of the practice or business of the supplier;

- (ii) in the instance where the service is provided by a non-natural person, the full name of the entity, the sphere of business, the regulatory authority under which the service operates, and the appropriate number denoting a license to perform the said service; and
- (iii) such other additional information or particulars as may be determined by the Council by notice in the Gazette.

(c) (i) Any health care provider and or health establishment must apply, in the manner determined by the Council, for enrolment in the Health Care Providers Register.

(ii) Such an application must contain the particulars and information contemplated in paragraph (b) and be accompanied by such documentation as may be determined by the Council.

(d) Where particulars and information contemplated in paragraph (b) relating to any particular health care provider or health establishment have been entered in the Health Care Providers Register, the Registrar must allot to the health care provider or health establishment concerned a unique registration number, and issue a certificate of registration in the format determined by the Council bearing that unique registration number.

(2) For the purposes of subsection (1), the Registrar may from time to time in writing direct any medical scheme to provide aggregate information of payments made to any health care provider who, during a

specified period, either in full or in part and whether directly or indirectly, provided relevant health services to any beneficiary.

(3) (a) Subject to any provision in this Act to the contrary, a medical scheme may elect not to pay a health care provider directly for the relevant health service provided to a beneficiary unless that health care provider is registered as such in the Health Care Providers Register under subsection (1).

(b) Where the health care provider is not so registered and a medical scheme has elected not to pay the relevant health care provider directly, the medical scheme is obliged to make the payment in question directly to the member concerned, who then will be responsible for paying that health care provider.

(4) Information extracted from the Health Care Provider Register must be made publicly available for the general information of medical schemes, the Fund and other interested parties."

Substitution of section 33 of Act 131 of 1998

16. The following section is hereby substituted for section 33 of the principal Act:

"Approval and withdrawal of benefits options

33 (1) (a) A medical scheme may not offer, market or provide any benefit option unless such benefit option has been approved by the Registrar on application made by the medical scheme.

(b) Such an application—

- (i) must be submitted in a manner and form, and contain such information, as may be prescribed; and
- (ii) must be accompanied by a business plan and any other information indicating the viability of the proposed benefit option and its impact on the medical scheme as a whole.

(2) The Registrar shall not approve any benefit option which in his or her opinion will run at a loss in the next financial year of the medical scheme unless he or she is satisfied that—

- (a) such benefit option will not jeopardise the financial soundness of the medical scheme; and
- (b) it will be in the best interests of the beneficiaries on the relevant benefit option, taking into account considerations of quality and cost effectiveness.

(3) With a view to ensuring the financial soundness of all or any of the benefit options within a medical scheme, the Registrar—

- (a) may demand from the medical scheme such financial guarantees as the Registrar considers sufficient for that purpose; or
- (b) impose such requirements regarding the reserves to be held by the medical scheme, additional to the statutory requirements in that regard imposed in Chapter 7, as are necessary for that purpose.

(4) If, on account of any inspection or investigation in terms of this Act or any report, document, statement or information furnished or provided to the Registrar in terms of this Act, the Registrar is of the opinion that a benefit option is or may not be financially sound, the Registrar may subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), issue a written directive whereby—

(a) the approval of the benefit option in question is withdrawn; and

(b) the medical scheme concerned is directed to make all the amendments to its rules that may be necessary as a result of that benefit option being withdrawn, and—

(i) to do so not later than the date specified for that purpose in that directive; and

(ii) to cause that amendment to take effect as from the date likewise specified.

(5) (a) Where a medical scheme has failed to amend its rules in compliance with a directive issued to it by the Registrar under subsection (4)(b), the Registrar may proceed to effect the necessary amendment to those rules.

(b) Any amendment of the rules of a medical scheme by the Registrar under paragraph (a) is for all purposes in law deemed to have been effected by the medical scheme itself."

Amendment to section 34 of Act 131 of 1998

17. Section 34 of the principal Act is hereby amended by the addition of the following subsection:

"(3) The registrar may, after consultation with the Minister, restrict the extent of benefits offered by medical schemes, having regards to the benefit and services coverage under the Fund thereby eliminating duplicative costs for the same benefit."

Amendment of section 44 of Act 131 of 1998, as amended by section 17 of Act 55 of 2001

18. Section 44 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"Inspections [and], reports and other information";

(b) by the substitution for subsections (1),(2) and (3) of the following subsections, respectively:

"(1) A medical scheme [shall, at] or any person accredited in terms of this Act or transacting any business with a medical scheme must, on the written request of the Registrar, or during an inspection, in terms of this Act, of the affairs of a medical scheme by the Registrar or [such other person authorised by him or her] by

any person authorised thereto by the Registrar, produce at any place where [it] the requested party carries on business, its books, documents, records and [annual] financial statements in order to enable the Registrar or [such other person authorised by him or her] that authorised person to obtain any information relating to the medical scheme that may be required in connection with the administration of this Act.

