

REPUBLIC OF SOUTH AFRICA

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# MEDICAL SCHEMES BILL

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*(As introduced in the National Assembly)*

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(MINISTER OF HEALTH)

**[B 116—98]**

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# BILL

To consolidate the laws relating to registered medical schemes; to provide for the establishment of the Council for Medical Schemes as a juristic person; to provide for the appointment of the Registrar of Medical Schemes; to make provision for the registration and control of certain activities of medical schemes; to protect the interests of members of medical schemes; to provide for measures for the co-ordination of medical schemes; and to provide for incidental matters.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**CHAPTER 1****DEFINITIONS****Definitions**

1.	(1) In this Act, unless inconsistent with the context—	40
	“actuary” means any fellow of an institute, faculty, society or chapter of actuaries approved by the Minister of Finance;	
	“administrator” means any person who has been accredited by the Council in terms of section 59, and shall, where any obligation has been placed on a medical scheme in terms of this Act, also mean a medical scheme;	45

- “Appeal Board” means the Appeal Board established by section 51;
- “board of trustees” means the board of trustees charged with the managing of the affairs of a medical scheme, and which has been elected or appointed under its rules;
- “business of a medical scheme” means the business of undertaking liability in return for a premium or contribution— 5
- (a) to make provision for the obtaining of any relevant health service;
  - (b) to grant assistance in defraying expenditure incurred in connection with the rendering of any relevant health service; and
  - (c) where applicable, to render a relevant health service, either by the medical scheme itself, or by any supplier or group of suppliers of a relevant health service or by any person, in association with or in terms of an agreement with a medical scheme; 10
- “Council” means the Council for Medical Schemes established by section 3;
- “complaint” means a complaint of a complainant relating to the administration of a medical scheme, the investment of its funds or the interpretation and application of its rules, and alleging— 15
- (a) that a decision of the medical scheme or any person purportedly taken in terms of the rules was in excess of the powers of that medical scheme or person, or an improper exercise of its powers; 20
  - (b) that the complainant has sustained or may sustain prejudice in consequence of the maladministration of the medical scheme by the medical scheme or any person, whether by act or omission;
  - (c) that a dispute of fact or law has arisen in relation to a medical scheme between the medical scheme or any person and the complainant; or 25
  - (d) that an employer who participates in a medical scheme has not fulfilled its duties in terms of the rules of the medical scheme,
- but shall not include a complaint which does not relate to a specific complainant;
- “curator” means a curator appointed under section 57;
- “dependant”, in relation to a member of a medical scheme, means— 30
- (a) the spouse of such member who is not a member of any medical scheme;
  - (b) any minor child, including any step-child or legally adopted child of such member, who is not self-supporting and is not a member or a dependant of a member of any medical scheme;
  - (c) any minor child who resides with the member, who is not self-supporting and in respect of whom the member is legally liable for family care; 35
  - (d) any other member of the immediate family of the member who resides with the member, who is not self-supporting and who is dependent on the member for family care; or
  - (e) any other person who, under the rules of a medical scheme, is recognised as a dependant of such member and is eligible for benefits under the medical scheme by virtue of such member’s membership; 40
- “financial year” means each period of 12 months ending on 31 December;
- “Master” means the Master of the High Court;
- “medical scheme” means any medical scheme registered under section 25(1); 45
- “member” means a person who has been enrolled or admitted as a member of a medical scheme, or who in terms of the rules of a medical scheme is a member of such medical scheme;
- “Minister” means the Minister of Health;
- “officer” means any member of a board of trustees, any manager, principal officer, treasurer, clerk or other employee of the medical scheme, but does not include the auditor of the medical scheme; 50
- “prescribed” means prescribed by regulation;
- “principal officer” means the principal officer appointed in terms of section 58(4)(a); 55
- “Registrar” means the Registrar of Medical Schemes appointed in terms of section 19;
- “relevant health service” means any health care treatment of any person by a person registered in terms of any law, which treatment has as its object—
- (a) the physical or mental examination of that person; 60
  - (b) the diagnosis, treatment or prevention of any physical or mental defect, illness or deficiency;
  - (c) the giving of advice in relation to any such defect, illness or deficiency;

- (d) the giving of advice in relation to, or treatment of, any condition arising out of a pregnancy, including the termination thereof;
- (e) the prescribing or supplying of any medicine, appliance or apparatus in relation to any such defect, illness or deficiency or a pregnancy, including the termination thereof; or 5
- (f) nursing or midwifery,  
and includes an ambulance service, and the supply of accommodation in an institution established or registered in terms of any law as a hospital, maternity home, nursing home or similar institution where nursing is practised, or any other institution where surgical or other medical activities are performed, and such accommodation is necessitated by any physical or mental defect, illness or deficiency or by a pregnancy; 10
- “restricted membership scheme” means a medical scheme, the rules of which restrict the eligibility for membership by reference to—
- (a) employment or former employment in a profession, trade, industry or calling; 15
- (b) employment or former employment by a particular employer, or by an employer included in a particular class of employers;
- (c) membership or former membership of a particular profession, professional association or union; or
- (d) any other prescribed matter; 20
- “rules” means the rules of a medical scheme and include—
- (a) the provisions of the law, charter, deed of settlement, memorandum of association or other document by which the medical scheme is constituted;
- (b) the articles of association or other rules for the conduct of the business of the medical scheme; and 25
- (c) the provisions relating to the benefits which may be granted by and the contributions which may become payable to the medical scheme;
- “this Act” includes the regulations.
- (2) For the purposes of this Act, any reference in this Act to a medical scheme shall be construed as a reference to that medical scheme or to the board of trustees of that medical scheme, as the case may be. 30

## CHAPTER 2

### APPLICATION OF ACT

#### Application of Act

2. (1) If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act shall prevail. 35
- (2) This Act shall also apply to a medical scheme established by any organ of the State.

## CHAPTER 3

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### COUNCIL FOR MEDICAL SCHEMES

#### *Part 1—Council*

#### Establishment of Council for Medical Schemes

3. (1) There is hereby established a juristic person called the Council for Medical Schemes. 45
- (2) The Council shall be entitled to sue and be sued, to acquire, possess and alienate moveable and immovable property and to acquire rights and incur liabilities.
- (3) The registered office of the Council shall be situated in Pretoria or such other address as the Council may from time to time determine.
- (4) The Council shall, at all times, function in a transparent, responsive and efficient manner. 50

### Constitution of Council

4. (1) The Council shall consist of up to 15 members appointed by the Minister taking into account the interests of members and of medical schemes, expertise in law, accounting, medicine, actuarial sciences, economics and consumer affairs.
- (2) The Minister may appoint any member of the Council on a full-time or a part-time basis for such a period as the Minister may deem necessary. 5
- (3) The Minister shall appoint a member of the Council as chairperson.
- (4) Members of the Council shall elect from amongst themselves a vice-chairperson.
- (5) When the chairperson is unable to perform his or her functions in terms of this Act, the vice-chairperson shall act as chairperson of the Council. 10
- (6) The chairperson or the vice-chairperson or, in their absence, a member of the Council designated by the members present, shall preside at a meeting of the Council.
- (7) If a member dies or by virtue of section 5(2) ceases to be a member, the Minister may, subject to the provisions of this section, appoint a person in that member's place for the unexpired period of his or her term of office. 15
- (8) The Minister may at any time discharge a member of the Council from office if such a member is absent, except with the leave of the chairperson, from more than three consecutive meetings of the Council, or is guilty of misconduct.
- (9) The Minister shall cause the name of every person appointed as a member of the Council and the period for which he or she has been appointed to be published in the *Gazette*. 20

### Disqualification as member of Council, and vacation of office

5. (1) No person shall be appointed as a member of the Council if he or she—
- (a) is an unrehabilitated insolvent;
  - (b) is disqualified under any law from carrying on his or her profession; 25
  - (c) is not permanently resident in the Republic of South Africa; or
  - (d) has at any time been convicted (whether in the Republic of South Africa or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine. 30
- (2) A member of the Council shall vacate his or her office if he or she—
- (a) becomes subject to any disqualification referred to in subsection (1);
  - (b) becomes mentally ill;
  - (c) by written notice resigns as a member; 35
  - (d) is discharged of his or her office by the Minister under section 4(8);
  - (e) is in terms of the provisions of the Electoral Act, 1993 (Act No. 202 of 1993), nominated as a candidate for election as a member of Parliament; or
  - (f) is in terms of the provisions of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), elected as a member of Parliament or holds a political office at a provincial or local government level. 40

### Term of office of member of Council

6. A member of the Council shall be appointed for no more than three years but he or she may be reappointed for one further term.

### Functions of Council 45

7. The functions of the Council shall be to—
- (a) protect the interests of the members at all times;
  - (b) control and co-ordinate the functioning of medical schemes in a manner that is complementary with the national health policy;
  - (c) make recommendations to the Minister on criteria for the measurement of quality and outcomes of the relevant health service provided for by medical schemes, and such other services as the Council may from time to time determine; 50
  - (d) investigate complaints and settle disputes in relation to the affairs of medical schemes as provided for in this Act; 55
  - (e) collect and disseminate information about private health care;

- (f) make rules, not inconsistent with the provisions of this Act for the purpose of the performance of its functions and the exercise of its powers;
- (g) advise the Minister on any matter concerning medical schemes; and
- (h) perform any other functions conferred on the Council by the Minister or by this Act.

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### **Powers of Council**

- 8.** The Council shall, in the exercise of its powers, be entitled to—
- (a) appoint such staff as the Council may deem necessary to employ to assist the Registrar in the performance of his or her functions and the execution of his or her duties; 10
  - (b) hire, purchase or otherwise acquire such moveable or immovable property for the performance of its functions, and may let, sell or otherwise dispose of such property;
  - (c) enter into an agreement with any person including the State or any other institution for the performance of any specific act or function or the rendering of any service; 15
  - (d) insure itself against any loss, damage, risk or liability which it may suffer or incur;
  - (e) impose levies on medical schemes in terms of section 13 for the purpose of meeting the general administrative and other costs of the Council and the functions performed by the Registrar; 20
  - (f) approve business plans and the budget for the Council and the functions performed by the Registrar;
  - (g) determine the requirements under which the Registrar shall register, suspend and cancel the registration of a medical scheme or of a benefit option; 25
  - (h) exempt, in exceptional cases and subject to such terms and conditions and for such period as the Council may determine, a medical scheme upon written application from complying with any provision of this Act;
  - (i) invest, loan, advance on interest and place on deposit, moneys not needed immediately for the current expenditure of the Council or the functions performed by the Registrar or to deal therewith in any other way against such securities and in such manner as the Council may determine from time to time, and to convert investments into money, adjust such securities, re-invest the proceeds thereof or to deal therewith in any other manner as determined by the Council; 30 35
  - (j) authorise the Registrar from time to time to sign any contract, cheque or other document which binds the Council or which authorises any action on behalf of the Council;
  - (k) determine the terms and conditions of service of any person appointed by the Council or who is under contract; and 40
  - (l) in general, do anything which it deems necessary or expedient to perform its functions in accordance with the provisions of this Act.

### **Committees of Council**

- 9.** (1) The Council may—
- (a) appoint from amongst its members an executive committee consisting of the chairperson, the vice-chairperson and three other members to attend to the day to day tasks of the Council, and may delegate to such executive committee such functions and powers as it may from time to time determine; and 45
  - (b) appoint from amongst its members or any other person, any other committee in regard to any matter falling within the scope of the Council's functions and powers under this Act, and may delegate to any such committee such of its functions and powers as it may determine from time to time. 50
- (2) The chairperson of the Council shall be the chairperson of the executive committee and in his or her absence the vice-chairperson shall act as chairperson.
- (3) Any other committee appointed by the Council shall elect its own chairperson. 55
- (4) All resolutions taken by the executive committee or any other committee shall be by a majority vote.
- (5) The quorum for a meeting of the Council or any committee shall be half of the members of the Council or of such committee plus one member.

### Meetings of Council

- 10.** (1) The Council shall hold at least four ordinary meetings each year.
- (2) Special meetings of the Council may be convened by the chairperson or at the written request of the majority of the members setting forth clearly the purpose for which the meeting is to be held. 5
- (3) The Minister may at any time request that a meeting of the Council be convened in order to advise him or her on a specific matter.
- (4) The executive committee shall meet at least once a month or at such intervals as the chairperson may deem it necessary for the efficient performance of the Councils functions. 10
- (5) The Council may determine its own rules regarding the procedures at its meetings or those of its committees.
- (6) All resolutions taken by the Council shall be by a majority vote.

### Remuneration of members of Council and committees

- 11.** The chairperson, vice-chairperson, other members of the Council and members of committees of the Council who are not members of the Council, excluding any such member— 15
- (a) who is in the full-time service of the State; or
- (b) who is in the full-time service of an employer by whom such member is remunerated in respect of such service and with whose consent such member was appointed as such, 20
- shall be paid such remuneration and allowances out of the funds of the Council as the Minister, with the concurrence of the Minister of Finance, may determine from time to time.

