

**BOARD of
HEALTHCARE
FUNDERS
of SOUTHERN AFRICA**

(Association Incorporated
under Section 21
Registration number
2001/003387/08)

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26th May 2008

The Secretary to Parliament
c/o Mr. Bradley Viljoen
Committee Section
Parliament of the RSA
P.O. Box 15
Cape Town
2008

Attention: Bradley Viljoen

WITHOUT PREJUDICE

bviljoen@parliament.gov.za

**Board of Healthcare Funders Comments on Proposed Amendments to the
Long Term and Short Term Insurance Bills**

The Board of Healthcare Funders of Southern Africa strongly objects to the insertion of the following into the Long Term Insurance Act as proposed in section 1 of the Insurance Laws Amendment Bill –

(xvii) “health policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a health event, and includes a reinsurance policy in respect of such a contract[but excluding any contract] -

(a) excluding any contract -

(i) that provides for the conducting of the “business of a medical scheme” referred to in section 1(1) if the Medical Schemes Act, 1998 (Act No. 131 of 1998); or

(ii) of which the policyholder is a medical scheme registered under the Medical Schemes Act, 1998 (Act No. 131 of 1998), and which contract -

(aa) relates to a particular member of the scheme or to the beneficiaries of that member; and

(bb) is entered into by the medical scheme to fund in whole or in part its liability to the member or the beneficiaries of the member referred to in subparagraph (aa) in terms of its rules; but

(b) specifically including, despite paragraph (a)(i), any contracts identified by the Minister by regulation under section 72(1A) as a health policy;”

The BHF also objects in the strongest terms to the inclusion of the proposed amendment in section 52 of the Amendment Bill to the following insertion in the Short Term Insurance Act, 1998 -

(1A) (a) The Minister, despite the definition of the “business of a medical scheme” in section 9(1) of the Medical Schemes Act, 1998, may, after consultation with the Minister of Health, make regulations identifying a kind, type or category of contract as an accident and health policy, and may prescribe matters relating to the design and marketing thereof.

(b) The Minister, when making regulations under paragraph (a), must have regard to

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- (i) the need to ensure the sustainability of medical schemes;
- (ii) the need to ensure access to health care services;
- (iii) limitations on the liability undertaken by medical schemes; and
- (iv) the extent to which medical schemes are able or willing to provide certain services.

(c) Where the Minister has made regulations referred to in paragraph (a), the kind, type or category of contract identified as an accident and health policy in the regulations, is not subject to the Medical Schemes Act, 1998."

The two amendments referred to above have the effect of creating uncertainty as to the when, whether and if an insurance company is doing the business of a medical scheme or not.

It also effectively creates a jurisdiction for the Minister of Finance over medical schemes business that was previously exclusively that of the Minister of Health and that in BHF's view still falls squarely within her portfolio as a member of Cabinet.

We submit with respect, that the Minister of Finance is not in a position to be able to meaningfully assess the need for access to health care services, the limitations on the liability undertaken by medical schemes and the extent to which medical schemes are able or willing to provide certain services. The financing of health care services whether in the public or private sector must fall within the domain of the Minister of Health because it is necessary to deal with access to health services at systemic level. If the Long Term and Short Term Insurance Acts are amended in the manner proposed this will have the effect of fragmenting health financing at both a policy and legislative level and undermining a systemic approach to the national health system as it stands currently. The financing of health services is fundamentally, constitutionally speaking, a health issue and not a financial issue. The fact that the Minister Finance must consult with the Minister of Health in terms of the proposed amendment is not sufficient especially given the fact that the phrase used is "after consultation" which means the Minister of Finance is entitled to ignore the views of the Minister of Health on the issues to be consulted on. This is despite the fact that constitutionally speaking it is the Minister of Health is the member of Cabinet responsible for concretizing and implementing health policy in South Africa.

The Council for Medical Schemes is the regulatory body for medical schemes and falls under the auspices of the Minister of Health. It is the role of the Council to advise the Minister of Health on policy issues affecting or involving medical schemes. The point is that there are significant structures in place that govern medical schemes business currently which could be largely negated by the proposed legislation. It is submitted that the proposed legislation will unacceptably blur the roles of the Minister of Health and the Minister of Finance and will lead to a situation in which the Minister of Finance effectively has control over a significant portion of health financing within the private health sector. This fragmentation will cause uncertainty between the insurance sector on the one hand and medical schemes on the other and will also open up the possibility of the insurance industry competing with medical schemes for policy holders/members.

Medical schemes are extremely vulnerable at present as they are not for profit entities that are controlled very strictly by the Medical Schemes Act in terms of the benefits they may offer and the contributions they may charge. This same is not true of the the insurance industry. Allowing competition between medical schemes and insurance industry will allow the latter to 'cherry pick' all of the good risks out of the medical schemes system leaving medical schemes with the 'uninsurable risks' only. This is contrary to the system and spirit of community rating contemplated in the Medical

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Schemes Act and is therefore also contrary to national health policy as reflected in that Act. The BHF views the proposed legislative changes as an attempt to entrench the highly problematic decision of the Supreme Court of Appeal in the Guardrisk case which has created significant challenges for the Minister of Health and the Council for Medical Schemes and unacceptable levels of legal uncertainty within the medical schemes environment. The Bills as proposed will aggravate this uncertainty. They will also erode the business of medical schemes to the point where the medical schemes industry becomes unsustainable because more and more business that should be the domain of a medical scheme will become that of insurance companies.

The principles behind medical schemes are completely at odds with the traditional concept of insurance as conducted by long term and short term insurers. Insurance companies do not want their policy holders to claim. In fact they do everything they can to avoid liability should a claim arise. Medical schemes by contrast, exist to pay claims. Insurance companies are for profit entities. Medical schemes are not. The fiascos in recent years involving insurance companies and major brokers depriving their policyholders and clients of money by means of various nefarious business practices does not bode well for the transfer of medical schemes business to the insurance industry. It is submitted that the money available for health costs will be rapidly and drastically diminished should the changes referred to above be made to the Long Term and Short Term Insurance Acts.

For the reasons given, the Board of Healthcare Funders absolutely opposes any amendments to the Long Term and Short Term Insurance Acts which will give the Minister of Finance legislative control over medical schemes business, which will erode the business of medical schemes or remove issues of health financing from the portfolio of the Minister of Health.



Kind regards,

**DR H ZOKUFA
MANAGING DIRECTOR
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA**

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