



# **Guideline for the preparation of managed care agreements in compliance with Regulations 15, 15A, 15E, 15F and 15J, and the managed care accreditation standards**

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<b>Table of Contents</b>	<b>Page</b>
<b>1. OVERVIEW.....</b>	<b>3</b>
<b>2. REGULATORY REQUIRMENTS.....</b>	<b>3</b>
2.1 Regulations 15A, 15E, 15F and 15J.....	3 - 4
2.2 Managed care accreditation standards Version 5) .....	5 - 6
2.3 Other.....	6
<b>3 GENERAL CONSIDERATIONS.....</b>	<b>6 - 7</b>
<b>4 EXAMPLE OF MANAGED CARE AGREEMENT AND SERVICE LEVEL PROVISIONS.....</b>	<b>7</b>
4.1 Basic provisions (contents of agreement) .....	7-11
4.2 Detailed service level agreement (SLA).....	11



## 1. OVERVIEW

The Medical Schemes Act, 1998 (Act no 131 of 1998) (“the Act”) and the Regulations thereto (“the Regulations”) contain the requirements for providing managed care services to medical schemes. One of the requirements in respect of managed care arrangements between medical schemes (“schemes”) and managed care organisations (“MCOs”) is that there must be a written agreement setting out the arrangements, which is duly signed by authorised persons from both parties.

A comprehensive and properly drafted managed care agreement ensures that both parties are fully aware of their rights and obligations in terms of the agreement. It also assists both parties in the identification and resolution of any disputes with regards to the execution of the agreement.

## 2. REGULATORY REQUIREMENTS

Listed below are the specific requirements in respect of managed care arrangements which must be included in each managed care agreement as appropriate:

### 2.1 Regulations 15A, 15E, 15F and 15J

Below is a list of the requirements as per the relevant Regulations to the Act:

Reference	Requirements
Reg 15	<p>Definitions –</p> <ul style="list-style-type: none"> <li>• ““managed health care” means clinical and financial risk assessment and management of health care, with a view to facilitating appropriateness and cost-effectiveness of relevant health services within the constraints of what is affordable, through the use of rules-based and clinical management-based programmes”</li> <li>• ““managed health care organisation” means a person who has contracted with a medical scheme in terms of regulation 15A to provide a managed health care service”</li> <li>• ““evidence-based medicine” means the conscientious, explicit and judicious use of current best evidence in making decisions about the care of beneficiaries whereby individual clinical experience is integrated with the best available external clinical evidence from systematic research”</li> <li>• ““capitation agreement” means an arrangement entered into between a medical scheme and a person whereby the medical scheme pays to such person a pre-negotiated fixed fee in return for the delivery or arrangement for the delivery of specified benefits to some or all of the members of the medical scheme”</li> <li>• ““rules-based and clinical management-based programmes” means a set of formal techniques designed to monitor the use of, and evaluate the clinical necessity, appropriateness, efficacy, and efficiency of, health care services, procedures or</li> </ul>

Reference	Requirements
	<p>settings, on the basis of which appropriate managed health care interventions are made”.</p> <ul style="list-style-type: none"> <li>• ”participating health care provider” means a health care provider who, by means of a contract directly between that provider and a medical scheme in terms of regulation 15A, or pursuant to an arrangement with a managed health care organisation which has contracted with a medical scheme in terms of regulation 15A, undertakes to provide a relevant health service to the beneficiaries of the medical scheme concerned.”</li> </ul>
Reg 15A	<p>“Prerequisites for managed health care arrangements –</p> <p>(1) If a medical scheme provides benefits to its beneficiaries by means of a managed health care arrangement with another person –</p> <p>a) the terms of that arrangement must be clearly set out in a written contract between the parties;</p> <p>b) with effect from 1 January 2004, such arrangement must be with a person who has been granted accreditation as a managed health care organisation by the Council; and</p> <p>c) such arrangement must not absolve a medical scheme from its responsibility towards its members if any other party to the arrangement is in default with regards to the provision of any service in terms of such arrangement.”</p>
Reg 15E	<p>“Provision of health services –</p> <p>(1) If managed health care entails an agreement between the medical scheme or a managed health care organisation, on the one hand, and one or more participating health care providers, on the other –</p> <p>a) the medical scheme is not absolved from its responsibility towards its members if any other party is in default to provide any service in terms of such contract;</p> <p>b) no beneficiary may be held liable by the managed health care organisation or any participating healthcare provider for any sums owed in terms of the agreement.”</p>
Reg 15F	<p>“Capitation agreements – A medical scheme shall not enter into a capitation agreement, unless –</p> <p>a) the agreement is in the interests of the members of the medical scheme;</p> <p>b) the agreement embodies a genuine transfer of risk from the medical scheme to the managed health care organisation;</p> <p>c) the capitated payment is reasonably commensurate with the extent of the risk transfer.</p>
Reg 15J	<p>“General provisions –</p> <p>(1) Any managed health care contract, contemplated in Regulation 15A, must require either party to give at least 90 days notice before terminating the contract, except in cases of material breach of the provisions of the contract, of where the availability or quality of health care rendered to beneficiaries of a medical scheme is likely to be</p>