### Funds of Council 25

- 12.** (1) The funds of the Council shall consist of—
- (a) levies imposed on medical schemes under section 13;
- (b) moneys appropriated by Parliament on such terms and conditions as the Minister, with the concurrence of the Minister of Finance, may determine;
- (c) fees raised on services rendered by the Registrar in the performance of his or her functions under the provisions of this Act; 30
- (d) penalties contemplated in section 67(3); and
- (e) interest on overdue fees in respect of services rendered by the Registrar, levies and penalties.
- (2) The Council— 35
- (a) may accept moneys or other goods donated or bequeathed to the Council; and
- (b) shall specify details of any such donation or bequest in the annual report to the Minister.
- (3) The Council shall utilise its funds for the defrayal of expenses incurred by the Council and the office of the Registrar in the performance of their functions under this Act. 40
- (4) The Council shall cause an account to be opened with an institution registered as a bank and shall deposit in that account all moneys received in terms of this section.
- (5) The Council may invest money, which is deposited in terms of subsection (4) and which is not required for immediate use, in any manner as it may deem fit. 45
- (6) Any money which at the close of the Council's financial year stands to the credit of the Council shall be carried forward to the next financial year as a credit in the account of the Council.

### Levies payable to Council

- 13.** (1) The Council may, by notice in the *Gazette*, impose levies on medical schemes and may, subject to the provisions of this section, at any time in a similar manner amend, substitute or withdraw any such notice. 50
- (2) The Council shall in any such notice determine—
- (a) the amounts of the levies based on the number of members of a medical scheme and the manner of calculation or determination of such amounts; 55

- (b) the periods in respect of which levies are imposed, the dates on, or the periods within which they are payable, and the manner of payment; and
- (c) the rate of interest and manner of calculation of interest contemplated in subsection (5).

(3) Before imposing the levies referred to in subsection (1), the Council shall publish the contemplated levies in such a manner as it considers appropriate in order to bring the contemplated levies to the attention of medical schemes and the members, together with a statement that representations about the contemplated levies may be made to the Council within a specified time. 5

(4) Before imposing the levies the Council shall have regard to any representations made in accordance with that statement. 10

(5) A medical scheme which fails to pay a levy contemplated in subsection (1) in full within the period determined in the notice or on the date so determined, shall, at the rate and calculated in the manner determined in the said notice, pay interest on the balance of the levy outstanding. 15

#### **Accounting officer**

**14.** (1) The Registrar shall be the accounting officer of the Council charged with accounting for all moneys received and payments authorised by and made on behalf of the Council and the Registrar.

(2) The financial year of the Council shall end on 31 December in each year. 20

(3) The Registrar shall—

(a) keep full and proper records of all moneys received and expenses incurred by, and of all assets, liabilities and financial transactions of, the Council and the Registrar; and

(b) as soon as is practicable, but not later than four months after the end of each financial year referred to in subsection (2), prepare annual financial statements in respect of the financial year in question. 25

(4) The records and annual financial statements referred to in subsection (3) shall be audited by the Auditor- General.

(5) Any moneys payable to the Council in terms of this Act, shall be a debt due to the Council and recoverable by the Registrar in any competent court. 30

#### **Annual report**

**15.** (1) The Council shall submit to the Minister before the end of June of each year a report on the Council's activities during the previous financial year.

(2) The report referred to in subsection (1) shall be accompanied by audited financial statements and notes thereon in respect of the financial year concerned. 35

(3) The financial statements referred to in subsection (2) shall—

(a) be in conformity with general accepted accounting practice;

(b) fairly present the state of affairs and functions of the Council and the results thereof and of the Registrar; and 40

(c) refer to any material matters not specifically required in terms of this Act which have affected or are likely to affect the affairs of the Council and the Registrar.

(4) The Council shall publish or make available the annual report and audited financial statements after submission thereof to the Minister. 45

#### **Consultation between Minister and Council**

**16.** (1) The Council may consult with the Minister in the exercise of the powers and the performance of the functions under this Act or on any other law, and in connection with any other matter which the Council deems necessary.

(2) The Minister may consult with the Council on any matter falling under this Act. 50

#### **Cases of improper or disgraceful conduct**

**17.** Whenever it appears to the Council—

(a) that the conduct of any person registered under any Act of Parliament which regulates the professional conduct of any health care supplier constitutes improper or disgraceful conduct relating to a medical scheme, the Council 55

shall report this matter to the council, body or any other organisation which has jurisdiction over the person concerned.

- (b) that an offence has been committed, the Council shall refer the matter to the National Prosecuting Authority.

## **Liquidation** 5

- 18.** (1) The Council shall only be placed under liquidation by an Act of Parliament.  
 (2) In the event of the liquidation of the Council, the assets and liabilities of the Council, if any, shall accrue to the State.

### *Part 2—Registrar, Deputy Registrar and Staff of Council*

## **Appointment of Registrar and Deputy Registrar of Medical Schemes** 10

- 19.** (1) The Minister shall, after consultation with the Council, appoint a Registrar and one or more Deputy Registrars of Medical Schemes.  
 (2) The Registrar shall be the executive officer of the Council and shall manage the affairs of the Council.  
 (3) The Registrar shall act in accordance with the provisions of this Act and the policy and directions of the Council. 15  
 (4) The Registrar may assign to any staff member such of his or her functions or duties as he or she may from time to time determine.  
 (5) The Registrar shall supervise the staff appointed under section 8(a) or placed at his or her disposal in terms of section 20(1). 20  
 (6) A Deputy Registrar shall assist the Registrar in the performance of his or her functions and the carrying out of his or her functions and duties and may, subject to the approval of the Registrar, exercise any power conferred upon the Registrar by the Council or by this Act.

## **Staff of Council** 25

- 20.** (1) The Council may, in addition to the staff appointed or a person under contract under section 8(a) or (c) respectively, request the Director-General of Health to place at the disposal of the Registrar, officers and employees in the public service in terms of section 15(3) of the Public Service Act, 1994 (Proclamation No. 103 of 1994) to assist the Registrar in the performance of his or her functions and duties. 30  
 (2) The staff of the Council, excluding the officers and employees referred to in subsection(1), shall be paid such remuneration and allowances as the Council may, after consultation with the Minister and with the concurrence of the Minister of Finance, determine from time to time.  
 (3) Staff of Council shall become members of the Government Employees' Pension Fund mentioned in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996). 35

## **CHAPTER 4**

### **MEDICAL SCHEMES**

## **Business of Medical Scheme** 40

- 21.** (1) No person shall carry on the business of a medical scheme unless that person is registered as a medical scheme under section 25.  
 (2) No medical scheme shall purchase any insurance policy in respect of any relevant health services other than to reinsure a liability in terms of section 27(1)(b).

## **Use of designation “medical scheme”** 45

- 22.** No person shall, without the consent of the Registrar, apply to his or her business a name which includes the words “medical scheme” or any other name which is calculated to indicate, or is likely to lead persons to believe that he or she carries on the business of a medical scheme, unless such business is registered under this Act.

### Application for registration

23. (1) Every medical scheme shall apply to the Registrar for registration under this Act.

(2) An application under subsection (1) shall be accompanied by such documents and particulars as may be prescribed from time to time. 5

### Name of medical scheme and change of name

24. (1) The Registrar shall not register a medical scheme under a name, nor change the name of a medical scheme to a name—

- (a) which has already been registered;
- (b) which so closely resembles the name of a medical scheme already registered that the one is likely to be mistaken for the other; or 10
- (c) which is likely to mislead the public.

(2) A medical scheme shall not use or refer to itself by a name other than the name under which it is registered or a literal translation or an abbreviation thereof which has been approved by the Registrar. 15

(3) A medical scheme may, with the consent of the Registrar, in conjunction with its registered name, use, or refer to itself by, the name of a medical scheme with which it has amalgamated or which it has absorbed or, in the case of a change of name, the name by which it was previously known.

(4) A medical scheme shall not change its name without the prior written consent of the Registrar. 20

### Registration as medical scheme

25. (1) The Registrar shall, if he or she is satisfied that the medical scheme which has lodged an application in terms of section 23, complies or will be able to comply with the provisions of this Act, register the medical scheme and impose such terms and conditions as he or she deems necessary. 25

(2) No medical scheme shall be registered under this section unless the Registrar is satisfied that—

- (a) a member of the board of trustees or the principal officer of the proposed medical scheme is a fit and proper person to hold the office concerned; 30
- (b) the medical scheme complies with or will be able to comply with any other provision of this Act;
- (c) the medical scheme is or will be financially sound;
- (d) the medical scheme has a sufficient number of members who contribute or are likely to contribute to the medical scheme; 35
- (e) the medical scheme does not or will not unfairly discriminate directly or indirectly against any person on one or more grounds including race, gender, marital status, ethnic or social origin, sexual orientation, disability and state of health; and
- (f) the registration of the medical scheme is not contrary to the public interest. 40

(3) The Registrar shall transmit to the applicant a certificate of registration and a copy of the rules of the medical scheme reflecting the date of registration of such rules.

(4) If an application for registration is rejected, the Registrar shall in writing indicate to the applicant in what respect the medical scheme in question does not comply with the provisions of this Act. 45

(5) The Registrar may demand from the person who manages the business of a medical scheme which is in the process of being established, such financial guarantees as will in his or her opinion ensure the financial stability of the medical scheme.

### Notification of registration

26. The Registrar shall publish in the *Gazette* a notification of the registration of a medical scheme setting out— 50

- (a) the name and address of the medical scheme;
- (b) the date of registration; and
- (c) any terms and conditions imposed.

**Effect of registration**

27. (1) Any medical scheme registered under this Act shall—
- (a) become a body corporate capable of suing and being sued and of doing or causing to be done all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules; 5
  - (b) assume liability for and guarantee the benefits offered to its members and their dependants in terms of its rules; and
  - (c) establish a bank account under its direct control into which shall be paid every amount—
    - (i) received as subscription or contribution paid by or in respect of a 10 member; and
    - (ii) received as income, discount, interest, accrual or payment of whatsoever kind.
- (2) No person shall have any claim on the assets or rights or be responsible for any liabilities or obligations of a medical scheme, except in so far as the claim has arisen or 15 the responsibility has been incurred in connection with transactions relating to the business of the medical scheme.
- (3) The assets, rights, liabilities and obligations of a medical scheme, including any assets held in trust for the medical scheme by any person, as existing immediately prior to its registration, shall vest in and devolve upon the medical scheme without any formal 20 transfer or cession.
- (4) No amount shall be debited to the account contemplated in subsection 1(c) other than—
- (a) payments by a medical scheme of any benefit, payable under the rules of a 25 medical scheme; or
  - (b) costs incurred by the medical scheme in the carrying on of the business as a medical scheme.
- (5) No payment in whatever form shall be made by a medical scheme directly or indirectly to any person as a dividend, rebate or bonus of any kind whatsoever. 30
- (6) No person shall receive, hold or in any manner deal with the subscription or contribution which is payable to a medical scheme by or on behalf of a member of such medical scheme. 30
- (7) All subscriptions or contributions shall be paid directly to a medical scheme not later than three days after payment thereof becoming due. 35
- (8) The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset or right which in terms of subsection (3) vests in or devolves upon a medical scheme, shall, upon production to him or her by the medical scheme of its certificate of registration and of the deed or other document aforesaid, 40 without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his or her registers that are necessary by reason of such vesting or devolution.
- (9) All moneys and assets belonging to a medical scheme shall be kept by that medical scheme and every medical scheme or the administrator, as the case may be, shall 45 maintain such books of accounts and other records as may be necessary for the purposes of such medical scheme.
- (10) Every medical scheme shall have a registered office in the Republic.
- (11) No medical scheme shall carry on any business other than the business of a medical scheme and no medical scheme shall enrol or admit any person as a member in 50 respect of any business other than the business of a medical scheme.

**Cancellation and suspension of registration**

28. (1) The Registrar may, after investigation and after having afforded the medical scheme or its legal representative an opportunity of being heard, cancel the registration of a medical scheme—
- (a) on proof that the medical scheme has ceased to operate; 55
  - (b) if the medical scheme was registered by virtue of misleading information;
  - (c) if the medical scheme is unable to maintain a financially sound condition as contemplated by this Act;

- (d) if the medical scheme is unable to enrol within the period determined by the Council, or to maintain the minimum number of members required for the registration of a medical scheme; and
- (e) if the medical scheme, after written notice from the Registrar, persists in violating any provision of this Act. 5

(2) The Registrar may, in lieu of cancellation suspend the cancellation, in terms of subsection (1), if the Registrar is satisfied that the medical scheme will be able to rectify the situation contemplated in paragraphs (c), (d) or (e) of subsection (1) in a manner consistent with the provisions of this Act.

