

New health proposals may head for court

Insurers fight medical aid schemes

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THE constitutional rights of those who cannot afford medical aid are being violated by the Treasury's proposed regulations for health insurance, providers of the service say, and the plan is likely to be challenged in court.

The demarcation regulations aim to create boundaries between medical aid and health insurance products amid complaints by the Council for Medical Schemes that these products are harming medical aid schemes. The regulations were developed by the Treasury, the council and the Financial Services Board.

Mainly three insurance products compete with medical aids: primary healthcare policies, gap cover and hospital cash plans.

If the existing proposals are passed, short-term insurers will be banned from selling policies for

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primary healthcare that pay for visits to a doctor or dentist and medicines as these products are considered to be the business of medical schemes. This could jeopardise the cover of hundreds of thousands who do not belong to a medical scheme but buy the cover to avoid having to use public health facilities.

Currently a mere 8.5-million people out of a population of 52-million have medical aid cover.

Hospital cash plans and gap-cover policies will continue, but under stricter rules. Insurance brokers will not be allowed to use the word “hospital” when selling hospital cash plans because consumers often confuse these with hospital plans provided by medical schemes.

The health insurance industry remains small due to uncertainty around its products. About 500,000 families have gap cover policies and about 2.4-million people have hospital cash plans. Providers say it could grow considerably if there were clarity on the products they sell given the

number of people who cannot afford medical aid.

The Council for Medical Schemes took legal action in 2006, seeking to declare gap cover illegal, but lost the case at the Supreme Court of Appeal with no leave to appeal to the Constitutional Court.

Steph Bester, CEO of short-term insurer The Unlimited, says most South Africans cannot afford medical aid and rely on these policies to access private healthcare. Barring these products infringes on the rights of those who cannot afford medical aid but are able to buy these policies, he says.

The policies are a lot cheaper than medical aid, costing about R500 a month. Health is a socio-economic right that is protected by the constitution.

“If these regulations are passed in the current form, they will have no impact on our business. We're challenging them because we believe an enormous part of our population can't afford medical aid,” says Mr Bester. “The worst-case scenario is to take the matter to court.”

Mike Settas, MD of Xelus Specialised Insurance Solutions, says it is unfair that the proposed regulations would only allow medical schemes to provide access to private health insurance.

“What about citizens who want to purchase primary care cover or dental cover? This may be the only level of care they can afford,” he says. His company specialises in gap cover. “Legal action is not out of the question but we would exhaust all other options before taking that route.”

Reshma Sheoraj, director of insurance at the Treasury, says consumers are not adequately protected by health insurance products. Insurers can risk-profile clients before taking them on, “impose severe exclusions” or cancel the policies of those who are deemed to claim too much.

“You cannot have these products openly competing with medical schemes because effectively what you're doing is eroding and undermining the core of what medical schemes are supposed to be doing,” she said on Friday.

“We accept that there are structural problems with the medical schemes environment ... but these insurance products are not

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the answer.”

Stephen Mmatli, head of compliance and investigation at the Council for Medical Schemes, says these products are “eroding the principle of cross-subsidisation” because insurers recruit the young and healthy, leaving the old and sickly to medical schemes.

There are low-cost medical schemes or options people can take instead of buying primary

healthcare cover.

Insurers are also arguing that it is inappropriate for the government to introduce the regulations when an inquiry is still being held into the healthcare sector, which will examine health insurance policies.

The insurers are concerned that the inquiry may come up with different regulations, which would create problems if the proposed regulations have already been implemented.

Ms Sheoraj says the Treas-

ury views the rules as complementary to the inquiry.

The Treasury has received 461 comments up to the end-July closing date. The final regulations are expected to be published in November, and implementation early next year.

The government has been trying to resolve the turf war between private health insurers and medical schemes for a while without success. A court challenge could further frustrate such efforts.