(2) In addition to the powers and duties conferred or imposed by this Act on the Registrar or such authorised person for the purposes of such an inspection, the Registrar or that person shall have all the powers and is subject to all the duties conferred or imposed upon an inspector by sections 4, 5, 6 and 8 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), as if the Registrar or that authorised person had been appointed an inspector under section 2 of that Act.

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

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

"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] must** be

accompanied by a report thereon by the auditor of the medical scheme, **[and]** in which the auditor **[shall]** must state";

- (d) by the substitution for subsections (7) and (8) of the following subsections, respectively:

"(7) If, on account of any statement, document or information furnished to the Registrar by virtue of subsection (5), the Registrar deems it deemed necessary in the interest of the members of the medical scheme concerned the Registrar may, by notice in writing direct the medical scheme to furnish to him or her a report prepared by an actuary, in the form and relating to the matters specified by the Registrar in the notice.

(8) The Registrar may from time to time place any restriction on a medical scheme's non-healthcare expenditure in respect of any financial year, either with reference to specified individual components of that expenditure or to aggregate expenditure, and may for that purpose determine the basis on which that expenditure shall be calculated."

- (e) by the substitution in subsection (9), for the words preceding paragraph (a) of the following words:

"The Registrar may, if he or she is, on account of an inspection or investigation in terms of this Act or on account of any report, document, statement or information furnished to him or her under this section, of the opinion that a medical scheme is or may be rendered not financially sound or it is in the interests of the members of the medical scheme—"

- (f) by the substitution in subsection (10), for the words preceding paragraph (a) of the following words:

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

- (g) by the substitution for subsection (11) of the following subsection:

"(11) If a medical scheme fails to amend its rules as directed and indicated by the Registrar in his or her notice under subsection (10)(a), within the period specified in that notice, the Registrar may amend such rules, which amendment shall be deemed to be an amendment within the purview of section 31."; and

- (h) by the addition of the following subsection:

"(12) The costs of the actions required by the Registrar under subsections (9) or (10) shall be borne by the medical scheme concerned.".

Amendment of section 45 of Act 131 of 1998

19. Section 45 of the principal Act is hereby amended by the addition of the following subsection:

"(3) Where, after examination of the information submitted in terms of subsections (1) and (2), the Registrar is satisfied on reasonable grounds that the business of a medical scheme is being carried on by a person not registered as a medical scheme, the Registrar, must by written notice served on the person concerned—

- (a) inform that person of that fact and that the person, by so carrying on that business, is in contravention of this Act and guilty of an offence in terms of section 66(1A); and
- (b) direct that person forthwith to cease the carrying on of that business unless registered as a medical scheme in compliance with the provisions of this Act."

Substitution of section 47 of Act 131 of 1998

20. The following section is hereby substituted for section 47 of the principal Act:

"Complaints and Disputes

47. (1) The Registrar shall publish guidelines about the content and application of the dispute resolution mechanisms that have to be included in the rules of a medical scheme as required by section 29(1)(j).

(2) Any member or a third party on behalf of a member may lodge a written complaint about a medical scheme with the medical scheme of which he or she is a member.

(3) The medical scheme must deal with every such complaint as soon as practically possible in accordance with the dispute resolution mechanisms in its rules and the guidelines made in terms of subsection (1).

(4) Any person may complain to the Registrar in writing about—

- (a) a medical scheme, including its administration, the handling of its funds and the interpretation or application of its rules; or
- (b) any person required to be registered or accredited in terms of this Act or any person whose professional activities are regulated by this Act, where such person has—
 - (i) acted, or failed to act, in contravention of this Act;
 - (ii) acted improperly in relation to any matter which falls within the jurisdiction of the Council; or
 - (iii) treated a member unfairly.

(5) In the case of a complaint about a medical scheme, the complainant must first attempt to settle the complaint with the medical scheme concerned

(6) Subject to subsection (5), the Registrar must transmit a copy of the complaint to the medical scheme or person against whom the complaint is directed.

(7) The medical scheme or person against whom the complaint is directed must respond in writing, within 10 working days or such longer period as the Registrar may allow, or such shorter period as the Registrar may in exceptional circumstances direct in the transmission referred to in subsection (6).

(8) As soon as practically possible after receipt of the response or the expiry of the 10 day period referred to in subsection (7), the

Registrar must consider the complaint and inform the parties in writing of his or her decision and the reasons thereof.

(9) Subject to section 49, the decision of the Registrar shall be binding on the parties."