Reference	Requirements
	compromised by the continuation of the contract.”

## 2.2 Managed care accreditation standards (Version 5) requirements

Standard reference	Standard description (V5)
<b>1.3 Managed care agreements in place are in full compliance with the Act, Regulations and managed care accreditation standards</b>	
1.3.1	The managed care agreements are signed and clearly identify the managed care organisation and relevant scheme as the contracting parties.
1.3.2	The commencement date and duration of the agreement are clearly provided for in the agreement.
1.3.3	The agreement confirms the scope and duties of the organisation for each specific scheme.
1.3.4	The agreement contains full details of fees payable by the medical scheme, including the basis on which fees are determined and manner of payment thereof.
1.3.5	Fees are specified per individual or group of related services submitted.
1.3.6	The agreements contain details of how confidentiality of scheme data and beneficiary personal information is to be maintained
1.3.7	The agreement provides for the right of access by the medical scheme to any treatment record held by the managed care organisation or health care provider, and other information, data and records pertaining to the diagnosis, treatment and health status of the beneficiary in terms of the agreement, subject to disclosure of such information in compliance with Regulation 15J(2)(c)
1.3.8	Termination arrangements are clearly defined in the agreements, with particular regard to the termination notice period; and the timing, format and cost in respect of the scheme data to be transferred to the scheme or new managed care organisation on termination.
1.3.9	The agreements contain details on procedures to be followed in instances of breach of contract.
1.3.10	The agreement provides for a formal mechanism which deals with complaints/disputes and appeals against the organisation which may be lodged with the scheme concerned and does not prevent the complainant from lodging complaints / disputes and appeals to the

Standard reference	Standard description (V5)
	Council.
1.3.11	Provision is made in the agreement that no beneficiary may be held liable by the managed care organisation or any participating health care provider for any sums owed in terms of the agreement in compliance with Regulation 15E(1)(b).
1.3.12	Where applicable, the agreements provide for the sub-contracting of managed care functions by the managed care organisation to another accredited managed care organisation
1.3.13	The agreement includes a detailed service level agreement which contains details of the services to be provided, agreed upon service levels, performance measures, and relating penalties / remedies available to the parties in the case of non-performance
1.3.14	Any amendments, including fee adjustments, to the initial agreements are in writing and signed by the parties
<b>1.4 Where applicable, capitation agreements entered into comply with Regulation 15F</b>	
1.4.1	The agreement constitutes a bona fide transfer of risk from the medical scheme to the managed care organisation.
1.4.2	The agreement provides for a capitation-based payment which is reasonably commensurate with the extent of the risk transferred.

### 2.3 Other

This guideline should be read with and incorporate the requirements of Circular 13 of 2014 – “Final managed health care services document” (or updated version published thereafter).

## 3. GENERAL CONSIDERATIONS

- The managed care agreements should be comprehensive, well written and clear.
- The agreement should be between the direct contracting parties only. Should any other party, such as the administrator of the medical scheme, be a party to the contract it should only be in the role of facilitator to in order to give effect to the implementation of the agreement between the medical scheme and managed care organisation.
- Medical schemes must apply their minds when contracting with a managed care organisation in terms of the managed care services contracted for and the relating managed care fees.