(3) The Registrar shall inform the medical scheme concerned of any decision taken in terms of subsection (1) by means of a written notice served upon the medical scheme and shall come into operation on a date specified in such notice. 10

### **Prohibition of membership of, and claims against, more than one medical scheme**

**29.** No person shall—

- (a) be a member of more than one medical scheme; 15
- (b) be admitted as a dependant of—
  - (i) more than one member of a particular medical scheme; or
  - (ii) members of different medical schemes; or
- (c) claim or accept benefits in respect of himself or herself or any dependant from any medical scheme other than the medical scheme of which he or she is a member. 20

## **CHAPTER 5**

### **RULES OF MEDICAL SCHEME**

#### **Matters for which rules shall provide**

**30.** (1) The Registrar shall not register a medical scheme under section 25, and no medical scheme shall carry on any business, unless provision is made in its rules for the following matters: 25

- (a) The appointment or election of a board of trustees consisting of persons who are fit and proper to manage the business contemplated by the medical scheme. 30
- (b) The appointment of a principal officer by the board of trustees who is a fit and proper person to hold such office.
- (c) The appointment, removal from office, powers and remuneration of officers of a medical scheme.
- (d) The manner in which contracts and other documents binding the medical scheme shall be executed. 35
- (e) The custody of the securities, books, documents and other effects of the medical scheme.
- (f) The appointment of the auditor of a medical scheme and the duration of such appointment. 40
- (g) The powers to invest funds.
- (h) Subject to the provisions of this Act, the manner in which and the circumstances under which a medical scheme shall be terminated or dissolved.
- (i) The appointment of a liquidator in the case of a voluntary dissolution. 45
- (j) The settlement of any complaint or dispute.
- (k) The amendment of the rules in accordance with the provisions of section 32.
- (l) The giving of advance written notice to members of any change in contributions, membership fees or subscriptions and benefits or any other condition affecting their membership. 50
- (m) The manner of calling the annual general meeting and special general meetings of members, the quorum necessary for the transaction of business at such meetings and the manner of voting thereat.
- (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 not provide for the determination of contributions or benefits, on one or more grounds, including age, sex, past or present state of health, of the applicant or one or 55

- 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.
- (o) The prescribed scope and level of minimum benefits that are to be available to members and dependants. 5
- (p) The scope and level of minimum benefits shall not be less than benefits provided for by public hospitals: Provided that no limitation shall apply to the payment of any relevant health service obtained by a member from a public hospital.
- (q) The payment of any benefits according to— 10  
 (i) a scale, tariff or recommended guide; or  
 (ii) specific directives prescribed in the rules of the medical scheme.
- (r) The dependants of a member are entitled to participate in the same benefit option as the member. 15
- (s) The continuation, subject to the prescribed conditions, 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.
- (t) For continued membership of a member's dependants, subject to the prescribed conditions, 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. 20
- (u) 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— 25  
 (i) is a person or persons contemplated in paragraph (s); or  
 (ii) is a person or persons contemplated in paragraph (t), 30
- (2) 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— 35  
 (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 40  
 (e) the non-disclosure of material information.
- (3) A medical scheme shall not provide in its rules—  
 (a) for the exclusion of any applicant or a dependant of an applicant from membership unless it is a restricted membership scheme;  
 (b) for the exclusion of any applicant or a dependant of an applicant who would otherwise be eligible for membership to a restricted membership scheme; and 45  
 (c) for the imposition of waiting periods or new restrictions on account of the state of health of any member who has been a member or a dependant of a member of another medical scheme for a continuous period of at least two years and who has resigned from such other medical scheme because of change of employment and who applies for membership within three months of resigning from the other medical scheme. 50

### General provisions to be contained in rules

31. (1) A medical scheme may in its rules make provision for—  
 (a) donations to any hospital, clinic, nursing home, maternity home, infirmary or home for aged persons in the interest of all or some of its members; 55  
 (b) the granting of loans to any of its members or to make *ex gratia* payments on behalf of or to members in order to assist such members to meet commitments in regard to any matter specified in the definition of "business of a medical scheme" in section 1; 60

- (c) the contribution to any association instituted for the benefit of medical schemes;
  - (d) the contribution to any fund of any kind whatsoever which is conducted for the benefit of the officers of the said medical scheme or to pay for insurance policies on the lives of officers of the said medical scheme for the benefit of such officers or their dependants; 5
  - (e) the allocation to a member of a personal medical savings account, within the limit and in the manner prescribed from time to time, to be used for the payment of any relevant health service; or
  - (f) the membership of a minor who is assisted by his or her parent or guardian. 10
- (2) Notwithstanding the provisions of section 42(1) and (2), a medical scheme shall provide free of charge to every member of that medical scheme on admission with a detailed summary of the rules specifying such member's rights and obligations.

### **Amendment of rules**

- 32.** (1) A medical scheme may, in the manner provided for in its rules, amend or rescind any of such rules or make any additional rule. 15
- (2) No amendment or rescission of any rules referred to in subsection (1) shall be valid unless it has been approved by the Registrar and registered as contemplated in subsection (3).
- (3) On receipt of a written notice from a medical scheme setting out the particulars of any amendment or rescission of its rules, certified by the principal officer, the chairperson and one other member of the board of trustees as having been adopted in accordance with the provisions of the rules of the medical scheme, the Registrar shall— 20
- (a) if he or she is satisfied that the amendment or rescission of the rules will not be unfair to members or will not render the rules of the medical scheme inconsistent with this Act, register the amendment or the rescission of the rules and return it to the medical scheme with the date of registration endorsed thereon; or 25
  - (b) if he or she is not so satisfied, in writing advise the medical scheme accordingly and indicate the reasons for his or her rejection of the amendment or rescission. 30
- (3) The Registrar may order a medical scheme to—
- (a) within a period of 30 days as from the date on which he or she addressed the request to the medical scheme concerned, amend the rules in the manner indicated by him or her; or 35
  - (b) apply in the manner indicated by him or her,
- any rule of such medical scheme which is, in his or her opinion, being applied in a manner which is inconsistent with the provisions of this Act.

### **Binding force of rules**

- 33.** The rules of a medical scheme and any amendment thereof shall be binding on the medical scheme concerned, its members, officers and on any person who claims any benefit under the rules or whose claim is derived from a person so claiming. 40

## **CHAPTER 6**

### **BENEFIT OPTIONS**

#### **Approval and withdrawal of benefit options** 45

- 34.** (1) A medical scheme shall apply to the Registrar for the approval of any benefit option if such a medical scheme provides members with more than one benefit option.
- (2) The Registrar shall not approve any benefit option under this section unless he or she is satisfied that such benefit option— 50
- (a) includes the prescribed benefits;
  - (b) shall be self-supporting in terms of membership and financial performance;
  - (c) is financially sound; and
  - (d) will not jeopardise the financial soundness of any existing benefit option within the medical scheme.

(3) The Registrar may demand from the principal officer such financial guarantees as will in the opinion of the Registrar ensure the financial soundness of benefit options.

(4) The Registrar, may 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, is of the opinion that a benefit option is or may not be financially sound, withdraw the approval of such benefit option and the medical scheme shall amend its rules accordingly with effect from the date directed by notice by the Registrar. 5

(5) The Registrar may amend the rules of a medical scheme if such medical scheme fails to amend its rules as directed by the Registrar under the provisions of subsection (4) within the period specified in the notice, and such amendment shall be deemed to be an amendment within the meaning of the provisions of section 32. 10

### **Prohibition on cession, and attachment of benefits**

35. (1) No benefit or right in respect of a benefit payable under this Act shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or be liable to be attached or subjected to any form of execution under a judgement or order of a court of law. 15

(2) A medical scheme may withhold, suspend or discontinue the payment of a benefit to which a member is entitled under this Act or any right in respect of such benefit or payment of such benefit to such a member, if a member attempts to assign or transfer or otherwise cede or to pledge or hypothecate such benefit. 20

## **CHAPTER 7**

### **FINANCIAL MATTERS**

#### **Financial arrangements**

36. (1) A medical scheme shall at all times maintain its business in a financially sound condition by— 25

- (a) having assets as contemplated in subsection (3);
- (b) providing for its liabilities; and
- (c) generally conducting its business so as to be in a position to meet its liabilities at all times.

(2) A medical scheme shall be deemed to have failed to comply with the provisions of subsection (1) if it does not comply with subsections (3), (4), (5), (6) or (7). 30

(3) A medical scheme shall have assets, the aggregate value of which, on any day, is not less than the aggregate of—

- (a) the aggregate value on that day of its liabilities; and
- (b) the nett assets as may be prescribed. 35

(4) A medical scheme shall not be deemed to hold an asset for the purposes of this Act to the extent to which such asset is encumbered.

(5) A medical scheme shall have such assets in the Republic in the particular kinds or categories as may be prescribed.

(6) A medical scheme shall not— 40

- (a) encumber its assets;
- (b) allow its assets to be held by another person on its behalf;
- (c) directly or indirectly borrow money; or
- (d) by means of suretyship or any other form of personal security, whether under a primary or accessory obligation, give security in relation to obligations between other persons, 45

without the prior approval of the Council.

(7) Subject to the provisions of this section a medical scheme may invest its funds in any manner provided for by its rules.

(8) A medical scheme shall not invest any of its assets in the business of or grant loans to— 50

- (a) an employer who participates in the medical scheme or any administrator or any arrangement associated with the medical scheme;
- (b) any other medical scheme;
- (c) any administrator; 55
- (d) any person including a legal person; and
- (e) any person associated with any of the abovementioned.

- (9) For the purposes of this Act, the liabilities of a medical scheme shall include—
- (a) the amount which the medical scheme estimates will be payable in respect of claims which have been submitted and assessed but not yet paid;
  - (b) the amount which the medical scheme estimates will become payable in respect of claims which have been incurred but not yet submitted; and 5
  - (c) the amount standing to the credit of a member's personal savings account.
- (10) A medical scheme which fails to comply with subsection (1) shall, within 30 days after becoming aware of it, notify the Registrar of such failure and state the reasons for it.
- (11) The Registrar may, if a medical scheme gives notice to the Registrar in terms of subsection (10), or if the Registrar is satisfied that a medical scheme is failing, or is likely to fail within a reasonable period, to comply with subsections (1), (2), (3), (4), (5) or (6), direct that the medical scheme by notice, submit to him or her, within a specified period— 10
- (a) specified information relating to the nature and causes of the failure; and 15
  - (b) its proposals as to the course of action that it should adopt to ensure compliance therewith.
- (12) The Registrar may, when he or she has received the information referred to in subsection (11), and in concurrence with the Council—
- (a) authorise the medical scheme concerned, by notice, to adopt a course of 20  
action, approved by him or her after having considered those proposals and which he or she is satisfied will reasonably ensure that the medical scheme complies with subsections (1), (2), (3), (4), (5) or (6), within a specified time and he or she may at the same time, or at any time thereafter, by notice authorise the modification of that course of action to the extent he or she 25  
deems appropriate in the circumstances; or
  - (b) if he or she is satisfied that it is necessary to do so in the interest of the members of the medical scheme, at the same time, or at any time thereafter, and notwithstanding any steps already taken by him or her under paragraph 30  
(a), act in terms of any other provision of this Act.
- (13) If a medical scheme fails to comply with any provisions of this section, every officer of the medical scheme who is a party to the failure, shall be guilty of an offence.

#### **Auditor and audit committee**

- 37.** (1) A medical scheme shall appoint at least one auditor.
- (2) The appointment of an auditor, other than the re-appointment that does not involve 35  
a break in the continuity of the appointment, shall not take effect unless it has been approved by the Registrar.
- (3) A medical scheme shall not appoint as its auditor—
- (a) a person who is a member of its board of trustees; or
  - (b) a person who is not engaged in public practice as an auditor. 40
- (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), whose membership of the firm have changed, if not fewer than half of the members after the change, were members when the 45  
appointment of the firm was last approved by the Registrar.
- (5) Notwithstanding anything to the contrary contained in any other law, the auditor of a medical scheme shall—
- (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, also furnish a copy thereof to the Registrar; 50
  - (b) inform the Registrar in writing of any matter relating to the affairs of the medical scheme of which he or she became aware in the performance of his or her functions as auditor and which, in the opinion of the auditor, may prejudice the medical scheme's ability to comply with this Chapter;
  - (c) if his or her appointment is terminated for any reason— 55
    - (i) submit to the Registrar a statement of what he or she believes to be the reasons for that termination; and
    - (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)(a) of the Public Accountants' and Auditors' Act, 1991, submit such a report to the 60  
Registrar; and

- (d) if requested by the Registrar to do so, furnish him or her with written information relating to any matter referred to in this Chapter.
- (6) An auditor who in terms of this section furnishes a report in good faith shall not contrive a provision of a law or breach a provision of a code of professional conduct, to which he or she is subject to. 5
- (7) An auditor's failure, in good faith, to furnish a report or information in terms of this section shall not confer upon any person a right of action against the auditor which, but for that failure, that person would not have had.
- (8) The auditor shall, in addition to the duties imposed upon the auditor of a medical scheme by any other Act— 10
- (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; and 15
- (b) carry out the other duties provided for in this Act.
- (9) The Registrar may, notwithstanding the provisions of any other Act, appoint an auditor for a medical scheme if that medical scheme for any reason fails to appoint an auditor, and such an auditor shall be deemed to have been appointed by the medical scheme. 20
- (10) The board of trustees of a medical scheme shall, subject to the provisions of subsection (13), appoint an audit committee of at least three members of which at least two shall be members of that board of trustees.
- (11) The majority of the members, including the chairperson of the audit committee, shall be persons who are not officers of the medical scheme or the administrator of the medical scheme, the controlling company of the administrator or any subsidiary of its controlling company. 25
- (12) The objects of the audit committee shall, *inter alia*, be to—
- (a) assist the board of trustees in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied by that medical scheme or its administrator in the day-to-day management of its business; 30
- (b) facilitate and promote communication and liaison regarding the matters referred to in paragraph (a) or a related matter, between the board of trustees, principal officer, administrator and , where applicable, the internal audit staff of the medical scheme; 35
- (c) recommend the introduction of measures which the committee believes may enhance the credibility and objectivity of financial statements and reports concerning the affairs of the medical scheme; and 40
- (d) advise on any matter referred to the committee by the board of trustees.
- (13) The Registrar may, if he or she is satisfied that the appointment of an audit committee, in a particular case is, inappropriate or impractical or would serve no useful purpose, subject to the conditions he or she deems fit to impose, exempt the medical scheme concerned from the requirements of subsection (10). 45

### Annual financial statements

- 38.** (1) The board of trustees shall in respect of every financial year cause to be prepared annual financial statements and shall within four months after the end of a financial year furnish copies of the statements concerned together with the report of the board of trustees to the Registrar. 50
- (2) The annual financial statements referred to in subsection (1) shall be furnished to the Registrar in the medium and form determined by the Registrar and shall *inter alia* consist of—
- (a) a balance sheet dealing with the state of affairs of the medical scheme;
- (b) an income statement; 55
- (c) a cash-flow statement;
- (d) a report by the auditor of the medical scheme; and
- (e) such other returns as the Registrar may require.
- (3) The annual financial statements of a medical scheme shall, subject to the provisions of the Public Accountants' and Auditors' Act, 1991, be audited by an 60

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.