Repeal of section 48 of Act 131 of 1998

21. Section 48 of the principal Act is hereby repealed.

Substitution of section 49 of Act 131 of 1998

22. The following section is hereby substituted for section 49 of the principal Act:

"Appeal against decision of Registrar

49. (1) Any person who is aggrieved by a decision of the Registrar under this Act may appeal in writing to the Appeal Board.

(2) An appeal must be lodged with the secretary of the Appeal Board within 30 days of the person becoming aware of, or of the day when the person ought to have become aware of, a decision, or within such further period as the Appeal Board may for good cause shown, allow.

(3) An appeal lodged in terms of this section does not suspend any decision of the Registrar pending the outcome of the appeal, unless the chairperson of the Appeal Board or a member of the Appeal Board

designated by the chairperson, on application by the appellant or another affected person, directs otherwise.

Substitution of section 50 of Act 131 of 1998

23. The following section is hereby substituted for section 50 of the principal:

"Appeal Board

50. (1) There is hereby established an Appeal Board.

(2) The appeal board consists of not more than 10 members, appointed by the Minister, of whom—

(a) at least three members must be practising advocates or attorneys with a minimum of 10 years' experience or judges who have been discharged from active service, one of whom must be the chairperson; and

(b) the rest must be persons who have experience and knowledge of medical schemes.

(3) Section 5 applies with the changes required by the context to the appointment of members to the Appeal Board and the vacation of office by such members.

(4) (a) A member of the appeal board is appointed for a period of five years.

(b) The Minister may reappoint a member of the appeal board at the expiry of that member's term of office for one further period of five years.

(5) The Minister may, after affording the member a reasonable opportunity to be heard, terminate the period of office of a member of the Appeal Board, if—

(a) the member is unable to perform the functions of office effectively; or

(b) the member is guilty of misconduct.

(6) Any vacancy that occurs on the Appeal Board must be filled by the appointment of another person, subject to the provisions of subsections (2) and (3), and any person so appointed holds office for a period referred to in subsection (4)(a).

(7) A member of the Appeal Board who is not in the full-time employment of the State must be paid such remuneration and allowances as the Council may, from time to time, determine.

(8) The Registrar shall designate a staff member to act as secretary of the Appeal Board.

(9) The Council is responsible for the expenditure of the Appeal Board."

Insertion of section 50A in Act 131 of 1998

24. The following section is hereby inserted in the principal Act after section 50:

"Panels of Appeal Board and appeal proceedings

50A. (1) The chairperson of the Appeal Board—

- (a) may, for each appeal lodged, appoint at least three of the members of the Appeal Board to form an appeals panel, of whom one (1) must be the member contemplated in section 50(2)(a);
- (b) must appoint a chairperson from amongst the members of the panel to preside over a hearing of the panel and that chairperson must have a casting vote in the event of an equality of votes;
- (c) must assign each appeal to a panel
- (d) must manage the case load of the Appeal Board; and
- (e) may make rules for appeal proceedings, which must be published by notice in the Gazette.

(2) Any reference in this Act or any other law to the Appeal Board must be construed as including a reference, where appropriate in the case of a particular appeal, to a panel to whom an appeal is or was assigned.

(3) If, before or during a hearing in which a member is participating, it becomes apparent that the member has an interest in a matter, that member must—

- (a) immediately and fully disclose this interest to the other members of the panel; and
- (b) withdraw from any further involvement in that hearing.

(4) If, because of resignation, illness, death or withdrawal from a hearing, a member of the panel is unable to complete a hearing, the chairperson of the Appeal Board may—

- (a) replace that member;

- (b) direct that the hearing of that matter must proceed before the remaining members of the panel; or
- (c) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.

(5) When the chairperson of a panel deems it necessary that the panel be assisted by an assessor having expert knowledge of a particular relevant matter, the panel may co-opt any such person to participate in the appeal as an assessor of the panel, without any right of participation in any decision making.

(6) An appeal is heard on the date and at the time and place determined by the chairperson of the panel.

(7) The chairperson of a panel may, subject to this Act and the rules referred to in subsection (1)(a)(iii), determine the procedure for hearing an appeal.

(8) The Registrar and any party to an appeal may be represented by a legal representative of his or her choice and at his or her own expense: Provided that in an appeal against a decision of the Registrar taken under section 47 concerning a complaint about a medical scheme, the chairperson of a panel may, if the interests of justice so require and after affording the medical scheme concerned a reasonable opportunity to be heard, instruct the secretary of the Appeal Board to appoint a legal representative for a member who is not legally represented, in which event the costs of such legal representation shall be borne by the medical scheme concerned.

(9) The Appeal Board must conduct its hearings in public, unless the chairperson of the panel rules that specific persons or groups of persons be excluded from the hearing, on good cause shown.