- The managed care agreement must be in the interest of the medical scheme's beneficiaries at all times.
- The full names and designations of the persons signing the agreements on behalf of the contracting parties must be clearly indicated.
- Each party should retain copies of the signed agreements at their registered offices.
- Services included and the terms of the agreement must be in accordance with the regulatory requirements and registered rules (including the benefit tables) of the relevant medical scheme.
- The contracting parties must ensure that the services contracted for meet the definition of "managed care" as defined. Other services may be contracted for, provided that it is a) in a separate non-managed care agreement, or b) it is clearly stated as non-managed care services in the agreement.
- Regular reporting on the managed care organisation's performance in terms of the agreement and the detailed service level agreement should be provided to the medical scheme on a regular basis.
- The medical scheme must ensure that the managed care organisation is executing the terms of the agreement as set out therein, and that it continuously demonstrates its value-added proposition.
- Pricing of the contracted fees in respect of services are required to be broken down per service or logical group of services.

#### **4. EXAMPLE OF MANAGED CARE AGREEMENT AND SLA PROVISIONS**

##### **4.1 Basic provisions (contents of agreement):**

The following provisions are the minimum provisions that should be included in the managed care agreement and whilst the CMS is not prescriptive in the exact wording to be used, unless it is wording so stated in the Act and/or Regulations, the wording used by the parties should not detract from the requirements.

##### **i. Definitions / Interpretations**

Define at least the following: accreditation; the Act; managed care organisation; auditors; beneficiary; benefit options; managed care services; confidential information; contributions; days means working days; effective date / date of commencement; employer; member; members' portion; personal information; Regulations; scheme rules; services; service fee(s); etc.

##### **ii. Appointment of managed care organisation**

The scheme hereby appoints the managed care organisation to provide the services set out in this agreement according to the terms and conditions of this agreement.

The managed care organisation will at all times comply with the Act, Regulations and all lawful and reasonable instructions issued to it by the scheme.

##### **iii. Accreditation of the managed care organisation**

The managed care organisation warrants that it is accredited by the Council for Medical Scheme in



accordance with Regulation 15 of the Act and that it will remain accredited for the duration of the agreement.

The managed care organisation shall at all times ensure that it remains compliant with the requirements for accreditation, i.e.:

- It must be fit and proper;
- It must have the necessary systems, resources, skills and capacity to render the services; and
- It must be financially sound.

#### **iv. Duration of agreement**

*The agreement must stipulate the commencement date the duration (e.g. initial period and subsequent periods, or fixed period of for instance 3 years)*

#### **v. Termination**

- *The termination period should be in compliance with Regulation 15J(1)*
- *Termination arrangements, including transfer of data upon termination (cost, timing and format) must be in compliance with the accreditation standards, Act and Regulations.*
- *Include process to be followed from termination date until the run-off period has been completed.*

#### **vi. Services to be provided by the managed care organisation**

*All services provided should be detailed in the main agreement or in an annexure thereto. The agreement must include a detailed service level agreement which includes the service levels, performance measures and penalties / recourse in case of non-performance by the managed care organisation.*

#### **vii. Remuneration**

- *How is the managed care service fee calculated, and how and when is it payable? E.g. is it a fixed amount, or a rate per member per month or per beneficiary / enrolled beneficiary per month? Is it calculated on the at the end or the beginning of a month? When will the invoice for payment be presented to the scheme and what are the payment terms? There should be a proper reconciliation of fees paid.*
- *Annual review of managed care fee - specify how it will be calculated, e.g. is the cost escalation calculated using medical inflation or CPI or negotiated.*
- *Provision for review of managed care fee due to unforeseen circumstances - for instance due to additional unspecified work to be performed.*
- *When reviewing the managed care fee, the process should take into account the actual performance of the managed care organisation and might also entail a tightening or amendment of the service levels.*

*Example:*

In consideration for the rendering of the managed care services to XXX Medical Scheme in terms of this agreement, the scheme agrees to pay to the managed care organisation the managed care fee equal to

Rx per member per month, including VAT (at the VAT rate prevailing at the time).

The fee will be calculated based on the total number of members registered on the scheme as of the first day of the month to which the fee relates.

The managed care organisation will provide a tax invoice to the scheme for payment within 7 days after the end of the month.

### **viii. Ownership and Retention of Data, Information and Documents**

*Include amongst others the following provisions:*

- All records and data pertaining to the scheme, must at all times remain the sole property of the medical scheme, and no lien may be held over them by the managed care organisation; and
- The agreed retention periods for documents, data and other information should be specified, both for the duration of the agreement and following termination.

