



CIRCULAR

Reference: COVID-19 Medical Schemes Industry Guidelines
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Circular 28 of 2020: COVID-19 Medical Schemes Industry Guidelines

The Council for Medical Schemes (CMS) is implementing measures within the ambit of Medical Schemes Act (the Act) to assist medical schemes to adapt to the adverse effect of the coronavirus pandemic, which threatens their liquidity and by extension, schemes' ability to pay claims. Despite the agility constraints of the Act, these measures are in the best interest of medical scheme members.

This Circular seeks to provide medical schemes with proposals linked to the coronavirus lockdown only and does not address any other issues outside this dispensation, and is pursuant to [Circular 25 of 2020](#).

This Circular covers:

1. [Contribution holiday](#)
2. [Financial relief to members](#)
 - 2.1. Use of accumulated savings funds to offset contributions
 - 2.2. Ex-gratia payments to offset contributions
 - 2.3. Considerations for Medical schemes when dealing with financial relief applications
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The CMS anticipates that the lockdown will not last more than three months and therefore, the period of exemption should be consistent with this. This period may be extended as guided the Disaster Management Act (DMA) regulations, but the most important consideration to these exemptions is the individual scheme's ability to self-sustain beyond the exempted three months, if approved.

Each exemption application will be assessed on its own merits and schemes seeking exemption from the Act or their registered rules in terms of section 8(h) must provide proof of exceptional circumstances. Furthermore, the CMS will closely monitor all schemes exempted for the period to ensure compliance with the exemption conditions and fair treatment of members. All exemptions will be considered subject to the solvency ratios not declining below specified threshold levels to ensure schemes maintain their liquidity to deal with the coronavirus pandemic. The CMS will consider the exemptions subject to all additional concessions reported separately in the management accounts in order to assess and monitor their impact.

Other considerations are that the full impact of coronavirus pandemic has not been established or forecasted with respect to claims experience. Therefore, as part of the motivation in support of the exemption application, schemes are expected to provide the CMS with preliminary views based on the assessed impact on solvency. Furthermore, schemes are required to supply the CMS with the evidence of the impact of the coronavirus pandemic has had so far on investment performance to date, forecast for 2020, and impact on solvency. It should be noted that from 1 January to 31 March 2020, equity markets have declined by 24%, SA bonds by over 8%, and local interest rates have been cut by 1%.

The following groups of at-risk schemes are excluded from any consideration in this dispensation:

- § Bargaining Council Schemes
- § Schemes under curatorship
- § Schemes with rapidly declining solvency levels and schemes with solvency levels below the minimum required level in terms of Regulation 29

It should be noted that the current levels of scheme reserves estimated at R60bn of scheme are a result of:

- § Retained surplus between contributions and claims
- § Investment Income
- § Tax credits and subsidies
- § Fraud and over-payment recoveries

As such, any consideration to utilise scheme reserves to address the negative financial impacts of coronavirus on the medical schemes industry can be justified only if it benefits medical scheme members only.

1. CONTRIBUTION HOLIDAY

The CMS received requests from the industry for a blanket exemption in terms of section 8(h) to medical schemes and their members from the provision of section 26(7). Careful consideration was given to these requests with the view of safe guarding the financial liquidity of medical schemes. For this reason, the CMS declined the proposals on the basis that not all medical schemes would be able to safely absorb a contribution holiday, where medical member's contributions are waived and the loss of income is funded from medical schemes reserves. The CMS is, however, amenable to consider such exemption applications in terms of section 8(h) from individual medical schemes where each application will be assessed on its merits.

2. FINANCIAL RELIEF TO MEMBERS

2.1. Use of accumulated savings funds to offset contributions

The MSA and medical schemes rules, allows for membership to be terminated if their monthly contributions remain unpaid, resulting in disruption to their access healthcare. To ensure member protection through continued access to healthcare, the CMS encourages medical schemes to assist vulnerable members who cannot pay contributions due to loss of income as a result of the coronavirus pandemic and subsequent lockdown. Schemes should investigate all disruptions to member contributions on a case by case basis and determine the merits thereof, prior to termination.

The CMS is of the view that, where a member has accumulated sufficient savings in their Personal Medical Savings Account (PMSA) for a specific period, it would be in the public interest, to grant medical schemes exemptions from complying with their registered rules, section 26(7) and regulation 10(3) of the MSA in order to use their savings to offset a member contributions.

The afore-mentioned MSA provisions are outlined herein:

- Section 26(7) requires that all subscriptions or contributions shall be paid directly to a medical scheme not later than three days after payment thereof becoming due
- Regulation 10(3) prohibits the medical savings funds to be used to offset contributions unless to settle any debt owed to the scheme upon termination of membership.

Medical schemes may use accumulated medical savings where the following conditions have been met:

- Medical scheme members have requested such relief;
- The desired level of accumulated PMSA is for a period of 12 months, however, a lesser balance of example, six months can be considered by assessing each request on its merit;
- The terms and conditions of such a concession to pay member's contributions from their PMSA should be clearly spelled out, as well as the likely impact of such an arrangement given the possibility that their savings are likely to be depleted before the end of the year.

To ensure members remain protected, all exempted schemes will be required to report on this separately in the management accounts to clearly illustrate the impact. Schemes embarking on this dispensation are also required to communicate its medium to long term impact- to all participating members. Scheme Board of Trustees are expected to exercise their fiduciary responsibilities in this respect.