- (4) The annual financial statements shall—
- (a) be prepared in accordance with general accepted accounting practice;
  - (b) fairly present the state of affairs and the business of the medical scheme and the results thereof at the end of the financial year concerned and the surplus or deficiency of the medical scheme for that financial year;
  - (c) by means of figures and a descriptive report, set out and explain any matter or information material to the affairs of the medical scheme; and
  - (d) be accompanied by the management accounts in respect of every benefit option offered by the medical scheme indicating the financial performance thereof and the number of members enrolled per option.
- (5) The board of trustees' report referred to in subsection (1) shall—
- (a) deal with every matter which is material for the appreciation by members of the medical scheme of the state of affairs and the business of the medical scheme and the results thereof; and
  - (b) contain relevant information indicating whether or not the resources of the medical scheme have been applied economically, efficiently and effectively.

### **Registrar may reject returns**

**39.** The Registrar, if he or she is of the opinion that any document furnished in terms of section 38 does not comply with any of the provisions of this Act or does not correctly reflect the revenue and expenditure or financial position, as the case may be, of that medical scheme, may reject the document in question, and in that event—

- (a) he or she shall notify the medical scheme concerned of the reasons for such rejection; and
- (b) the medical scheme shall be deemed not to have furnished the said document to the Registrar.

## **CHAPTER 8**

### **DOCUMENTS**

#### **Requirements in regard to documents to be deposited with Registrar**

**40.** (1) A medical scheme shall be deemed not to have complied with any provision of this Act which imposes upon such a medical scheme the obligation to furnish to the Registrar a document prepared by the medical scheme, unless such document is signed by the principal officer and one other person authorised in accordance with the rules of the medical scheme to sign documents.

(2) The following persons, other than an auditor or valuator, shall sign any document which in terms of any provision of this Act must be furnished by a medical scheme to the Registrar:

- (a) In the case of a board of trustees, the chairperson of the board of trustees, and by one other member of such board; and
- (b) in any other case, persons designated by the Registrar who exercise control over the business of the medical scheme concerned.

(3) A medical scheme shall be deemed not to have complied with the provisions of section 38 unless any income statement, cashflow statement, balance sheet or return required to be submitted, is certified by the auditor of the medical scheme.

(4) Any person who is required in terms of this Act to furnish to the Registrar—

- (a) any original document; or
- (b) a copy of any document,

shall furnish one copy thereof certified as correct—

- (i) in the case of a medical scheme, by its principal officer; and
- (ii) in any other case, by the person by whom such copy is required to be furnished,

together with so many additional copies as the Registrar may require.

#### **Effect of Registrar's certificate on documents**

**41.** Every document which purports to have been duly certified by the Registrar to be

a document deposited at his or her office under this Act, or to be a copy of such a document, shall *prima facie* be deemed to be such a document, or a copy thereof, and every such copy shall be admissible in evidence in a court of law as if it were the original document.

#### **Right to obtain copies of, or to inspect certain documents** 5

**42.** (1) A medical scheme shall deliver to a member on demand by such member, and on payment of such fee as may be determined by the rules of the medical scheme, a copy of any of the following documents:

- (a) The rules of the medical scheme.
- (b) The latest annual financial statements prepared under section 38(1). 10
- (c) Any other document referred to in section 38(2) and (4)(d).

(2) A member shall be entitled to inspect, without charge, at the registered office of a medical scheme of which he or she is a member, the documents referred to in subsection (1) and to make extracts therefrom.

(3) Any person may, upon payment of the prescribed fee, inspect at the office of the Registrar any document referred to in subsection (1) and may make an extract thereof or obtain from the Registrar a copy thereof or extract therefrom. 15

(4) The Registrar may exempt any person from the obligation to pay fees under this section if the Registrar is satisfied that the inspection, copy or extract in question is desired for the purpose of furthering the public interest. 20

### **CHAPTER 9**

#### **POWERS OF REGISTRAR**

##### **Registrar may require additional particulars.**

- 43.** (1) The Registrar may, if he or she is of the opinion that—
- (a) an application for registration of a medical scheme; 25
  - (b) any amendment to the rules of a medical scheme; or
  - (c) any statement, account, return or document relating to the financial condition of a medical scheme,

does not disclose sufficient information to enable a decision to be made, request the principal officer of that medical scheme to furnish such additional particulars as the Registrar may deem necessary. 30

(2) If the Registrar is of the opinion that a certificate or special report by an actuary or by the auditor of a medical scheme is necessary in regard to any matter set out in subsection (1), the principal officer of that medical scheme shall on request furnish such certificate or report as the Registrar may require. 35

(3) The Registrar may require such information as to enable the Council to make recommendations to the Minister on the matters referred to in section 7(c).

##### **Enquiries by Registrar**

**44.** The Registrar may address enquiries to a medical scheme in relation to any matter connected with the business or transactions of the medical scheme, and the medical scheme shall reply in writing thereto within a period of 30 days as from the date on which the Registrar addressed the enquiry to it, or within such further period as the Registrar may, at the request of the medical scheme, allow. 40

##### **Inspections and reports**

**45.** (1) A medical scheme shall, at the written request of the Registrar, or during an inspection of the affairs of a medical scheme, by the Registrar or such other person authorised by him or her, produce at any place where it carries on business, its books, documents and annual financial statements in order to enable the Registrar or such other person authorised by him or her to obtain any information relating to the medical scheme required in connection with the administration of this Act. 50

(2) The Registrar, or such other person authorised 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 appointed under section 2 of

the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), as if he or she has been appointed an inspector under that Act.

(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. 5

(4) The Registrar may, at any time by notice in writing, direct a medical scheme to furnish to him or her within a period specified in that notice, or within such further period as the Registrar may allow—

- (a) a statement of its assets and liabilities, including contingent liabilities; and
- (b) any other document or information specified in the notice, relating to the financial or other affairs of the medical scheme over a period likewise specified. 10

(5) The Registrar may direct that any statement furnished to him or her under subsection (4), 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— 15

- (a) in what manner and to what extent he or she has satisfied himself or herself as to the amount of the liabilities and contingent liabilities shown in the statement;
- (b) in what manner and to what extent he or she has satisfied himself or herself as to the existence of the assets shown in the statement; 20
- (c) to what extent he or she has satisfied himself or herself that the particulars of such assets which are shown in the statement are correct;
- (d) whether or not, in his or her opinion, the basis of valuation of each of the various kinds of assets adopted by the medical scheme is financially sound; 25
- (e) whether or not, in his or her opinion, the medical scheme is in a sound financial condition;
- (f) if he or she is of the opinion that the medical scheme is not in a sound financial condition—
  - (i) in what respects the condition of the medical scheme is in his or her opinion unsound; and 30
  - (ii) what the causes or probable causes are of such unsound condition;
- (g) such other particulars as he or she deems relevant for the purposes of this Act; and
- (h) such other particulars as the Registrar may deem necessary. 35

(6) 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), deems it necessary in the interest 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. 40

(7) The Registrar may, on the authority and in accordance with the instructions and directions of the Council, from time to time place any restriction on the administration costs of a medical scheme in respect of any financial year, and may for this purpose prescribe the basis on which such costs shall be calculated. 45

(8) 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— 50

- (a) by notice in writing direct the medical scheme to take such steps as may be specified in the notice which are, in the opinion of the Registrar, necessary—
  - (i) to ensure the financial soundness of the medical scheme; or
  - (ii) in the interests of the members of the medical scheme;
- (b) at any time demand from the medical scheme such financial guarantees and guarantee deposits as will in the opinion of the Registrar ensure the financial stability of the medical scheme; and 55
- (c) subject to the provisions of this Act, take such other steps as may in his or her opinion be necessary to ensure the financial soundness of the medical scheme.

(9) The Registrar may, for the purposes of paragraph (a) of subsection (8), by notice in writing direct the medical scheme concerned— 60

- (a) to amend, within a period specified in the notice, the rules of the medical scheme in the manner indicated in the notice; or

(b) to conduct, within a period or for a period specified in the notice, the business of the medical scheme in a manner determined by the Registrar and specified in the notice.

(10) The Registrar may, if a medical scheme fails to amend its rules as directed by the Registrar under subsection (9)(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 32. 5

#### **Persons not registered to furnish information**

46. (1) The Registrar may, by notice in writing, require any person who he or she has reason to suspect is carrying on the business of a medical scheme which is not registered, to transmit to him or her, within a period stated in such notice, a copy of the rules, if any, under which such person is operating and such other information as he or she may require. 10

(2) The Registrar may, if the person referred to in subsection (1) fails to comply with his or her requirements to his or her satisfaction, require such person to produce at any place where that person carries on the business in question, the records, documents, statements or accounts relating to that business in order to enable the Registrar to ascertain whether that business constitutes the business of a medical scheme. 15

#### **Removal of member of board of trustees or principal officer**

47. (1) The Council may, by notice in writing, remove from office a member of the board of trustees of a medical scheme if it has sufficient reason to believe that the person concerned is not a fit and proper person to hold the office concerned. 20

(2) The Council shall, before issuing the notice referred to in subsection (1), furnish such person with full details of all the information the Council has in its possession in regard to any allegations of the member of the board of trustees not being a fit and proper person and to request that person to furnish the Council with his or her comments thereon within 30 days or such further period as the Council may allow. 25

(3) The Council may not issue the notice referred to in subsection (1) until it has considered the comments, if any, referred to in subsection (2).

### **CHAPTER 10** 30

#### **COMPLAINTS AND APPEALS**

##### **Complaints**

48. (1) The Registrar shall, where a written complaint in relation to any matter provided for in this Act has been lodged with the Council, furnish the party complained against with full particulars of the complaint and request such party to furnish the Registrar with his or her written comments thereon within 30 days or such further period as the Registrar may allow. 35

(2) The Registrar shall, as soon as possible after receipt of any comments furnished to him or her as contemplated in subsection (1), either resolve the matter or submit the complaint together with such comments, if any, to the Council, and the Council shall thereupon take all such steps as it may deem necessary to resolve the complaint. 40

##### **Appeal to Council**

49. (1) Any person contemplated in section 30(10) or a medical scheme who may be aggrieved by any decision of any person or persons designated as contemplated in that section may appeal against such decision to the Council. 45

(2) The operation of any decision which is the subject of an appeal under subsection (1) shall be suspended pending the decision of the Council on such appeal.

(3) An appeal contemplated in subsection (1) shall be in the form of an affidavit directed to the Council and shall be furnished to the Registrar not later than 3 months, or such further period as the Council may, for good cause shown, allow, after the date on which the decision concerned was made. 50

(4) The date, time and place for the hearing of an appeal shall be determined by the

Council and shall, not less than 14 days before such hearing, be made known in writing by the Registrar to the parties concerned.

(5) The persons contemplated in subsection (1) may appear before the Council and tender evidence or submit a written argument or explanation to the Council in person or through a representative. 5

(6) The Council may for the purposes of an appeal—

- (a) in writing request any person who, in its opinion, may be able to give material information concerning the subject of the appeal or who in its opinion has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the appeal, to appear before it at a time and place specified in the written request, to be interrogated or to produce that document, and may retain for examination any document so produced; 10
- (b) administer an oath to or accept an affirmation from any person called as a witness at the appeal; and
- (c) call any person present at the hearing of the appeal as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control. 15

(7) The procedure at the hearing of an appeal shall be determined by the Council.

(8) The Council may after hearing the appeal confirm or vary the decision concerned, or rescind it and give such other decision as it may deem necessary. 20

(9) The decision of the Council shall be in writing and a copy thereof shall be furnished to the persons contemplated in subsection (1).

#### **Appeal against decision of Registrar**

**50.** (1) Any person who is aggrieved by any decision of the Registrar under a power conferred or a duty imposed upon him or her by or under this Act, excluding a decision that has been made with the concurrence of the Council, may within 30 days after the date on which such decision was given, appeal against such decision to the Council and the Council may make such order on the appeal as it may consider equitable. 25

(2) The operation of any decision which is the subject of an appeal under subsection (1) shall be suspended pending the decision of the Council on such appeal. 30

(3) The Registrar may in person or through a representative appear before the Council and tender evidence or submit any argument or explanation to the Council in support of the decision which is the subject of the appeal.

#### **Appeal Board**

**51.** (1) There is hereby established an Appeal Board, consisting of three persons appointed by the Minister, of whom— 35

- (a) one shall be a person appointed on account of his or her knowledge of the law, who shall be the chairperson; and
- (b) two shall be persons appointed on account of their knowledge of medical schemes. 40

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

(3) Any person aggrieved by a decision by the Council under a power conferred or a duty imposed upon it by or under this Act, may within a period of 60 days after the date on which such decision was given and upon payment to the Registrar of the prescribed fee, appeal against such decision to the Appeal Board. 45

(4) Any person who lodges an appeal under subsection (3) shall submit with his or her appeal written arguments or explanations of the grounds of his or her appeal.