(10) An appeal is decided on the written evidence, factual information and documentation submitted to the Registrar before the decision, which is the subject of the appeal, was taken.

(11) Subject to subsection (12), no oral or written evidence or factual information and documentation, other than what was made available to the Registrar, may be submitted to the panel.

(12) (a) The chairperson of a panel designated to hear an appeal may, on application by—

- (i) any party to the appeal, and on good cause shown, allow further oral and written evidence or factual information and documentation not made available to the Registrar prior to the making of the decision; or
- (ii) the Registrar, and on good cause shown, allow further oral and written evidence or factual information and documentation to be submitted and introduced into the record on appeal.

(b) If further oral and written evidence or factual information and documentation is allowed into the record on appeal under paragraph (a)(i), the matter must be reverted to the Registrar for reconsideration, and the appeal must be deferred pending the final decision of the Registrar.

(c) If, after the Registrar has made a final decision under paragraph (b), the appellant continues with the appeal by giving written notice to the secretary, the record on appeal must include the further oral

evidence, properly transcribed, written evidence or factual information and documentation allowed, and further reasons or documentation submitted by the Registrar.

(13) (a) For purposes of allowing further oral evidence in terms of subsection (12)(a), the chairperson of the panel may—

- (i) summon any person to appear before it at a time and place specified in the summons, to be questioned or to produce any document, and retain for examination any document so produced; and
- (ii) administer an oath to or accept an affirmation from any person called as a witness at an appeal.

(b) Any person summoned to provide oral evidence is entitled to—

- (i) legal representation at his or her own expense; and
- (ii) the same witness fees from public funds, as if he or she had been summoned to attend or had given evidence at a criminal trial in a High Court held at the place of such sitting.

(c) Any person who has been duly summoned under paragraph (a)(i) and who, without sufficient cause—

- (i) fails to appear at the time and place specified in the summons;
- (ii) fails to remain in attendance until excused by the Appeal Board from further attendance;
- (iii) refuses to take the oath or to make an affirmation as contemplated in paragraph (a)(ii);
- (iv) fails to answer fully and satisfactorily any question lawfully put to him or her; or

(v) fails to furnish information or to produce a document specified in the summons,

commits an offence and is liable on conviction to a fine or to imprisonment not exceeding two years or to both a fine and such imprisonment.

(14) Any person who—

(a) after having been sworn or having made affirmation, gives false evidence before the Appeal Board on any matter, knowing such evidence to be false or not knowing or believing it to be true; or

(b) wilfully interrupts the proceedings of the Appeal Board or who wilfully hinders or obstructs the Appeal Board in the performance of its functions,

commits an offence and is liable on conviction to a fine or to imprisonment not exceeding ten years or to both a fine and such imprisonment.

(15) (a) The decision of the majority of the members of the panel is the decision of the Appeal Board.

(b) The decision must be in writing and a copy must be furnished to every party to the appeal within a reasonable period.

(16) The Appeal Board may—

(a) confirm, set aside or vary the decision under appeal, and order that any such decision of the Appeal Board be given effect to; or

(b) remit the matter for reconsideration by the Registrar in accordance with such directions, if any, as the Appeal Board may determine.

(17) The Appeal Board may make such order as to costs as it may deem suitable and fair: Provided that, save in exceptional circumstances,

no costs order should be made against a member who has appealed against a decision of the Registrar taken under section 47.

(18) A costs order by the Appeal Board has legal force and may be enforced as if it were issued in civil proceedings in a division of the High Court within whose area of jurisdiction the Appeal Board held its sitting.

(19) The decision of the Appeal Board must be made public.

(20) Subject to the decision of a court in judicial review proceedings which may be brought under the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the decision of the Appeal Board is final and binding on the parties and the Registrar."

Repeal of section 52 of Act 131 of 1998, as amended by section 20 of Act 55 of 2001

25. Section 52 of the Act is hereby repealed.

Insertion of new Chapter 11A in Act 131 of 1998

26. The following chapter is hereby inserted in the principal Act after section 56:

**"CHAPTER 11A
GOVERNANCE OF MEDICAL SCHEMES**

Part 1

Corporate Governance: board of trustees

General

56A. (1) Every medical scheme must have a board of trustees to manage or direct and oversee the operation and management of the business of the medical scheme in accordance with this Act, the other applicable laws and the rules of the medical scheme.

(2) A board of trustees must comprise persons—

- (a) who are fit and proper persons as contemplated in section 56R; and
- (b) who comply with any qualifications or have successfully completed any training as may be prescribed, provided that this requirement will not preclude persons who, prior to the commencement of the Medical Schemes Act Amendment Act, were trustees of medical schemes from continuing in office until the expiry of their terms of office.

