



CIRCULAR

Reference: Brokers - Revision of Circular 20 of 2010
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CIRCULAR 35 OF 2022 - CMS PROPOSALS TO REVISE CIRCULAR 20 OF 2010 PERTAINING TO THE APPOINTMENT OF BROKERS BY A MEMBER AND/OR EMPLOYER IN TERMS OF REGULATION 28(7) OF THE MEDICAL SCHEMES ACT, 131 OF 1998

The Council for Medical Schemes (the CMS) is in the process of revising [Circular 20 of 2010](#), specifically the appointment of brokers by a member and/or employer (in case of employer group), as stipulated in Regulation 28(7) of the Medical Schemes Act, 131 of 1998 (the Act). We invite comments and suggestions from all parties involved to improve this circular.

In recent years this office received numerous enquiries and complaints from brokers and other interested parties seeking further clarity on the interpretation of Regulation 28(7) of the Act, following the publication of Circular 20 of 2010.

Circular 20 of 2010 indicates that in Regulation 28(7), a member can appoint a new broker to replace a broker previously appointed by the member. It further states that when a member has been admitted to a medical scheme without the assistance of a broker, no other person or entity that can represent a member is acting as an agent in appointing a new broker.

Based on our experience in addressing these issues over the past few years, we believe that further engagements with the industry are essential.

Given that these are issues which directly affect our stakeholders and other interested parties, the CMS hopes that collective views from all affected parties can be considered to address areas of concern alongside the views of all parties.

The proposals are accordingly being devised for revising Circular 20 of 2010 on the following matters/issues which were perhaps not adequately elaborated on in Circular 20 of 2010. Preliminary proposals from this office are articulated as follows:

Regulation 28(7) of the Act provides that:

“A medical scheme shall immediately discontinue payment to a broker in respect of services rendered to a particular member if the medical scheme receives notice from that member (or the relevant employer, in the case of employer group), that the member or employer no longer requires the services of that broker”.

1. The fact that the employer has the right to terminate the broker appointment on behalf of the employees implies that the employer has the right to appoint a broker on behalf of its employees.
2. The above statement was also confirmed in the recent Appeal Committee case of Bonitas v Ramaph CMS 72546 issued on 9 November 2020, wherein it was stated ad paragraph 46 that:

“Regulation 28(7) allows an individual or his or her employer to appoint a broker.”
3. The CMS believes that the employer’s right to appoint a broker on behalf of employees constitutes a limitation on the employees’ right to choose who they wish to deal with and/or a limitation on the employees’ freedom to contract with the broker of their choice. Hence, the employer’s right to appoint a broker on behalf of employees must be exercised reasonably.
4. In line with the provisions of section 7 (a) of the Medical Schemes Act 131 of 1998 (“MSA”) which places a legal responsibility on Council to always protect the interest of beneficiaries, the CMS proposes the following guidelines in relation to the appointment of brokers by employers on behalf of employees:
 - 4.1 Where an employer chooses to appoint a broker on behalf of employees, the employer must appoint a minimum of 3 brokerages to allow employees the freedom to choose any of the appointed brokerages as and when the employee so wishes.
 - 4.2 The employer must make use of an open, transparent, and competitive process to appoint brokers.
 - 4.3 The appointment must be of a fixed reasonable period.
 - 4.4 When appointing and terminating a broker, the employer exercises power in terms of Regulation 28 (7) and therefore such appointment and termination are subject to monitoring and enforcement powers of the Registrar in terms of the MSA and any other applicable legislation.
5. Please use this opportunity to make submissions on these proposals. Please inform us what you think of them, and why. If you find some of the proposals particularly good, please say so. If you find them problematic, let us know this as well. If you have even better suggestions, please make them.
6. The CMS will analyse all the comments/suggestions received and issue a revised Circular based on the comments/suggestions received.
7. Please submit your comments/suggestions to Ms Florence Maphanga, at f.maphanga@medicalschemes.co.za by no later than 31 July 2022.

Yours sincerely



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