(5) A member of the Appeal Board shall, if before or during the hearing of any appeal it transpires that he or she has any direct or indirect personal interest in the outcome of that appeal, recuse himself or herself and shall be replaced for the duration of the hearing by— 50

- (a) in the case of the member referred to in subsection (1)(a), a person appointed by the Minister with due consideration of the provisions of that subsection; and 55
- (b) in the case of a member referred to in subsection 1(b), a member appointed by the Minister under the provisions of that subsection.

(6) A member of the Appeal Board shall hold office for a period of three years and shall on the expiration of his or her term of office be eligible for reappointment.

(7) Subject to the provisions of subsection (1), any casual vacancy that occurs on the Appeal Board shall be filled by the appointment by the Minister of another person, and any person so appointed shall hold office for the unexpired period of office of his or her predecessor.

(8) An appeal shall be heard on the date and at the place and time fixed by the Appeal Board and the secretary shall notify the appellant as well as the Council thereof in writing. 5

(9) For the purpose of ascertaining any matter relating to the subject of its investigation, the Appeal Board shall have the powers which a High Court has to summon witnesses, to cause an oath or affirmation to be administered by them, to examine them, and to call for the production of books, documents and objects. 10

(10) A summons for the attendance of a witness or for the production of any book, document or object before the Appeal Board shall be signed and issued by the secretary in a form prescribed by the chairperson and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a High Court at the place where the attendance or production is to take place. 15

(11) A witness shall, if required to do so by the chairperson of the Appeal Board, before giving evidence, take an oath or make an affirmation, which oath or affirmation shall be administered by the chairperson.

(12) Any person who has been summoned to attend any sitting of the Appeal Board as a witness or who has given evidence before the Appeal Board shall be entitled to 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, and in connection with the giving of any evidence or the production of any book or document before the Appeal Board, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in such a court, shall apply. 20 25

(13) All the evidence and addresses heard by the Appeal Board shall be heard in public: Provided that the chairperson may, in his or her discretion, exclude from the place where such evidence is to be given or such address is to be delivered any class of persons or all persons whose presence at the hearing of such evidence or address is, in his opinion not necessary or desirable. 30

(14) The procedure at the hearing of an appeal shall be determined by the chairperson of the Appeal Board.

(15) The appellant as well as the Council shall be entitled to be represented at an appeal by a legal practitioner. 35

(16) The Appeal Board may, after hearing the appeal—

(a) confirm, set aside or vary the relevant decision of the Council; or

(b) order that the decision of the Council be given effect to.

(17) The decision of a majority of the members of the Appeal Board shall be the decision of Appeal Board. 40

(18) The decision of the Appeal Board shall be put in writing, and a copy thereof shall be furnished to the appellant as well as to the Council.

(19) If the Appeal Board sets aside any decision by the Council, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him or her, and if the Appeal Board varies any such decision, it may in its discretion direct that the whole or any part of such fee be refunded to the appellant. 45

(20) A member of the Appeal Board who is not in the full-time employment of the State, shall in respect of his or her services as such a member be paid such remuneration, including reimbursement for transport, travelling and subsistence expenses incurred by him or her in the performance of his or her functions as a member of the appeal board, as may from time to time be determined by the Minister with the concurrence of the Minister of Finance. 50

(21) Any person who wilfully interrupts the proceedings of the Appeal Board or who wilfully hinders or obstructs the Appeal Board in the performance of its functions shall be guilty of an offence. 55

(22) (a) Any person summoned to attend and give evidence or to produce any book, document or object before the Appeal Board who, without sufficient cause, the onus of proof whereof shall rest upon him or her, fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the appeal or until he or she is excused by the chairperson of the Appeal Board from further attendance, or having attended, refuses to be sworn or to make affirmation as a witness after he or she has been required by the chairperson of the Appeal Board to do so or, having been sworn 60

or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her, or fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce, shall be guilty of an offence.

(b) Any person who 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, shall be guilty of an offence. 5

## CHAPTER 11

### JUDICIAL MATTERS

#### Application to High Court 10

52. (1) The Registrar may, with the concurrence of the Council, in regard to any medical scheme, apply to the High Court for an order contemplated in paragraph (b), (c), (d) or (e) of subsection (5), if the Registrar is of the opinion that it is in the interest of members or because material irregularities have come to his or her notice.

(2) A medical scheme may, in regard to itself, apply to the High Court for an order contemplated in paragraph (b), (d) or (e) of subsection (5), if the medical scheme is of the opinion that it is desirable, because the medical scheme is not in a sound financial condition or for any other reason that such an order be made in regard to the medical scheme: Provided that a medical scheme shall not make such an application except by leave of the High Court and the court of appeal shall not grant such leave unless the medical scheme has given security to an amount specified in the Rules of the High Court for the payment of such costs. 15 20

(3) Any member or one or more creditors of a medical scheme may make an application to the High Court for an order in terms of paragraph (b), (d) or (e) of subsection (5), and the proviso to subsection (2) shall apply in regard to such an application. 25

(4) If an application to the High Court in terms of subsection (3) is made by a person other than the Registrar—

(a) it shall not be heard unless a copy of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are also lodged with the Registrar at least 15 days, or such shorter period as the High Court may allow on good cause shown, before the application is set down for hearing; and 30

(b) the Registrar may, if he or she is of the opinion that the application is contrary to the interest of the members of the medical scheme concerned, make application to join the application as a party and file affidavits and other documents in opposition to the application. 35

(5) Upon any application in terms of the preceding subsections, the High Court may—

(a) refuse the application; 40

(b) order that an investigation be made and may issue such directions regarding such investigation as the High Court may deem desirable;

(c) order that the rules of the medical scheme relating to the appointment, powers, remuneration and removal from office of any officer, or relating to such other matter as the High Court may regard appropriate, be altered in a manner to be specified in such order; 45

(d) order that the medical scheme be placed under judicial management in terms of section 53; or

(e) order that the whole or any part of the business of the medical scheme be wound-up in terms of section 54. 50

(6) The High Court shall, in exercising its discretion under subsection (5), consider the equitable interests of the members and of any other person who has rendered or who intends to render financial assistance to the medical scheme, and, subject to such considerations as aforesaid, shall make such order as it deems most advantageous to the members. 55

(7) When a High Court has made an order under paragraph (b) of subsection (5) in regard to a medical scheme, it may at any time thereafter make an order under paragraph (c), (d) or (e) of that subsection in regard to that medical scheme, and when a High Court has made an order under paragraph (d) of subsection (5) in regard to the medical

scheme, it may at any time thereafter make an order under paragraph (e) of that subsection in regard to that medical scheme.

(8) Notwithstanding anything to the contrary contained in the rules of a medical scheme, an order of the High Court made under paragraph (c) of subsection (5) shall take effect as from the date specified for that purpose in the order, or if no date has been so specified, as from the date of the order, and thereupon the said rules shall be deemed to have been amended in the manner specified by the High Court. 5

(9) Unless the High Court otherwise orders, the costs of the Registrar in or in connection with an application in terms of this section, shall be paid by the medical scheme and shall be a first charge upon the assets of such medical scheme. 10

### **Judicial management**

**53.** (1) Chapter XV of the Companies Act, 1973 (Act No. 61 of 1973), shall, subject to the provisions of this section and with the necessary changes, apply in relation to the judicial management of a medical scheme, and in such application the Registrar shall be deemed to be a person authorised by section 346 of the Companies Act, 1973, to make an application to the High Court for the winding-up of the medical scheme. 15

(2) The Registrar may make an application under section 427(2) of the Companies Act, 1973, for a judicial management order in respect of a medical scheme if he or she is satisfied that it is in the interests of the members of that medical scheme to do so.

(3) In the application of Chapter XV of the Companies Act, 1973, as provided for by subsection(1)— 20

- (a) a reference which relates to the inability of a medical scheme to pay its debts or to meet its obligations shall be construed as relating also to its inability to comply with the requirements prescribed by section 36(1) of this Act;
- (b) in addition to any question which relates to the nature of a medical scheme as a successful concern, there shall be considered also the question whether any course of action is in the interest of its members; 25
- (c) a reference to the members of a company in sections 432(2) and 433(d) shall be construed as a reference also to the members of a medical scheme;
- (d) a reference in sections 432(2)(e) and 433(d) to the Registrar of Companies shall be construed as a reference also to the Registrar; 30
- (e) a reference in sections 428(3), 432(4) and 433(j) to the Master shall be construed as a reference also to the Registrar; and
- (f) a reference in section 433(j) to a contravention of any provision of that Act shall be construed as a reference also to a contravention of any provision of this Act; and 35
- (g) a reference to a director shall be construed as referring also to a member of the board of trustees.

(4) If an application to the High Court for the judicial management of a medical scheme is made by a person other than the Registrar— 40

- (a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the Registrar at least 15 days, or such shorter period as the High Court may allow on good cause shown, before the application is set down for hearing; 45
- (b) the Registrar may, if he or she is satisfied that the application is contrary to the interests of the members of the medical scheme concerned, make application to the High Court to join the application as a party and file affidavits and other documents in opposition to the application.

(5) As from the date on which a provisional or final judicial management order is granted in respect of a medical scheme— 50

- (a) any reference in this Act to a medical scheme shall, unless clearly inappropriate, be construed as a reference to the provisional or final judicial manager, as the case may be; and
- (b) the provisional or final judicial manager of a medical scheme shall not admit members unless he or she has been granted permission to do so by the High Court in the provisional or final judicial management order or any variation thereof. 55

**Winding-up**

**54.** (1) Chapter XIV of the Companies Act, 1973 (Act No. 61 of 1973), shall, subject to the provisions of this section and with the necessary changes, apply in relation to the winding-up of a medical scheme and in such application the Registrar shall be deemed to be a person authorised by section 346 of the Companies Act, 1973, to make an application to the High Court for the winding-up of the medical scheme. 5

(2) The Registrar may, with the approval of the High Court, make an application under section 346 of the Companies Act, 1973, for the winding-up of a medical scheme if he or she is satisfied, that it is in the interest of the members of that medical scheme to do so. 10

(3) In the application of Chapter XIV of the Companies Act, 1973, as provided for by subsection (1)—

(a) a reference which relates to the inability of a medical scheme to pay its debts shall be construed as relating also to its inability to comply with the requirements prescribed by section 36(1) of this Act; 15

(b) in addition to any question whether it is just and equitable that a medical scheme should be wound up, there shall be considered also the question whether it is in the interests of the members of that medical scheme that it should be wound up;

(c) notwithstanding any other provision of that Chapter, there shall be considered whether a person is acting in contravention of section 21 of this Act; 20

(d) a reference in sections 392, 394(5) and 400 to the Master shall be construed as a reference also to the Registrar;

(e) a reference to the Registrar of Companies in sections 375(5)(a) and 419(1) shall be construed as a reference also to the Registrar; 25

(f) a reference in section 400 to a contravention of any provision of that Act shall be construed as a reference also to a contravention of any provision of this Act;

(g) section 346(3) of the Companies Act, 1973, shall not apply where the Registrar makes the application to the High Court; and 30

(h) a reference to a company shall be construed as referring also to a medical scheme, and a reference to a director shall be construed as referring also to a member of a board of trustees.

(4) If an application to the High Court for or in respect of the winding-up of a medical scheme is made by any person other than the Registrar— 35

(a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the Registrar at least 15 days, or such shorter period as the High Court may allow on good cause shown, before the application is set down for hearing; and 40

(b) the Registrar may, if satisfied that the application is contrary to the interests of the members of the medical scheme concerned, make application to the High Court to join the application as a party and file affidavits and other documents in opposition to the application.

**Compromise**

**55.** (1) Where any compromise or arrangement is proposed between a medical scheme and its creditors or any class of them, or between a medical scheme and its members or any group of them, the High Court may, on the application of the medical scheme or any creditor or member thereof or, in the case of a medical scheme being wound up, of the liquidator, or if the medical scheme is subject to a judicial management order, of the judicial manager, or if the medical scheme is subject to a curatorship order, of the curator, order a meeting of the creditors or class of creditors, or of the members of the medical scheme or a group of members, as the case may be, to be summoned in such manner as the High Court may direct. 50

(2) If the compromise or arrangement is agreed to by— 55

(a) a majority in number representing 75 per cent in value of the creditors or class of creditors; or

(b) a majority representing 75 per cent of the votes exercisable by the members or group of members, as the case may be, present and voting either in person or by proxy at the meeting, 60

such compromise or arrangement shall, if sanctioned by the High Court, be binding on all the creditors or the class of creditors, or on the members or group of members, as the case may be, and also on the medical scheme, liquidator, judicial manager or curator, as the case may be.

(3) No such compromise or arrangement shall affect the liability of any person who is a surety for the medical scheme. 5

(4) If the compromise or arrangement provides for the discharge of a winding-up order, a judicial management order or curatorship order or for the dissolution of the medical scheme without winding-up, the liquidator or judicial manager or curator of the medical scheme, as the case may be, shall lodge with the Master and the Registrar a report as to whether or not any individual, organisation, person or persons or officer of the medical scheme is or appears to be personally liable for damages or compensation to the medical scheme or for any debts or liabilities of the medical scheme under any provision of this Act, and the Master and the Registrar shall report thereon to the High Court. 10 15

(5) The High Court, in determining whether the compromise or arrangement should be sanctioned or not, shall have regard to the number of members present or represented at the meeting referred to in subsection (2) and voting in favour of the compromise or arrangement, and to the report of the Master and the Registrar referred to in subsection (4). 20

### **Information as to compromise**

**56.** (1) Where a meeting of creditors or members is summoned under section 55 for the purpose of agreeing to a compromise or arrangement, there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and stating all relevant information material to the proposed transaction; and 25

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as referred to in paragraph (a) or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement. 30

(2) Where a notice given by advertisement includes a notification that copies of the statement referred to in subsection (1)(a) may be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the medical scheme free of charge with a copy of such statement. 35

(3) Where a medical scheme is in default in complying with any requirement of this section, such medical scheme and every officer who is a party to the default, shall be guilty of an offence, and for the purpose of this subsection any liquidator, judicial manager or curator of the medical scheme shall be deemed to be an officer. 40

(4) A person shall not be liable under subsection (3) if he or she shows that the default was due to the refusal of any other person to supply the necessary particulars as to his or her interests and that fact has been stated in the statement referred to subsection(1)(a).