(3) A board of trustees is accountable for the performance of its functions and the due and proper performance by the chief executive officer and chief financial officer of their respective functions, to—

- (a) the members of the medical scheme; and
- (b) the Council and the Registrar, to the extent provided for in this Act.

Composition of board of trustees

56B. (1) A medical scheme's board of trustees may not have more than 10 and fewer than five members, inclusive of its chairperson.

(2) The composition of a board of trustees must consist of at least 50% of members elected from amongst the members at the annual general meeting of the scheme.

(3) The nomination of candidates and trustees' election shall not be on any constituency basis;

(4) The number of the members of a board of trustees must, as a minimum, include—

(a) a qualified and experienced lawyer;

(b) a member who practices or had practiced as a chartered accountant or certified financial accountant;

(c) a medical practitioner; and

(d) a member holding a tertiary qualification in business management or business administration, or both those disciplines.

(5) The Minister may prescribe the term of office of members of the Board of Trustees of a medical scheme.

(6) A person is disqualified from becoming or remaining a member of a medical scheme's board of trustees if that person—

(a) is or becomes 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 or becomes a broker or an employee, director or officer of a person that provides broker services;
- (c) 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, associate or joint venture partner;
- (d) has been found by the Council not to be fit and proper to act as a trustee or to be accredited for any purpose under this Act; or
- (e) has been disqualified from acting as a director under the Companies Act.

Duties of boards of trustees

56C. The duties of a medical scheme's board of trustees are—

- (a) to provide strategic direction and oversight to the medical scheme;
- (b) to ensure that—

 - (i) the resources of the medical scheme are used in an effective, efficient, economical and transparent manner;
 - (ii) proper books, registers and other records are kept of the medical scheme's business and all its operations;
 - (iii) proper minutes are kept of all the meetings and proceedings of the board of trustees and all the resolutions adopted by it, and that those minutes are kept in a secure place at all times;

- (iv) proper control systems are employed and maintained by or on behalf of the medical scheme in respect of its assets, investments, resources, business and operations;
- (v) adequate and appropriate information is communicated to the members regarding their rights, benefits, contributions and duties in terms of the medical scheme's rules, subject to compliance with such requirements as may be prescribed;
- (vi) an electronic version of the tariffs of the medical scheme concerned are publicly available on that scheme's internet website;
- (vii) all reasonable steps are taken for the timeous payment of contributions to the medical scheme, in accordance with this Act and the medical scheme's rules;
- (viii) an appropriate level of professional indemnity insurance and fidelity guarantee insurance is taken out and maintained by the medical scheme;
- (ix) the operation, administration, management and rules of the medical scheme comply with the provisions of this Act and the other applicable laws; and
- (x) all reasonable steps are taken to protect the confidentiality of any medical records concerning a member's state of health that is in the possession of the medical scheme or of which it has official knowledge;

- (c) to ensure that there exists within the medical scheme a strong executive structure, appointed in accordance with the transformation charter contemplated in section 29(t)—
- (i) that is independent of any material relationship with any party or parties contracted to the medical scheme; and
 - (ii) that is capable of properly managing the business and affairs of the medical scheme;
- which must include at least a chief executive officer; and
- (d) to approve the budget, policies, benefits and procedures in terms of which the operational and financial management of the medical scheme is carried out;
- (e) to approve any contract or occurrence of expenditure in accordance with the transformation charter contemplated in section 29(t), of a value equal to or exceeding such level or levels as have been predetermined by the board of trustees in that regard: Provided that, should a board of trustees fail to make such a predetermination, the Registrar, with the prior approval of the Council, may make such a predetermination where it is considered on reasonable grounds to be in the best interest of the members and beneficiaries of the medical scheme concerned;
- (f) to negotiate and—
- (i) enter into any contracts for the administration of the medical scheme by an administrator accredited in terms of section 58;
 - (ii) subject to any requirements prescribed under section 67(1)(m), enter into contracts for the provision of managed health care to beneficiaries;

- (g) to obtain such expert advice on any legal, accounting or business matter as may be regarded necessary, or on any other matter in respect of which the members of the board of trustees may lack sufficient expertise;
- (h) to ensure that proper risk management measures, resources and infrastructure are in place and maintained;
- (i) to monitor the performance of the medical scheme's chief executive officer and chief financial officer and hold the chief executive officer or chief financial officer accountable for the functions delegated to him or her by the board of trustees;
- (j) to take the steps regarded necessary to eradicate and prevent fraud and corruption in connection with the business and affairs of the medical scheme; and
- (k) to advise the Registrar in writing of the election or appointment of a new member to the board of trustees within 30 days after such an election or appointment.