### **ix. Confidentiality**

- *All data and information pertaining to the scheme, including the personal and health information of beneficiaries, is confidential and the managed care organisation must employ appropriate and sufficient measures to ensure that confidentiality of such data and information is maintained on the managed care organisation's systems and by the staff of the managed care organisation;*
- *It must be specified that the confidentiality provisions will be in force in perpetuity / survive the agreement.*

*Example:*

"The parties acknowledge that all material and information relating to the affairs of the scheme which has or will come into its possession, or knowledge in connection with and/or pursuant to this agreement or the performance thereof, consists of confidential data. The parties agree that such confidential data is a valuable, unique and a special asset proprietary to XXX Medical Scheme. The parties acknowledge and agree that the disclosure of the confidential data to any third party, except in the performance by the managed care organisation of its duties or functions in terms of this agreement and the Act, or when called upon to do so as a witness before any Court of Law, shall be unlawful and in breach of this agreement and the stipulations of the Act. The parties therefore acknowledge and agree that:

- this confidentiality clause shall be binding upon the parties and all persons employed by them including, but not limited to, professional advisors, agents, consultants, employees and staff, and the parties undertake to ensure that such parties are made aware of the confidential nature of the data;
- not to make use of the confidential data other than for the performance of the obligations in terms of this agreement and the Act;
- to release the confidential data only to those persons who are required to know same and not to release or disclose the confidential data to any other party other than contemplated in the Act and in this agreement, unless explicitly approved by the scheme;
- to return the confidential data to the scheme upon the termination of this agreement;

- the obligations of this clause shall survive the termination of this agreement.

Notwithstanding the above, the restrictions on the use and disclosure of the confidential data shall, subject to the provisions of the Act, not apply to any of the confidential data which:

- at the date of its disclosure is in the public domain or which subsequently enters the public domain other than through unauthorised disclosure;
- was lawfully in the possession of the managed care organisation and not subject to any restraint as to its confidentiality prior to the time of its disclosure;
- was received by the parties from a third party which is lawfully in possession of such confidential data and is not in breach of any confidential relationship with either of the parties; and
- is required to be disclosed by any party by applicable law, regulation or Court Order.

Upon termination of this agreement for any reason whatsoever, all the confidential data in the possession of or under the control of the managed care organisation shall be returned to XXX within the prescribed period.”

**x. Protection of Personal Information**

- *Sufficient provision must be made in the agreement for full compliance with the Protection of Personal Information Act insofar as the collection, processing, storing, etc. of beneficiaries’ personal and health information are concerned.*
- *The managed care organisation must also provide for the implementation of appropriate measures and controls to prevent the loss of or damage to beneficiaries’ personal and health information.*

**xi. Right of access**

*Provide for right of access arrangements by the scheme or members to documents under the managed care organisation’s control, subject to appropriate confidentiality considerations.*

**xii. Sub-contracting**

The Managed care organisation shall not sub-contract any of the contracted managed care services to any other party that is not accredited in terms regulation 15 of the Medical Scheme Acts 131 of 1998.

Any sub-contracting arrangement shall not relieve the Managed care organisation of its responsibility for the performance of its obligations in terms of this agreement.

**xiii. Non-solicitation of employees**

*Deals with arrangements concerning the possible solicitation of the managed care organisation or scheme’s personnel by the other.*

**xiv. Winding down**

*Deals with the arrangements concerning any services the managed care organisation may be required to continue delivering post the termination of the agreement during the winding-down period.*

**xv. Dispute resolution and Arbitration**

*Mechanism for the resolution of disputes, and arbitration procedures to be followed.*

**xvi. Breach of contract**

*State what constitutes a breach of contract, the necessity to call for specific performance, which remedies are available to each party, which penalties may be applied, etc.*

**xvii. Notices & domicilia**

*Each party to state its domicilium citandi et executandi, and the provisions regarding serving of notices.*

**4.2 Detailed service level agreement (SLA)**

A detailed service level agreement (SLA), which indicates the service levels to be achieved in respect of each of the services to be rendered and the performance measurement criteria and penalties / recourse available to the scheme in case of non-achievement of the service levels, must be attached as an annexure to the main agreement.

Please refer to the latest published managed care accreditation standards to serve as a guide as to the detailed services to be included in the SLA. Schemes should determine the service levels but should bear in mind that member interests must be prioritised at all times

Schemes should also ensure that the managed care organisation has implemented appropriate measures to be able to measure and record performance against each of the detailed service levels.

The managed care organisation must provide detailed performance and utilisation reports to the schemes the provide managed care services to on at least a monthly basis.