### **Appointment of curator**

**57.** (1) The Registrar may, notwithstanding the provisions of sections 53 and 54, if he or she is of the opinion that it is in the interest of members or that it is desirable to do so, because material irregularities have come to his or her notice, or because a medical scheme is not in a sound financial condition or as a result of an inspection of the affairs of a medical scheme, apply, with the concurrence of the Council, to the High Court, for the appointment of a curator to take control of and to manage the business of that medical scheme. 45 50

(2) The provisions of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), 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. 55

(3) In the application of the Financial Institutions (Investment of Funds) Act, 1984 as provided for by subsection (1)—

(a) a reference to a company and the registrar in section 1 of the Financial

Institutions (Investment of Funds) Act, 1984, shall be construed as a reference also to a board of trustees and the Registrar, respectively;

- (b) a reference in that Act to a director, official, employee or agent shall be construed as a reference also to a member of the board of trustees or the principal officer, as the case may be; and 5
- (c) a reference in that Act to a financial institution shall be construed as a reference also to a medical scheme.

## CHAPTER 12

### GENERAL

#### General provisions on governance 10

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

(2) At least 50 per cent of the members of the board of trustees shall be elected from amongst members. 15

(3) A person who is a director, shareholder, employee, representative, associate of, or any person affiliated to, an administrator of a medical scheme, shall not be a member of the board of trustees of such a medical scheme.

(4) The duties of the board of trustees shall be to—

- (a) appoint a principal officer who is a fit and proper person to hold such office and shall within 30 days of such appointment give notice thereof in writing to the Registrar; 20
- (b) ensure that 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; 25
- (c) ensure that proper control systems are employed by or on behalf of the medical scheme;
- (d) ensure that 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; 30
- (e) take all reasonable steps to ensure that contributions are paid timeously to the medical scheme in accordance with this Act and its rules;
- (f) take out and maintain professional indemnity insurance and fidelity guarantee insurance from and up to such amount as the medical scheme's auditor, with the concurrence of the Registrar, may determine; 35
- (g) 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
- (h) ensure that the rules, operation and administration of the medical scheme comply with the provisions of this Act and all other applicable laws. 40

(4) 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.

(5) The board of trustees shall—

- (a) take all reasonable steps to ensure that the interests of members in terms of the rules of the medical scheme and the provisions of this Act are protected at all times; 45
- (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 members. 50

#### Administration by intermediary

**59.** (1) No person shall administer a medical scheme as an intermediary unless the Council has, in a particular case or in general, granted accreditation to such a person.

(2) An application to administer a medical scheme shall be made to the Council in the manner and be accompanied by such information, as may be prescribed, and any other information as the Council may require. 55

(3) The Council may—

- (a) approve the application;
- (b) limit such approval to the performance of specified functions; and
- (c) review the approval from time to time.

(5) Application for approval in terms of subsection (2) shall be accompanied by the fees prescribed.

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### **Charges by suppliers of service**

**60.** (1) A supplier of a service who has rendered any service to a member or to a dependant of such a member for which an account has been rendered, shall, notwithstanding the provisions of any other law, furnish to the member concerned an account or statement reflecting such particulars as may be prescribed.

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(2) A medical scheme shall, in the case where an account has been rendered, subject to the provisions of this Act and the rules of the medical scheme concerned, pay to a member or a supplier of a relevant health service, any benefit owing to that member or supplier of service within 30 days after the day on which the claim in respect of such benefit was received.

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(3) Notwithstanding anything to the contrary contained in any other law a medical scheme may, in the case of—

- (a) any amount which has been paid *bone fide* in accordance with the provisions of this Act to which a member or a relevant health service is not entitled to; or
- (b) any loss which has been sustained by the medical scheme through theft, fraud, negligence or any misconduct which comes to the notice of the medical scheme,

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deduct such amount from any benefit payable to such a member or a relevant health care service.

### **Preservation of secrecy**

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**61.** (1) No person shall disclose any information relating to the affairs of the Council, except for the purposes of the performance of his or her duties or the exercise of his or her powers in terms of this Act or any other law or when required to do so under any law before a court of law.

(2) No person shall, except in the performance of his or her functions or duties under this Act or when called upon to do so as a witness before a court of law, disclose any information relating to the affairs of any medical scheme and furnished to or obtained by him or her in connection with any enquiry or investigation under this Act.

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### **Undesirable business practices**

**62.** (1) Notwithstanding the provisions of any other law, the Registrar may, with the concurrence of the Council and the Minister, by notice in the *Gazette*, declare a particular business practice as undesirable for—

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- (a) all or a particular category of medical schemes; or
- (b) all or a particular category of persons who render contractual, administrative or intermediary services.

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(2) The Registrar shall not publish the declaration referred to in subsection (1) unless he or she has, at least 60 days before that declaration is given, by notice in the *Gazette* published his or her intention to make the declaration and invited interested persons thereby to make written representations regarding the proposed declaration so as to reach him or her within 21 days after the date of publication of that notice.

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(3) The Registrar may, if he or she is satisfied that a medical scheme or any other person is carrying on a business practice which, in his or her opinion, may become the subject of a declaration under subsection (1), in writing, direct that medical scheme or person to suspend that particular business practice for such a period, not exceeding three months, as he or she deems necessary to enable the matter to be dealt with in terms of subsection (1).

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(4) No medical scheme or other person shall, on or after the date of a notice referred to in subsection (1), or of a directive referred to in subsection (3), carry on the business practice referred to in the directive referred to in subsection (3).

(5) The Registrar may, in writing, direct a medical scheme or other person who has, on or after the date of a notice referred to in subsection (1), or a directive referred to in subsection (3), carried on the business practice concerned, to rectify, to his or her

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satisfaction, anything which he or she is satisfied was caused by or arose out of that carrying on of the business practice concerned.

(6) A medical scheme or other person who is under subsection (5) directed to rectify anything, shall do so within 60 days after it has so been directed.

### **Limitation of liability** 5

**63.** The Minister, the Council, a member of the Council or of the Appeal Board, the Registrar, Deputy Registrar or other staff member of the Council shall not be liable in respect of any *bona fide* exercise of a discretion in the performance of any function under this Act.

### **Exemption** 10

**64.** The Council is exempted from the payment of any income tax, stamp duty, levies or fees which would otherwise have been payable by the Council in terms of any law.

### **Amalgamation and transfer**

**65.** (1) No transaction involving the amalgamation of the business of a medical scheme with any other medical scheme or the transfer of any business from a medical scheme to any other 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. 15

(2) The medical scheme contemplated in subsection (1) shall deposit with the Registrar a copy of the exposition of the proposed transaction, including a copy of every actuarial or other statement taken into account for the purpose of the proposed transaction, and shall furnish the Registrar with particulars of the voting at any meeting of its members at which the proposed transaction was considered and with such additional information as the Registrar may require. 20

(3) The Registrar may require a medical scheme to comply with any of the following provisions regarding the proposed transaction: 25

(a) A report on the proposed transaction to be drawn up by an independent valuator or other competent person nominated by the Registrar at the expense of the medical schemes concerned.

(b) A copy of the exposition of the proposed transaction and of the report, if any, referred to in paragraph (a) to be forwarded by the parties concerned to every member and creditor of those medical schemes. 30

(c) The publication of the proposed transaction of the parties concerned in a form approved by the Registrar in the *Gazette* and in such newspaper or newspapers as the Registrar may direct. 35

(4) Copies of the exposition of the proposed transaction and of the report, referred to in subsection (3)(a) shall, for such period but not less than 21 days or within such further period as the Registrar may, on request allow, be made available for the inspection of any member or creditor of any party to the proposed transaction or by any other person or body having an interest therein— 40

(a) at the registered office of any medical scheme concerned;

(b) at the registered office or other principal place of business in the Republic of any other party; and

(c) at the office of the Registrar.

(5) A person who has an interest in the proposed transaction may, in writing, submit to the Registrar within 21 days after the period specified in terms of subsection (4), such representations concerning the transaction as are relevant to his, her or its interests. 45

(6) The Registrar shall, if he or she is satisfied that the requirements of subsection (4) have been complied with, consider the exposition of the proposed transaction and thereafter he or she may— 50

(a) confirm the exposition; or

(b) suggest that the parties to the proposed transaction modify the exposition in certain respects, and if they so modify the exposition he or she may confirm the exposition as modified; or

(c) decline to confirm the exposition. 55

(7) The Registrar shall not confirm the proposed exposition unless he or she is satisfied that the transaction concerned—

- (a) would not be detrimental to the interests of the majority of the members of the medical schemes concerned; and
- (b) would not render any of the medical schemes concerned which will continue to exist if the proposed exposition is completed, unable to meet the requirements of this Act or to remain in a sound financial condition, or, in the case of a medical scheme which is not in a sound financial condition, to attain such a condition within a period of time deemed by the Registrar to be satisfactory.

(8) If the Registrar has declined to confirm the exposition, the parties to the proposed transaction may, after notice of not less than 14 days to the Registrar, apply to the Council for confirmation of the exposition.

(9) The Registrar shall be entitled to be heard personally or through a representative at any consideration by the Council of such application.

(10) The Council may confirm the exposition as submitted to it or with such modifications as the Council may deem fit, or decline to confirm the exposition.

(11) Any exposition confirmed by the Registrar or the Council in accordance with this section shall be binding on all parties concerned, and shall have effect notwithstanding any conflicting provision contained in the rules of any medical scheme concerned, in the memorandum or other document under which any other party to the transaction is constituted or in the articles of association or other rules of such party.

(12) Any person who is aggrieved by a decision of the Registrar in terms of subsection (6) or a decision of the Council in terms of subsection (10), may within 30 days after the date on which such decision was given, appeal against such decision to the Appeal Board or the High Court as the case may be, and the Appeal Board or the High Court may make such order as it may deem necessary.

(13) As soon as the exposition of the proposed transaction has been confirmed by the Registrar or the Council, as the case may be, the person controlling the amalgamated business or the person to whom any business has been transferred in terms of the transaction, as the case may be, shall within 14 days after such confirmation deposit with the Registrar a declaration, duly signed in accordance with the provisions of section 40, on behalf of each of the parties to the transaction, and also stating that, to the best of their belief, every payment made or to be made or other valuable consideration given or to be given to any person whatsoever on account of the amalgamation or transfer is fully set forth in the exposition of the proposed transaction and that all the conditions of the transaction have been complied with.

(14) Upon the confirmation of the exposition of a proposed transaction in accordance with the provisions of this section, the relevant assets and liabilities of the parties to the amalgamation shall vest in and become binding upon the amalgamated body or, as the case may be, the relevant assets and liabilities of the party effecting the transfer shall vest in and become binding upon the party to which transfer is effected.

(15) The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset which is transferred in accordance with the provisions of subsection (14), shall, upon the production to him or her by the person concerned of such deed or other document and of a certificate by the Registrar of the confirmation of the transaction of amalgamation or of transfer, as the case may be, without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his or her registers necessitated by the amalgamation or transfer.

(16) A transaction in terms of this section shall not deprive any creditor of a party thereto, other than in his or her capacity as a member or a shareholder of such party of any right or remedy which he or she had immediately prior to the date of the transaction against any party to the transaction or against any member or shareholder or officer of such party.

### **Voluntary or automatic dissolution**

**66.** (1) In the event of the rules of a medical scheme providing for the dissolution or termination of such medical scheme upon the expiry of a period or upon the occurrence of an event, or upon a resolution by the members that such medical scheme shall be terminated, then upon the expiry of such period, or the occurrence of such event, or the passing of such resolution, such medical scheme shall, subject to the provisions of this section, be liquidated in the manner provided for by the rules of such medical scheme,

and the assets of that medical scheme shall, subject to the provisions of this Act, be distributed in the manner provided for by the rules of the medical scheme.

(2) The board of trustees of the medical scheme shall appoint a person or persons as liquidator who shall be approved by the Registrar and the liquidation shall be deemed to commence as from the date of such approval. 5

(3) During such liquidation the provisions of this Act shall continue to apply to such medical scheme as if the liquidator were the person managing the business of the medical scheme.

(4) The liquidator shall, as soon as possible, deposit with the Registrar a preliminary account and a preliminary balance sheet signed and certified by him or her as correct, 10 showing the assets and liabilities of the medical scheme at the commencement of the liquidation and the manner in which it is proposed to realise the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members.