Conflicting offices

56D. A person may not be an officer in more than one medical scheme at the same time.

Remuneration of members of board of trustees and chief executive officer

56E. (1) The Registrar must from time to time, in concurrence with Council, publish parameters which medical schemes must apply in the remuneration of members of their boards of trustees, chief executive officers and chief financial officers.

(2) No officer of a medical scheme shall receive remuneration that is higher than the relevant parameter.

Part 2

Chief executive officer

Appointment of chief executive officer

56E. (1) The board of trustees of a medical scheme must—

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

(2) A person is disqualified from being appointed or remaining in the office of chief executive officer of a medical scheme if that person—

- (a) is not or has ceased to be a fit and proper person for incumbency of that office;

- (b) is or becomes an employee, director, officer, consultant or contractor—
 - (i) of any person contracted by the medical scheme to provide administrative, marketing or managed health care services; or
 - (ii) of the holding company, subsidiary, joint venture or associate of such a person;
- (c) is or becomes a broker or an employee, director or officer of a person that provides broker services;
- (d) is or becomes an officer of another medical scheme; or
- (e) 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 the holding company, subsidiary, associate or joint venture partner of that person.

Removal of chief executive officer

56F. (1) The board of trustees of a medical scheme may, on reasonable grounds by resolution, remove the chief executive officer from office—

- (a) after affording the chief executive officer a reasonable opportunity to persuade the board of trustees not to remove him or her from office;
- and
- (b) after informing the Registrar of their intention to remove the chief executive officer and their reasons therefore.

(2) If the board of trustees removes the chief executive officer from office, it shall—

- (a) forthwith appoint a person to act as the chief executive officer and inform the Registrar in writing of such appointment; and
- (b) within 6 months of the date of such removal, or such further period as the Registrar, on good cause shown may permit, appoint a person as the chief executive officer and inform the Registrar in writing of such appointment.

Duties of chief executive officer

56G. (1) The chief executive officer of a medical scheme is responsible for the overall executive management of the business of the medical scheme, subject to the oversight and strategic directions of the medical scheme's board of trustees.

(2) The medical scheme's board of trustees may, in relation to any specific matter and on the authority of a special resolution of that board in writing, delegate to the chief executive officer such of its duties as may be necessary to enable that officer to effectively manage the business of the medical scheme.

(3) In the absence of any duties specifically delegated to the chief executive officer as contemplated in subsection (2), the duties of the chief executive officer are—

- (a) to manage the investments, other assets and liabilities of the medical scheme;
- (b) to have proper books, registers and other records kept of all the assets, operations and liabilities of the medical scheme;

- (c) to have proper minutes kept of the proceedings of the board of trustees and of all the resolutions adopted by it;
- (d) to establish, maintain and implement effective, efficient and transparent systems and methods of financial and risk management and internal control;
- (e) to maintain a system of internal audit under the control and direction of an audit committee appointed under section 36(10) of this Act;
- (f) to maintain an appropriate procurement and provisioning policy and system that is fair, equitable, transparent, competitive and cost-effective;
- (g) to prevent unauthorised, irregular, fruitless and wasteful expenditure and any losses that may result from criminal conduct and, on discovery of any unauthorised, irregular, fruitless or wasteful expenditure, to forthwith report the matter to the board of trustees in writing, and in so doing, to furnish that board with written particulars of the relevant expenditure;
- (h) in consultation with the chief financial officer, if any, to prepare the budget of the medical scheme for consideration and approval by the board of trustees;
- (i) to develop and make recommendations for consideration by the board of trustees with regard to the amendment of the rules of the medical scheme affecting contributions, benefits and other matters;
- (j) to ensure the timeous collection of the contributions and other moneys due to the medical scheme;

- (k) to ensure the fulfilment of the medical scheme's contractual obligations and the payment of moneys owing by it, including claim-related payments, within the periods agreed upon or provided for in the rules of the medical scheme or the provisions of this Act or any other law (as the case may be);
- (l) to communicate to the medical scheme's member's appropriate and sufficient information regarding their rights, benefits, contributions and duties in terms of the rules of the medical scheme;
- (m) to take out and maintain an appropriate level of professional indemnity insurance and fidelity guarantee insurance in the name of and for the benefit of the medical scheme;
- (n) to obtain expert professional advice on legal, accounting, actuarial and business matters as and when required in connection with the medical scheme's business;
- (o) to make the arrangements that are necessary and take all reasonable steps that may be required in order to protect the confidentiality of medical records in the possession or under the control of the medical scheme with regard to the state of health of its beneficiaries;
- (p) subject to the provisions of this Act and to the general directions or any specific direction issued by the board of trustees (if any), to negotiate and enter into any such contractual arrangements with third parties as may be necessary or expedient for effectively conducting the business of the medical scheme;

- (q) to strive at all times to ensure the proper performance by the medical scheme and any parties with whom it had contracted, of their respective obligations in terms of those contracts;
- (r) to appoint such additional employees as are necessary for assisting the chief executive officer in the performance of his or her duties and functions or for otherwise assisting in carrying on or operating the business of the medical scheme effectively and efficiently; and
- (s) generally, to take responsibility for the effective and proper functioning and performance of the medical scheme's staff.