2.2. Ex-gratia payments to offset contributions

Medical schemes can also use ex-gratia payment to financially assist their members. Section 30(1)(b) of the Act, allows medical schemes to financially assist their members through ex-gratia payments as outlined below -

30(1)(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;

Further the definition of a business of a medical scheme is as follows:

"business of a medical scheme" means the business of undertaking liability in return for a premium or contribution—

(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;

The CMS views ex-gratia payments as essential in that, they are used to ensure that members meet their obligations in order to receive healthcare services. Moreover, CMS is of the view that the definition of a business of a medical scheme does not cover ex-gratia payments by medical schemes to off-set contributions. The meeting of commitment as per section 30(1)(b) is only applicable to the extent where a service is rendered or is to be rendered hence the wording '*make provision for the obtaining of any relevant health service; to grant assistance in defraying expenditure incurred in connection with the rendering of any relevant health service; and 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.*'

Thus, the intention of the legislation was to limit section 30(1)(b) only to benefits and claims rendered or to be rendered. The CMS adopts the literal interpretation of these provisions as they do not expressly include the offset of member contributions, but rather health services. Such process is then referred to under section 8(h) for it lacks application under section 30.

2.3 Considerations for Medical schemes when dealing with financial relief applications

Small, Medium and Micro-sized Enterprises (SMMEs)

SMMEs (<200 employees), seeking financial relief from medical schemes in order to protect their employees' membership cover must make a case to their respective medical scheme, demonstrating the financial impact caused by the lockdown due to the COVID-19 pandemic.

Consideration must be given to SMME's ability to financially recover and to repay the medical scheme post the lockdown period. In addition, the Board of Trustees should ensure that the scheme adheres to the provisions of the National Credit Act, and its regulations. The CMS will closely monitor medical schemes for the duration of the exemption period to ensure compliance with the exemption conditions.

3. BLANKET EXEMPTION TO MEDICAL SCHEMES AND THEIR MEMBERS

Section 8(h) provides exemption for a medical scheme or other person. In effect of this provision, a blanket exemption cannot be made to all medical schemes.

In the quest of protecting the interest of the beneficiaries as contemplated in section 7 of the Act, consideration was given to the implication a three-month contribution holiday would have on the financial liquidity of medical schemes. For this reason, the CMS is not in support of this proposal as not all medical schemes would be able to safely absorb a contribution holiday to the extent that, the loss of income would have to be funded from the reserves.

The CMS is, however, amenable to consider such exemption applications in terms of section 8(h) from individual medical schemes were each application will be assessed on its own individual merits.

4. APPROACH AND CRITERIA FOR SECTION 26(7) EXEMPTION CONSIDERATION

- 4.1. No blanket exemption application will be considered
- 4.2. Each exemption application will be subjected to a set of defined criteria
- 4.3. Each case will be treated on its merits
- 4.4. The exemption period covered will not extend beyond three months, subject to review as guided by the DMA regulations
- 4.5. Appropriate classification of exemption application (Individual relief, Employer Relief, Scheme Relief, Service Provider Relief)
- 4.6. Impact on the following measures will be considered:
 - 4.6.1. Reserve levels (% and Actual Rand terms)
 - 4.6.2. Solvency levels
 - 4.6.3. Member benefits and interests/ Complaints
 - 4.6.4. BOT's role in ensuring member interests are protected
 - 4.6.5. Compliance with another regulators legislation
 - 4.6.6. CMS's role in monitoring the contracts that will be used to implement these interventions
 - 4.6.7. CMS's accreditation standards, Act and Regulations

The CMS will not approve any exemption application that demonstrates potential adverse effects on members. The CMS is committed to ensuring that no medical scheme member is left without full comprehensive cover, consistent with their chosen benefit package as per [Circular 25 of 2020](#).

5. ANNUAL GENERAL MEETINGS AND ELECTIONS

As per [Circular 23 of 2020](#), the CMS is accepting exemption applications for the postponement of Annual General Meetings (AGMs), Special General Meetings (SGMs) and Trustee Elections. Applications should reach the CMS no later than 30 April 2020. The exemptions will be granted for a period of up to three months from 1 April 2020, with the following conditions:

1. All exemptions applications must be accompanied by a board resolution;
2. The Board of Trustees (BoT) must exercise its fiduciary duties at all times.
3. That AGMs are held 90 calendar days after the lifting of the lockdown

6. STAKEHOLDER ENGAGEMENT

To ensure that medical scheme members have continued access to healthcare services and to prevent the possible exploitation of patients as a result of the COVID-19 pandemic, the CMS is facilitating an Industry wide engagement to develop a price and tariff negotiations framework. In this initiative, the CMS is working with industry associations such as the Board of Healthcare Funders (BHF) and Health Funders Association (HFA), with the support of the National Department of Health. The CMS' role is to ensure that under the guidance of the Department of health the negotiations will benefit the members.

7. PROMULGATION OF CORONAVIRUS AS PART OF THE PMBs

The CMS lodged the draft regulation with the Minister of Health for the promulgation of coronavirus into a regulation in terms of section 67(3)(b) to form part of the Prescribed Minimum Benefit (PMB) package. The submission to the Minister of Health accented the fact that, the signing and promulgation of coronavirus in the national Gazette and the publication thereof, is in interest of the public and must be done so on an urgent basis.

8. CONCLUSION

To mitigate the possible negative impact of the coronavirus pandemic, medical schemes are urged to ensure that there is continued compliance with their managed care protocols as part of the cost containment measures. The CMS understands that the world is faced with extraordinary circumstances which require extraordinary measures to overcome them. We hope these guidelines will support the industry on how to manage the potentially catastrophic financial effects of coronavirus.

Yours sincerely,



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