(5) The Registrar may direct the liquidator to furnish a report drawn up by an independent valuator or other competent person nominated by the Registrar. 15

(6) The preliminary account, preliminary balance sheet and report, if any, referred to in subsections (4) and (5), shall lie open at the office of the Registrar, and at the registered office of such medical scheme, and where the registered office of the medical scheme is in any district other than the district wherein the office of the Registrar is situated, at the office of the magistrate of the district in which the registered office of the medical scheme is situated, for inspection by interested persons for a period of 30 days. 20

(7) The liquidator shall, at the cost of such medical scheme, cause to be published in the *Gazette* or in a newspaper circulating in the district in which the registered office of such medical scheme is situated, or in both the *Gazette* and such newspaper, a notice stating the period during which and the places at which the preliminary account, preliminary balance sheet and report, if any, shall lie open for inspection as aforesaid, and such notice shall call upon all interested persons who have any objection to the said preliminary account, preliminary balance sheet and report, if any, to lodge their objections in writing with the Registrar within a period stated in the notice, not being less than 14 days as from the last day on which the aforesaid documents lie open for inspection. 25 30

(8) If no objections are lodged with the Registrar in terms of subsection (7), he or she shall direct the liquidator to complete the liquidation.

(9) The Registrar may, if objections are lodged with him or her in terms of subsection (7), after considering the said objections, direct the liquidator to amend the preliminary account and preliminary balance sheet, or give such other directions relating to the liquidation as he or she thinks fit: Provided such directions are not inconsistent with the rules of the medical scheme, and any such directions shall be binding upon the liquidator. 35 40

(10) The liquidator shall, within 14 days of the receipt by him or her of any direction of the Registrar in terms of subsection (9), post a copy thereof to every member and creditor of the medical scheme, and the liquidator or any person aggrieved by any such direction of the Registrar, may apply to the Council or by motion to the High Court within 28 days after such direction has been communicated to the liquidator, for an order setting aside the Registrar's decision, and the Council or the High Court may confirm the said decision or make such order as it deems necessary. 45

(11) If the Registrar is satisfied that his or her directions, in so far as they have not been varied or set aside by the Council or the High Court, have been given effect to, he or she shall direct the liquidator to complete the liquidation. 50

(12) The liquidator shall, within 30 days after the completion of the liquidation, lodge with the Registrar a final account and a final balance sheet, signed and certified by him or her as correct, showing the assets and liabilities of the medical scheme at the commencement of the liquidation and the manner in which the assets have been realised and the liabilities, including any liabilities and contingent liabilities to or in respect of the members, have been discharged. 55

(13) The provisions of section 54, in so far as they are applicable to the voluntary winding up of a medical scheme and are not inconsistent with the provisions of this section, shall apply to the dissolution of a medical scheme in terms of this section.

(14) All claims against the medical scheme shall be proved to the satisfaction of the liquidator, subject to a right of appeal to the High Court, and the liquidator may require any claim to be made on affidavit. 60

(15) If the Registrar is satisfied that the said account and balance sheet are correct and

that the liquidation has been completed, he or she shall cancel the registration of the medical scheme, and thereupon such medical scheme shall be deemed to be dissolved.

(16) Any member of the board of trustees, principal officer or liquidator who fails to take all reasonable steps to ensure compliance with the provisions of this section, shall be guilty of an offence.

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### Offences and penalties

67. (1) Any person who—

- (a) contravenes any provision of this Act or fails to comply therewith;
- (b) makes or causes to be made any claim for the payment of any benefit allegedly due in terms of the rules of a medical scheme, knowing such claim to be false; 10
- (c) knowingly makes or causes to be made a false representation of any material fact to a medical scheme, for use in determining any right to any benefit allegedly due in terms of the rules of the medical scheme;
- (d) having knowledge of any fact or the occurrence of any event affecting his or her right to receive any benefit in terms of the rules of a medical scheme, and who fails to disclose such fact or event to the medical scheme with the intent to obtain from the medical scheme a benefit to which he or she is not entitled or a larger benefit than that to which he or she is entitled; 15
- (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 the benefit to which he or she is entitled in terms of the rules of the medical scheme; or 20
- (f) allows, compensates or causes any company, partnership or person, other than an employee of a medical scheme, to be compensated for the introduction or admission of a member to such a medical scheme or for consenting to keep such member in such medical scheme or who knowingly receive such compensation except as may be prescribed, 25

shall, subject to the provisions of subsection (2), be guilty of an offence, and liable on conviction to a fine or to imprisonment for a period not exceeding five years or both a fine and imprisonment. 30

(2) No contravention or failure to comply with any provision of this Act shall be punishable under subsection (1) if the act or omission constituting that contravention or failure to comply with any request or requirement is punishable as an offence under the provisions of any other Act of Parliament which controls the professional conduct of any health care provider. 35

(3) Any person who fails to furnish the Council or the Registrar with a return, information, financial statement, document or a reply to an enquiry addressed to him or her, as provided for by this Act or any directive under this Act, within the prescribed or specified period or any extension thereof, shall irrespective of any criminal proceedings instituted under this Act, be liable to a penalty as prescribed for every day which the failure continues, unless the Registrar, for good cause shown, waives the penalty or any part thereof. 40

(4) Any penalty imposed under subsection (3) shall be a debt due to the Council.

### Regulations

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68. (1) The Minister may, after consultation with the Council, make regulations relating to—

- (a) the provision by medical schemes to their members of written proof of membership, and the particulars such proof shall or may contain;
- (b) the conditions subject to which any person who has terminated his or her membership of a medical scheme shall be enrolled as a member or a dependant of a member of any other medical scheme; 50
- (c) the assets to be held by a medical scheme in the Republic including the limiting of the amount which or the extent to which such a medical scheme may invest in particular assets or in particular kinds or categories of assets; 55
- (d) the manner in and the period within which any payment due by a medical scheme shall be made;

- (e) the administration of the affairs of medical schemes, including the regulating, controlling, restricting or prohibiting of any act relating to such administration;
  - (f) the fees to be paid to the Council in respect of—
    - (i) an application for the registration of a medical scheme; 5
    - (ii) the registration of a medical scheme;
    - (iii) the change of the name of a medical scheme in terms of section 24;
    - (iv) the registration, of an amendment or rescission of a rule, or an addition to the rules of a medical scheme, in terms of section 32; and
    - (v) the fees payable by an appellant in terms of section 51(3); 10
  - (g) the prescribed scope and level of minimum benefits to which members and their registered dependants shall be entitled to under the rules of a medical scheme;
  - (h) the minimum membership required for registration of a medical scheme;
  - (i) the conditions under which a medical scheme may provide benefits in terms of a personal savings account; 15
  - (j) the conditions under which a person may act as an administrator of a medical scheme;
  - (k) the nett assets to be held by a medical scheme;
  - (l) the waiting periods to be applied in the case of pre-existing conditions, open enrolment periods, and premium penalties within defined bands for persons joining only late in life; 20
  - (m) provisions associated with the manner of providing managed health care to members; and
  - (n) all other matters which he or she considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved. 25
- (2) The Minister shall, not less than three months before any regulation is made under subsection (1), cause a copy of the proposed regulation to be published in the *Gazette* together with a notice declaring his or her intention to make that regulation and inviting interested persons to furnish him or her with their comments thereon or any representations they may wish to make in regard thereto. 30
- (3) The provisions of subsection (2) shall not apply in respect of—
- (a) any regulation made by the Minister which, after the provisions of that subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by him or her in pursuance of a notice issued thereunder; or 35
  - (b) any regulation in respect of which the Minister, with the concurrence of the Council, is of the opinion that the public interest requires it to be made without delay.

#### **Repeal of laws and transitional arrangements** 40

**69.** (1) Each of the laws referred to in the first two columns of Schedule 1 is hereby repealed to the extent specified opposite that law in the third column of that Schedule.

(2) The repeal of those laws does not effect any transitional arrangements made in Schedule 2.

(3) The transitional arrangements in Schedule 2 must be read and applied as substantive provisions of this Act. 45

#### **Amendment of laws**

**70.** The law referred to in Schedule 3 is hereby amended to the extent indicated therein.

#### **Short title and commencement**

**71.** This Act shall be called the Medical Schemes Act, 1998, and shall come into operation on a date fixed by the president by proclamation in the *Gazette*. 50

**SCHEDULE 1****Laws repealed by section 69(1)**

<b>Number and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 72 of 1967	Medical Schemes Act, 1967	The whole
Act No. 95 of 1969	Medical Schemes Amendment Act, 1969	The whole
Act No. 49 of 1972	Medical Schemes Amendment Act, 1972	The whole
Act No. 43 of 1975	Medical Schemes Amendment Act, 1975	The whole
Act No. 51 of 1978	Medical Schemes Amendment Act, 1978	The whole
Act No. 42 of 1980	Medical Schemes Amendment Act, 1980	The whole
Act No. 72 of 1981	Medical Schemes Amendment Act, 1981	The whole
Act No. 59 of 1984	Medical Schemes Amendment Act, 1984	The whole
Act No. 23 of 1993	Medical Schemes Amendment Act, 1993	The whole

## SCHEDULE 2

### Transitional arrangements

#### Council for Medical Schemes

1. The Council for Medical Schemes established by section 4 and any committee appointed under section 10 of the Medical Schemes Act, 1967 (Act No. 72 of 1967), shall be deemed to have been appointed in terms of sections 4(1) and 9(1), respectively, of this Act for a period of six months as from the date of commencement of this Act.

#### Assets and liabilities

2. (1) Immovable property of the State used by the Council and its employees immediately before the date of commencement of this Act remains at the disposal of the Council on terms and conditions as may be agreed on between the Council and the Minister.

(2) All movable assets of the State which were used by or which were at the disposal of the Council and its employees immediately before the effective date, except those assets excluded by the Minister, become the property of the Council.

(3) As from the date on which this Act shall come into operation, all contractual rights, obligations and liabilities of the Department of Health which relate to the activities of the Council, are vested in the Council.

(4) All financial, administrative and other records of the Department of Health which relate to the activities of the Council, including all documents in the possession of that Department immediately before the date on which this Act shall come into operation, shall be transferred to the Council.

#### Transfer of officers and employees

3. (1) Any person appointed in terms of section 13 of the Medical Schemes Act, 1967 shall be deemed to have been appointed in terms of section 19 of this Act for a period of nine months from the date of the commencement of this Act on the same terms and conditions under which he or she previously served.

(2) Any officer or employee in the employment of the State may, with his or her written consent and the consent of the head of the Department in which he or she is employed, be transferred to a post at the Council to assist the Registrar in the performance of his or her functions or duties, after which he or she shall from the date of his or her transfer be deemed to have been appointed under section 8(a) of this Act: Provided that—

- (a) his or her salary or salary scale in respect of the post shall not be less favourable than the salary or salary scale which was applicable to him or her as a person employed by the State;
- (b) any sick or vacation leave which stood to his or her credit immediately prior to his or her transfer, shall be deemed to be leave credited to him or her in the employment of the Council;
- (c) pensionable service accrued or bought back by him or her before his or her transfer shall be deemed to be pensionable service performed by him or her in the employment of the Council;
- (d) any other conditions of service shall not be less favourable than those under which he or she previously served; and
- (e) no person shall, as a consequence of such transfer and appointment, acquire a retirement age which is higher than that which applied to him or her in the employment of the State.

(2) The salary or salary scale referred to in subsection (2)(a) may not be reduced without the written consent of the person concerned.

#### Medical Schemes

4. (1) Any medical scheme which immediately prior to the commencement of this Act was registered as a medical scheme under section 15 of the Medical Schemes Act, 1967, shall be deemed to be registered as a medical scheme in terms section 25(1) read with sections 27 and 33 of this Act.

(2) Any medical scheme which immediately prior to the commencement of this Act was established as a medical scheme under the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), the Labour Relations Act, 1995, (Act No. 66 of 1995), the South African Police Services Act, 1995 (Act No. 68 of 1995) and the Correctional Services Act, 1959 (Act No 8 of 1959) shall be deemed to be a medical scheme registered in terms of section 25(1) read with sections 27 and 33 of this Act.

(3) A medical scheme shall within six months from the date of the commencement of this Act amend its rules in order to comply with the provisions of this Act; and shall submit such rules to the Registrar in terms of section 32 of this Act.

(4) The Registrar may, on good cause shown, grant extension to a medical scheme to comply with the provisions of subsection (3) for a further period of up to 3 months.

(5) A person who fails to comply with the provisions of subsection (3) shall be guilty of an offence.



## MEMORANDUM ON THE MEDICAL SCHEMES BILL, 1998

### 1. INTRODUCTION

Private health financing policy for South Africa has been set out in the *White Paper on Transformation of the National Health System*, issued in April 1997. A strategy for implementing of the policy has been captured in the document *Reforming Financing of Private Health Care in South Africa: The Quest and Efficiency*, issued in November 1997. This policy document called for the replacement of the Medical Schemes Act, 1967 (Act No. 72 of 1967), and for new legislation to supervise and regulate medical schemes in a manner which would accommodate and implement the new policy.

There are a number of features of the current situation within the medical schemes sector which underlie the need for new legislation. These include the need to:

- \* Expand access to medical schemes, especially by the elderly and sickly who currently tend to be excluded, by means of reinforcing a system of community rating and non-exclusion (**Clause 30(1)(a) and (3) respectively**).
- \* Provide for prescribed benefits, both as a way of ensuring that members have access to necessary care and costs are not unfairly shifted onto public hospitals (**Clause 30(1)(o)**).
- \* Provide appropriate protection against the tendency, within a voluntary environment where there is some form of open enrolment, to deliberately apply for membership of medical schemes and be admitted only when persons are sick or at an advance or late age (adverse-selection); (**Clauses 30 (n) and 68(1)(b)**).
- \* Establish an appropriate demarcation between the business of community rated medical schemes which effect cross-subsidisation from the young and healthy to the elderly and sickly members, and that of other sickness insurance products offered under the Insurance Acts. In order to create a single regulatory framework within which one Act of Parliament will apply to all the organisations which carry on the business of a medical scheme, medical schemes which came into operation under other legislation, will be required to register in terms of this Act. (**Clauses 1 definitions of “business of a medical scheme” and “relevant health service,” 21 and 25. and clause 4(2) of Schedule 2**).