Part 3

General Provisions on Governance

Corporate governance

56H. (1) The board of trustees must, in relation to the medical scheme concerned, establish and maintain a system of corporate governance that is adequate and effective and consistent with the nature, complexities and risks inherent in the business of a medical scheme generally, and more specifically, with the activities, operations and business of the medical scheme concerned.

(2) (a) The Council may, from time to time by notice in the Gazette and on the Council's internet website, specify norms for good corporate governance applicable to medical schemes with a view to providing boards of trustees and chief executive officers with guidelines necessary for,

and assisting them in, establishing and maintaining adequate and effective systems of corporate governance for their respective medical schemes.

(b) The board of trustees of a medical scheme must at such intervals or times as the Council may determine in relation to medical schemes generally, or whenever specially requested thereto by the Registrar in respect of the medical scheme concerned, report such information as may be required by the Registrar.

Duty of care

56l. A board of trustees and chief executive officer must, at all times—

- (a) take all reasonable steps to ensure that the beneficiaries' interests in terms of the medical scheme's rules and the provisions of this Act, are protected at all times;
- (b) act in good faith and exercise due care and diligence in the exercise or performance of their powers, duties and functions under this Act;
- (c) take all reasonable steps to avoid conflicts of interest; and, recuse themselves upon becoming aware of such a conflict; and
- (d) act with impartiality and objectivity in relation to all beneficiaries.

Reportable irregularities

56J. (1) Every officer of a medical scheme shall report to the Registrar in writing forthwith any reportable irregularity of which he or she becomes aware.

(2) A report under subsection (1) shall include particulars of the reportable irregularity and such other information and particulars as the member or officer considers appropriate.

Disclosure of financial interests

56K. The Officers must annually disclose in the audited financial statement to registrar, any payments or gifts made to them by the medical schemes or its intermediaries.

Requirements with regard to persons' fitness and propriety for office

56L. (1) A person will not be regarded to be a fit and proper person for membership of a board of trustees or for appointment in or incumbency of the office of chief executive officer of a medical scheme or the chief executive of any entity accredited under this Act or seeking such accreditation, where the person—

- (a) is a professional who is disqualified under any law from carrying on his or her profession;
- (b) is not permanently resident in the Republic;

- (c) has been convicted—
- (i) of any offence by a competent court of law in the Republic in respect of which he or she was sentenced to a term of imprisonment without the option of a fine; or
 - (ii) by a competent court of law in any other country of an offence which is also an offence in the Republic, and sentenced in respect thereof to a term of imprisonment without the option of a fine;
- (d) in any civil matter—
- (i) has had any judgment of a competent court of law in the Republic or elsewhere entered against him or her in which a finding of fraud, misrepresentation or dishonesty was made against the person;
 - (ii) has accepted civil liability for fraud or misrepresentation under the law of the Republic or of any other country;
- (e) has provided false or misleading information to the Council or the Registrar;
- (f) is an un-rehabilitated insolvent;
- (g) at any time has been removed from a position of trust in terms of this Act, any other law or in terms of rules of any medical scheme;
- (2) (a) The board of trustees of each medical scheme must develop criteria to be applied with a view to determining whether persons are fit and proper persons for appointment as members of the key management personnel of the medical scheme concerned.

(b) Without in any way detracting from the characteristics or features which may be associated with a fit and proper person for such an appointment, the criteria so developed must be consistent with the provisions and general spirit of the Act and the generally accepted principles of good corporate governance, and must promote the values of honesty and integrity in the corporate environment.

(c) The Council may from time to time determine guidelines aimed at assisting medical schemes' boards of trustees in developing criteria for determining whether persons are fit and proper persons for appointment as members of their key management personnel and must cause those guidelines to be published in the *Gazette* and on the Council's internet website.

Giving, providing or serving notices, directions, directives, orders, documents and process destined for medical scheme

56M. Any notice, direction, directive, order or document, and any court process or other legal process which, in terms of or by virtue of this Act may or must be given or provided to or served on a medical scheme, if it is given or provided to or served on the medical scheme's chief executive officer will be deemed to have been duly given or provided to or served on the medical scheme concerned.

