

Protection of Personal Information Bill (POPI)

Presented by the Council for Medical Schemes to the Select Committee on
Security and Constitutional Development



1. Introduction:

- Who are we:

The Council for Medical Schemes (CMS) is a statutory body established by the Medical Schemes Act (131 of 1998) to provide regulatory supervision of private health financing through medical schemes.

- Regulated entities include:

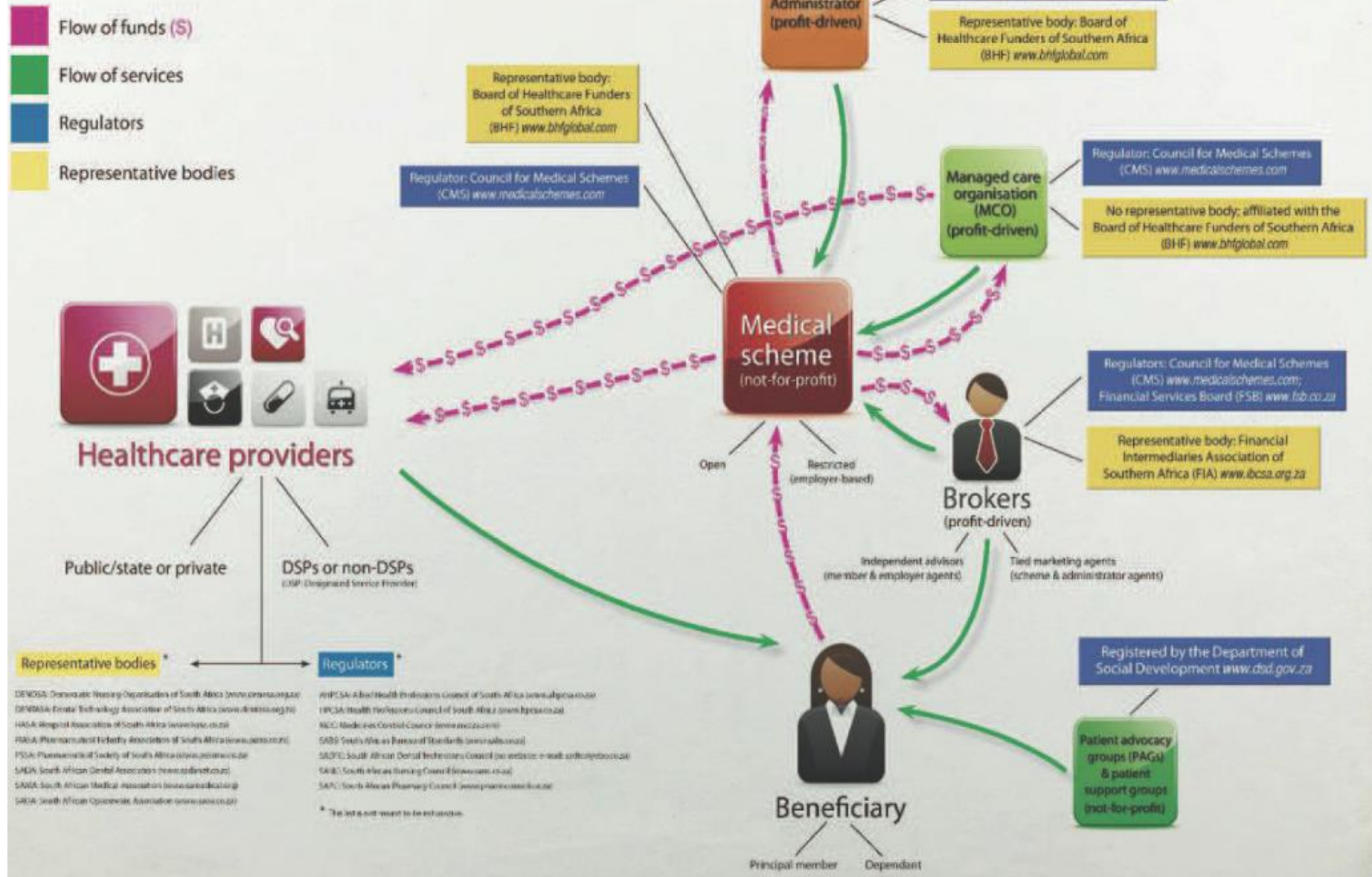
- ☐ Medical Schemes
- ☐ Administrators
- ☐ Managed Care Organizations
- ☐ Brokers

- Mission and Vision:

Our main purpose is to protect the interest of beneficiaries of medical schemes. We strive to be a fair custodian of equitable access to medical schemes in order to support the improvement of universal access to healthcare.