In addition, the existing provisions on governance, administration and reporting requirements need to be improved to reflect the significant changes that the medical schemes industry has continued to undergo. The Bill therefore aims to:

- \* Provide for improved governance and administration of medical schemes (**Clauses 30(1)(a), 58 and 59**).
- \* Improve the regulatory oversight and supervision of medical schemes through the Council for Medical Schemes (hereinafter referred to as “the Council”) and the office of the Registrar of Medical Schemes (hereinafter referred to as “the Registrar”) (**Clauses 3 to 16, 18, 19 and 20**).
- \* Improve the financial soundness of medical schemes in the interests of their members; to ensure transparent and detailed reporting which will enable the public to make informed decisions based on published results and to enable the regulatory authority to intervene pro-actively in instances where schemes do not perform well (**Clauses 36 to 38 and 45**).

### 2 PREAMBLE

The preamble identifies the conditions which give rise to the new Bill, including the need to provide for the establishment of the Council of Medical Schemes as a juristic body in order to protect the interests of members of medical schemes more efficiently.

### 3 CHAPTER 1: DEFINITIONS

This Chapter contains the definitions used in the Bill.

- (a) An important new definition relates to the “**business of a medical scheme**” which is being introduced to establish the principle that only registered organisations can do the business of a medical scheme, and seen in conjunction with the recent introduction of the Long- and Short Term Insurance Bills, will ensure that there is proper demarcation between the

business of a medical scheme which operates on the basis of social solidarity, and that of other sickness products registered under the Insurance Acts.

- (b) The definition of “**member**” clearly determines that persons who are related to the member of a medical scheme and particularly children (including those who are in foster care) who are financially dependent on the member, are entitled to membership of medical schemes by virtue of the membership of the member. The definition also includes other immediate family members who are not self-supporting and who is dependent on the member for family care.
- (c) The definition of “**relevant health service**” refers to the health care treatment envisaged and also makes it clear that an ambulance service is included for benefit purposes.

#### **4 CHAPTER 2: APPLICATION OF ACT**

##### **CLAUSE 2**

This Chapter clarifies the legal status of this Bill in the case where there is a conflict between this Bill, and any other Act. If read in conjunction with the transitional clause, (clause 69) the Bill intends to level the playing fields for all medical schemes to the extent that those medical schemes which were established by any organ of the State under other legislation will be deemed to be registered under this Bill.

#### **5 CHAPTER 3: COUNCIL FOR MEDICAL SCHEMES**

This Chapter deals with the Council for Medical Schemes and the staff of the Council. It is divided into two parts:

##### **PART 1**

##### **CLAUSES 3 TO 18**

The Council is established as a juristic person which is accountable to the Minister of Health. This is considered necessary to afford the Council the capacity it requires to properly supervise what has become a complex and constantly changing industry.

- (a) **Clauses 7 and 8** expand the functions and powers of the Council to extend, not only to issues of financial supervision, but also medical issues such as making recommendation to the Minister on criteria for the measurement of quality and outcomes of the relevant health service provided for by medical schemes to ensure that medical schemes’ activities are complementary with national health policy. The powers of the Council are extended to perform tasks which are commensurate with its status as juristic person.
- (b) **Clauses 12 and 13** enable the Council to require medical schemes to contribute to the costs of supervision—a measure which is consistent with local and international trends on funding of oversight activities.
- (c) Provision is made in **clause 15** for the Council to submit annual reports to the Minister while **clause 18** provides for its liquidation should the need arise.

##### **PART 2**

##### **CLAUSES 19 AND 20**

- (d) The Bill provides in **clause 19** for the Minister to appoint a Registrar of Medical Schemes and one or more deputy registrars to carry out the functions required by the Council and this Bill. This part also regulates the appointment of other staff of the Council, the transfer of employees of the State to the Council, remuneration, pension rights and other conditions of employment.

#### **6 CHAPTERS 4 AND 5: MEDICAL SCHEMES, AND RULES OF MEDICAL SCHEMES**

##### **CLAUSES 21 TO 33**

These Chapters regulate the requirements for registration as a medical scheme, the

effects of registration and suspension of registration, as well as other rules of medical schemes. It does so in a number of ways:

### **Governance**

- (a) **Clause 27** specify that all income by whatever means shall accrue to the medical scheme, that it remains the property of the medical scheme under the control of the board of trustees and that such funds are not to be utilised for purposes other than to conduct its normal business. Specific provision is made to underpin the liability of medical schemes to guarantee the benefits to their members.
- (b) Currently the rules of medical schemes lack clarity on issues such as management and governance of a medical scheme. Explicit provision is made in **clause 30** for the board of trustees that they should be “fit and proper” persons. This is necessary to ensure appropriate skills and integrity in the management of a medical scheme and is also consistent with international trends.
- (c) **Admission of members and prescribed benefits**  
**Clause 30** modifies registration requirements of medical schemes by requiring that contributions to medical schemes cannot discriminate on the basis of age, gender, past or present state of health of the applicant or one or more of the applicant’s dependants, the frequency of the rendering of relevant health services to a person or the amount or extent of benefits to which a person becomes entitled to. This clause intends to reinforce community rating and social solidarity within medical schemes. The potential of adverse selection is nonetheless recognised by inserting a provision that medical schemes can only vary from this requirement in those cases spelt out in the regulations to protect other members and the medical schemes against exploitation through adverse selection.
- (d) **Prescribed benefits**  
**Clause 30** authorises the Minister to prescribe minimum benefits by Regulation in order to protect necessary and cost effective care, and to ensure that people are not arbitrarily shifted to public hospitals when their private benefits are depleted.
- (e) **Non-exclusion of applicants**  
**Clause 30** further reinforces community rating by requiring that medical schemes cannot exclude applicants who are able to pay the average contribution. This limited open enrolment would apply to both restricted membership schemes (employer/profession based medical schemes), and open medical schemes, albeit in a different manner.
- (f) **Continuation cover and transferability**  
**Clause 30** regulates for continuation of cover for a limited period to those who lose their jobs or after death of the principal member, and also regulates the transferability of membership between medical schemes.
- (g) **Savings accounts**  
**Clause 31(e)** makes provision for personal medical savings accounts for payment of health care expenses in a manner which will be prescribed.

### **7. CHAPTER 6—BENEFIT DESIGN**

- (a) **Clause 34** regulates the registration of multiple benefit options within medical schemes. Currently many options are registered even when they could lead to a medical scheme being financially unsound. The new approach would lawfully require that these options must at all times include the prescribed minimum benefit package; be self-supporting in terms of membership and financial soundness, and be properly secured through guarantees when the Registrar is of the opinion that this is necessary.
- (b) **Clause 35** prohibits the cession or attachment of benefits payable under this Bill.

## **8. CHAPTER 7: FINANCIAL SOUNDNESS OF MEDICAL SCHEMES**

### **CLAUSES 36 TO 39**

- (a) It is necessary that the requirements regarding financial stability be extended to enforce compliance with stricter controls to ensure a financially strong industry and to avoid demise as a result of mismanagement or otherwise. It is essential that all medical schemes comply with statutory determined solvency and financial soundness requirements, failing which, remedial action is to be taken by the authorities in a pro-active manner which is consistent with legislation controlling other financial entities. In order to do so, it is also regarded necessary that detailed financial information regarding the performance of benefit options are submitted timeously to make an assessment of the situation.
- (b) This Chapter regulates financial arrangements within medical schemes in a number of ways. First, medical schemes are required to, at all times, be in a position to meet their liabilities. Medical schemes are also required to maintain mandatory net assets which will be monitored by the Council.
- (c) In addition to financial soundness requirements, it is regarded essential that the audit function and auditors should play a more constructive role in the process of reporting on financial results and calculation of contingent liabilities. Explicit provision is made in **clause 37(10)** for audit committees within medical schemes to assist schemes' trustees to better manage and evaluate medical scheme's financial performance. This is in line with corporate governance and similar legislation which controls other financial entities. Auditors are furthermore obliged in terms of **clause 37(8)** to report irregularities and untoward circumstances directly to the registrar while being indemnified from any action taken against them as a result thereof.
- (d) **Clause 38** deals with the annual reporting of audited financial results to the Registrar.

## **9. CHAPTER 8**

### **CLAUSES 40 TO 42**

This Chapter relates to requirements in relation to documents to be deposited with the Registrar, the effect of the Registrar's certificate on documents, and the right to obtain and inspect documentation.

## **10. CHAPTER 9**

### **CLAUSES 43 TO 47**

Chapter 9 deals with the powers of the Registrar to require additional particulars from medical schemes, to make enquiries and to require persons who are not registered under this Bill to make information available to enable the Registrar to establish whether this Act is contravened and to take action against perpetrators.

## **11. CHAPTER 10: COMPLAINTS AND APPEALS**

### **CLAUSES 48 TO 51**

This Chapter deals with the lodging and settlement of complaints, disputes and appeals within medical schemes. Provision is also made for the introduction of an independent Appeal Board appointed by the Minister, with the purpose of hearing an appeal lodged by any person who is aggrieved by a decision of the Registrar or the Council.

## **12. CHAPTER 11: JUDICIAL MATTERS**

### **CLAUSES 52 TO 57**

- (a) Chapter 11 regulates matters such as applications to court by a medical

scheme or by the Registrar, the judicial management of a medical scheme, the winding-up of a medical scheme, information as to a compromise and the appointment of a curator. The Bill allows persons other than the Registrar to apply to the court for the judicial management or the winding-up of a medical scheme should it be in the interests of the members.

- (b) Provision is made in **clause 57** for a medical scheme to be placed under curatorship in terms of the Financial Institutions (Investment of Funds) Act, 1984 (Act No 39 of 2984). This will allow for the replacement of the board of trustees where there is a need to rectify matters of concern, or to enable a medical scheme to restore its financial soundness.

### 13. CHAPTER 12 GENERAL

#### CLAUSES 58 TO 71

This Chapter deals with general provisions in the Bill and include:

- (a) **Administration of a medical schemes by an intermediary (Clause 59)**  
Currently there are instances of sub-optimal administration of certain medical schemes. The Bill requires that administrators be accredited by the Council on the basis of objective criteria. These objective criteria will be defined in the Regulations and will ensure that contractual relationships between medical schemes and administrators are optimal and are in the interests of members at all times. This principle is in line with administration of pension funds.
- (b) **Preservation of secrecy (Clause 61)**  
Clause 61 requires that confidentiality is maintained in specified instances by the Council, its employees and members of the Appeal Board with regard to information obtained in terms of investigations in instances where such confidentiality serves the public interest.
- (c) **Undesirable business practices (Clause 62)**  
Currently, certain medical schemes, their associates and contracting parties engage in a number of practices that may not be in the interest of members. In addition, these practices change constantly. There is therefore a need to define some practices being engaged in by medical schemes and intermediaries as “undesirable business practices” and to enable the Registrar and the Council to put a stop to such practices. In order to guarantee sufficient procedural safeguards to the affected parties, provision is made that a particular practise will be declared undesirable by the Registrar only with the concurrence of the Council and the Minister. This is consistent with provisions in insurance legislation.
- (d) **Offences and penalties (Clause 67)**  
The Bill propose to re-introduce effective administrative penalties for minor contraventions with regard to the failure to comply with certain requirements of this Bill. Penalties raised shall accrue as income to the Council. This is in line with similar legislation.
- (e) **Regulations (Clause 68)**  
Clause 68 makes provision for the Minister to make Regulations on matters such as minimum benefits, the level of solvency requirements, the criteria which should apply to administrators of medical schemes, specific measures that should be adopted to protect medical schemes from undue adverse selection, the interface between a medical scheme and managed health care entities and for conditions under which a medical scheme may provide benefits in terms of personal savings accounts.
- (f) This Chapter also includes a number of other issues such as exemption of the Council from payment of income tax; provisions on amalgamation of medical schemes; transfers; dissolution of a medical scheme, and on charges by suppliers of services.

#### 14 Transitional Provisions (Clause 69)

Schedule 2 provides for the continued existence of the Council for six months, transfer of assets, liabilities, and transfer of employees of the State to the Council, the continuation of medical schemes that are currently registered under the Medical Schemes Act, 1967 (Act No. 72 of 1967), and for the registration of medical schemes

established under the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), the South African Police Services Act, 1995 (Act No. 68 of 1995) and the Correctional Services Act, 1959 (Act No. 8 of 1959) which currently are not registered under the provisions of the Medical Schemes Act, 1967.

**15. Persons and bodies consulted:**

Chartered Accountants Medical Aid Fund  
Concerned Medical Schemes Group  
Congress of South Trade Unions  
Council of Medical Schemes  
Department of Finance  
Life Offices Association  
Hospital Association of South Africa  
Local Authorities Medical Aid Fund  
Medical Association of South Africa  
National Association of IPAS  
National Congress of South African Trade Unions  
ProSano Medical Aid Scheme  
Representative Association of Medical Schemes  
South African Chamber of Business  
South African Medical and Dental Practitioners  
South Health Care JV  
Financial Services Board

**16. Parliamentary procedure**

The Department of Health and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution.

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