national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

HEALTH INSURANCE POLICIES TO COMPLEMENT MEDICAL SCHEMES THROUGH AN ENABLING REGULATORY FRAMEWORK

RELEASE OF FINAL DEMARCATION REGULATIONS

The Minister of Finance, with the concurrence of the Minister of Health, today publishes the final Demarcation Regulations (Regulations) in Government Gazette No. 40515.

The draft Regulations were tabled in Parliament on 28 October 2016 for review, as required in terms of sections 72(2B) and 70(2B) of the Long-term Insurance Act, No. 52 of 1998 (LTIA) and the Short-term Insurance Act, No. 53 of 1998 (STIA). The period for Parliamentary review ended on 28 November 2016. The National Treasury (NT) response to the Chairperson of the Standing Committee on Finance regarding one public submission it received is attached as **Annexure A**. No objection to finalising the draft Regulations was received from Parliament.

The Regulations are the outcome of an extensive consultative process lasting several years between the Ministers of Finance and Health as well as the Council for Medical Schemes (CMS), the Financial Services Board (FSB) and affected stakeholders.

The first draft of the Regulations was published for public comment in March 2012, and revised after taking into account public comments. The second draft of the Regulations was published for public comment in April 2014.

The Regulations balance policy objectives across the medical schemes and the insurance sector and seek to prevent regulatory arbitrage. The Regulations specify which types of contracts are regulated under the LTIA and STIA as health policies and accident and health policies, respectively, and accordingly are excluded from the Medical Schemes Act, No. 131 of 1998 (MSA), despite such contracts meeting the definition of the business of a medical scheme. The Regulations seek to clearly demarcate the responsibility for supervision of medical schemes and health insurance products, and ensure that health insurance products do not undermine the social solidarity principles inherent in medical schemes, resulting in better protection for consumers.

Three categories of health insurance products are of particular relevance to the abovementioned demarcation, namely:

- **Medical Expense Shortfall policies (Gap cover plans):** These policies cover the shortfall between medical scheme benefits and the rates that private medical service providers may charge.
- **Non-medical expense cover as a result of hospitalisation policies (Hospital cash plans):** These policies pay out a stated benefit upon hospitalisation, usually per day spent in hospital. The stated benefit is unrelated to the actual cost of any medical service as it is aimed at covering incidental costs, such as loss of income.
- **Primary healthcare insurance policies:** These policies provide limited medical service benefits (often to employee groups or bargaining councils) including services such as general practitioner visits, acute and chronic medication, emergency medical care, dentistry and optometry.

The Regulations allow insurers to continue to provide Medical Expense Shortfall policies (Gap cover plans) and Non-medical expense cover as a result of hospitalisation policies (Hospital cash plans) in a manner that complements medical schemes, subject to strict underwriting and marketing conditions.

The Regulations do not allow insurers to continue to provide primary healthcare insurance policies. These types of benefits will, going forward, be provided in accordance with the MSA. In this regard, the Minister of Health has requested that the CMS grant a two year exemption, subject to certain conditions, for primary healthcare insurance policies, while further research is being led by the Department of Health (DoH) into the development of a Low Cost Benefit Option (LCBO) guideline. It is envisaged that the existing primary healthcare insurance policies will be required to transition into a LCBO framework once finalised.

The NT and FSB will work closely with the DoH and CMS to ensure that a clear exemption framework for primary healthcare policies is published before the effective date of the Regulations.

The Twin Peaks approach to regulating the financial sector holds lessons for the regulation of medical schemes, as tougher market conduct regulation over medical schemes should aim to treat customers more fairly. To this end, the NT and the FSB are working together with the DoH and the CMS to improve market conduct practices in medical schemes, enhance recourse mechanisms and lower the costs of medical scheme coverage.

Summary of consultation process

The first draft of the Regulations was published for public comment in March 2012. A total of 343 public comments were received. The main comments relate to the

prohibition on the sale of Gap Cover plans and restrictions on the marketing of Hospital Cash plans.

The second draft of the Regulations was published for public comment in April 2014. It took into account comments received on the first draft and provided for the continued sale of Gap Cover and Hospital Cash Plan policies with strict selling and marketing conditions. A total of 461 comments were received with concern raised about the exclusion of primary healthcare insurance policies and the absence of a medical scheme alternative.

From May 2014 to October 2015, the NT and FSB met with various stakeholders to facilitate a better understanding of the draft Regulations. The NT also released a Frequently Asked Question and Answer document in 2014 to provide further clarity on some of the questions received from stakeholders during the public consultation.

The amendment to the definition of a "business of a medical scheme"

The Financial Services Laws General Amendment Act, No. 45 of 2013 (which came into effect on 28 February 2014, and was published in *Government Gazette* No. 37237 of 16 January 2014), amends the definition of a "*business of a medical scheme*" to support the Regulations.

The amendment to the definition of a "*business of a medical scheme*" was deferred to come into effect at the same time as the Regulations are finalised. The amendment of the definition will therefore be made effective on 1 April 2017. Health insurance products that fall within the ambit of this amended definition will be prohibited, unless they are explicitly exempted through the Regulations.

Implementation timelines

The Regulations will take effect on 1 April 2017. All new health policies (LTIA) and accident and health (STIA) policies written after the Regulations come into operation must comply with the requirements set out in the Regulations.

Existing health policies (LTIA) will be expected to align to the Regulations as and when such contracts are varied or renewed after the Regulations come into operation. Existing accident and health policies (STIA) will be expected to align to the Regulations by 1 January 2018.

The NT thanks all stakeholders for their contribution to this process.

Supporting Annexures

The following supporting Annexures are also available on the NT's website at www.treasury.gov.za , and the FSB's website at www.fsb.co.za:

Annexure A:	NT response to the Chairperson of the Standing Committee on Finance;
Annexure B:	LTIA Demarcation Regulations, Gazette No. 40515;
Annexure B:	STIA Demarcation Regulations, Gazette No. 40515;
Annexure C:	Response to key issues raised in public submissions;
Annexure D:	A folder entitled "*First Draft Demarcation Regulations, 2012";*
Annexure E:	A folder entitled "*Public comments received on First Draft Demarcation Regulations";* and
Annexure F:	A folder entitled "Second Draft Demarcation Regulations".

Issued by: National Treasury
Date: 23 December 2016