Close monitoring of governance provisions

56N. If the Registrar becomes aware that a scheme is failing, or is likely to fail within a reasonable period, to meet any of the provisions of this chapter, he or she may in writing direct the scheme to—

- (a) provide the Registrar with specified information relating to the nature and causes of the failure to meet these requirements;
- (b) provide the Registrar with proposals on the course of action which will be followed by the scheme to correct the failure or to prevent impending failures; and
- (c) discuss progress with the implementation of the corrective action on a regular basis with the Registrar, until the Registrar is of the opinion that the failure has been corrected.

Compliance directives

56O. The Registrar may in writing direct a medical scheme—

- (a) to apply, in the manner indicated by the Registrar in the directive, any rule of that medical scheme specified in that directive which is being applied by the medical scheme in a manner inconsistent with the provisions of this Act;
- (b) to take steps specified in the directive which are necessary to ensure that the medical scheme complies with the provisions of this Act; or
- (c) where, in the opinion of the Registrar the medical scheme or any of its officers are acting or have acted in a manner which is contrary to the

best interests of the members of the medical scheme, to cease so acting or to remedy the adverse consequences of having so acted."

Amendment of heading of chapter 12 of Act 131 of 1998

27. The following heading is hereby substituted for the heading of chapter 12 of the principal Act:

"GENERAL PROVISIONS"

Repeal of section 57 of Act 131 of 1998

28. Section 57 of the principal Act is hereby repealed.

Insertion of section 58A in Act 131 of 1998

29. The following section is hereby inserted in the principal Act after section 58:

"Self-administered schemes

58A. Every medical scheme which does not appoint an administrator to undertake all of the administration functions of the scheme shall, to the extent that it self-administers, comply with any general standards for self-

administered scheme determined by the Council from time to time by way of a notice published in the *Gazette* and on the Council's internet website."

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

30. Section 66 of the principal Act is hereby amended—

(a) by the addition in subsection (1) of the following paragraph:

(f) carries on the business of a medical scheme without being registered as a medical scheme in terms of section 24,";

(b) by the substitution in subsection (1) for the words following paragraph (f) of the following words:

"[shall, subject to the provisions of subsection (2), be] is guilty of an offence[,] and liable on conviction to a fine not exceeding 10 million rand or to imprisonment for a period not exceeding five years or to both such a fine and imprisonment."; and

(c) by the insertion of the following subsections after subsection (2):

"(2A) Any person who carries on the business of an administrator, a broker or a managed health care organisation, without being accredited as such in terms of this Act, is guilty of an offence and liable on conviction to a fine not exceeding 10 million rand or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

(2B) The Minister may, from time to time by notice in the *Gazette*, increase the amounts of the fines contemplated in subsections (1) and (2A)."

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

31. Section 67 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph (d) of the following paragraphs, respectively:

"(dA) the accreditation of a person as an administrator under section 58(1);

(dB) the withdrawal or suspension of accreditation as an administrator under section 58(6);

(dC) the approval of the administration of a particular scheme under section 58(3);

(dD) the giving of directions under 58(7);

(dE) the requirements applicable to administration agreements or contracts, including the termination of such agreements or contracts;

(dF) the requirements applicable to the accreditation of auditors";

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

"(e) the administration of a medical scheme's business and affairs, irrespective of whether the administration is performed by the medical scheme itself or by an administrator as intermediary, and including regulations for the purpose of regulating,

controlling, restricting or prohibiting any act or conduct relating to such administration;";

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

"(m) provisions associated with or incidental to—

- (i) the material and formal requirements to be met, the conditions to be satisfied and the arrangements to be made as prerequisite for the provision of managed health care services and the manner and standards in accordance with which managed health care is to be provided to beneficiaries;
- (ii) the requirements applicable to agreements or contracts for the provision of managed health care, including the termination of such agreements or contracts; or
- (iii) the suspension or withdrawal of a person's status as or capacity of provider of managed health care;"; and

- (d) by the insertion in subsection (1) after paragraph (p) of the following paragraphs, respectively:

- "(pA) guidelines to be followed in the development of a transformation charter as contemplated in section 29(t);
- (pB) guidelines for the conduct of auditors and contemplated in section 36;
- (pC) guidelines for the fair treatment of members as contemplated in section 47(b)(iii);

(pD) any matter which in terms of this Act is required or permitted to be prescribed; and".

Substitution of expression "principal officer "in Act 131 of 1998

32. The principal Act is hereby amended by the substitution for the word "principal officer", wherever it appears, of the word "chief executive officer".

Short title and commencement

33. This Act is called the Medical Schemes Amendment Act, 2018 and comes into operation on a date determined by the President by proclamation in the *Gazette*.