How the beneficiary fits in



- The flow of funds and services can only take place if there is a flow of information.
- The patient / member is not qualified to make decisions regarding the medical services and appliances/ disposables to be purchased, the health care provider does.
- The scheme as the funder will ensure that the proposed services are in line with its rules and funding protocols.
- Information constantly needs to be exchanged between the scheme, the member and the health care provider to ensure effective healthcare:

Example



2. Engagement on POPI:

- An in-house task team was established to scrutinize the proposed Bill and the effect that it would have on the CMS and our regulated entities.
- Task team:

Legal Services

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Accreditation

Danie Kolver
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ICT

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Stakeholder Relations

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Benefits Management

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3. General:

- Our regulated entities process personal (s1) and special information (s26 as well as personal information on children (s34-35).

Definition as per section 1	Regulated entity included in the definition
"Responsible party"	medical schemes, brokers (depending on context)
"Operators"	medical schemes, administrators, managed care organizations and brokers (depending on context)
"Data subjects"	Beneficiary, Medical schemes, administrators and managed care organizations

- POPI will have far reaching effects on our industry:



4. Recommendations:

- Section 11
 - “(1) Personal information may only be processed if-
 - (a) The data subject, any other person authorized in writing by the data subject, or a competent person where the data subject is a child consents to the processing;”

Justification:

- One contract with a medical scheme covers a number of beneficiaries. A principal member contracts on behalf of his adult and child dependants.
- The additional obligations in the current provision may cause a delay in the enrollment processes at medical schemes which can again lead to delayed medical coverage pending the processing of the personal information.
- Claims are submitted by health care providers directly and the provision can also cause a delay in the payment of bills.

- Section 11(2)
 - (b) The data subject or competent person may on reasonable notice withdraw his, her or its consent, as referred to in subsection (1) (a), at any time: Provided that
 - (i) the lawfulness of the processing of personal information before such withdrawal or the processing of the personal information in terms of subsection (1)(b) to (f) will not be affected; and
 - (ii) Any contractual relationship or any other relationship that exist between the parties concerned may be suspended or terminated forthwith by the responsible party.

Justification:

- The implication of the provision is that a member or dependant can withdraw consent at any time. This poses a difficulty in the processing of claims.
- As a result medical schemes may contravene the provisions of the Medical Schemes Act as an unintentional consequence of the POPI provision.
- Even if consent is withdrawn the relevant person will still retain status as a member of the medical scheme.

- Section 34 and 35 provides deals with personal information of a child.
 - The age of consent needs to be aligned with that other relevant legislation.
 - The specific authorization granted in section 32(1) relating to health information should also be made a applicable to Section 35(1).

Justification:

- The definition in section 1 is in conflict with the definitions in other Acts. Compliance with the different provisions will be problematic.
- Specific authorization for the processing of health information to regulated entities and health care providers are not applicable to children which leaves a gap in the processing of their information.

- Retrospective application
 - Section 114(1) The application of the Bill should be prospectively or alternatively application could be made for an extension for a further 5 years.

Justification:

- Impossible for regulated entities to entirely comply with the Bill in respect of all their beneficiaries due to the size and complexity of the industry
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- Costs of implementation
 - Costs for compliance with the Bill is an administrative costs and the aim of the industry is to keep non-healthcare expenditure as low as possible.
 - The costs of compliance will be significant and will require the implementations of substantial system enhancements, processes and reporting mechanism.
 - The above will cause the increase in costs which will have to be borne by beneficiaries through contribution increases.