



## **Medical Aid Societies Model Law, 2023**

**A Model Law to provide for the harmonisation of licensing, regulation and supervision of persons carrying on medical aid societies business in Southern Africa Development Community member states; and to provide for matters connected with, or incidental to the foregoing.**

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## PART I

### PRELIMINARY

#### **1. Short title**

This Model Law may be cited as the Medical Aid Societies Model Law, 2023.

#### **2. Definitions**

In this Model Law—

“administrator” means a person who carries on the business of administering or managing the business of any medical aid society under any agency agreement or similar arrangement with the board of the society;

“Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing” shall have the meaning as defined in the domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing matters and Financial Action Task Force standards;

“auditor” means a person registered and certified to practise as an auditor in terms of the domestic law;

“board” means the board of trustees charged with managing the affairs of the medical aid society, and such board shall be elected or appointed under its rules;

“business of a medical aid society” 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 covering 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;

“Committee of Insurance, Securities, and Non-Banking Financial Authorities” means a committee of authorities responsible for the supervision of insurance, securities, and non-banking financial institutions in Southern African Development Community member states, which was established under the Protocol on Finance and Investment of the Southern African Development Community;

“dependant” means—

- (a) the spouse, dependent child, or other member of the member’s immediate family in respect of whom the member is liable for family care and support; or
- (b) any dependent parent or other person who, under the rules or rules of a medical aid society, is recognised as a dependant of such a member;

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“domestic law” means a law prevailing in a respective member state;

“health-care provider” means any of the following persons who or which supplies to a member or dependant of a member a service qualifying for payment or reimbursement by the medical aid society to which the member belongs—

- (a) medical or dental practitioner, nurse, pharmacist or other health practitioner; or
- (b) a health institution; registered or required to be registered in terms of the domestic law;

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“intermediary” means a medical aid society administrator or a medical aid society broker as may be defined in the domestic law;

“key responsible person” means—

- (a) any person that manages, controls, formulates the policy and strategy, directs the affairs of a medical aid society or has the authority to exercise the powers and perform such functions;
- (b) any person other than a person referred in (a) who makes or participates in making decisions that affects the whole or substantial part of the business of the medical aid society or has the capacity to affect significantly the financial standing of the society; and
- (c) any person in charge of a control function including compliance, internal audit or risk management;

- “medical aid card” means a card issued by a society indicating that the person named therein is a member;
- “medical aid society” or “medical aid fund” or “medical aid schemes” means an association or organisation which accepts subscriptions from members or other persons wholly or mainly for the purpose of conducting the business of medical aid, which are not set up for profit and excludes insurance business, and may be an open medical aid society or a restricted medical aid society;
- “medical scheme” means any scheme administered by a medical aid society for the benefit of a specified class of member;
- “member” means a person who has been admitted as a member of a medical aid society or who, in terms of the rules or rules of a society, is a member of such society;
- “officer” means a member of the board of a medical aid society, principal officer, administrator, treasurer and any other employee of the society the nature of whose duties may require him to account directly to the board;
- “open medical aid society” means a medical aid society which is not a restricted medical aid society;
- “person” includes an individual, a body corporate, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not;
- “principal officer” means the person directly responsible to the board of a medical aid society for administering or managing the business of the society;
- “regulatory authority” means a body responsible for the regulation and supervision of medical aid societies;
- “restricted medical aid society” means a medical aid society the rules of which restricts the eligibility for membership by reference to—
- (a) employment or former employment in a profession, trade, industry or calling;
  - (b) employment or former employment by a particular employer, or by an employer of a particular class;
- “specialist medical unit or facility” means—
- (a) a medical laboratory;
  - (b) a radiology unit;
  - (c) a medical rehabilitation centre; or
  - (d) such other specialist medical unit or facility as the regulatory authority may, from time to time, notify in writing to medical aid societies;
- “waiting period”, in relation to a member, means the period between the admission of the member into the society and the date on which the member is entitled under the rules or rules of the society to claim any benefits.

### **3. Application of the Model Law**

Southern African Development Community member states are required to benchmark their domestic laws governing the regulation and supervision of persons carrying on medical aid societies to meet the minimum requirements as set out in this Model Law.

### **4. Objectives of the Model Law**

The objective of this Model law is to—

- (a) promote harmonisation of medical aid societies laws across Southern Africa Development Community members states;
- (b) promote a fair, safe and stable market for medical aid societies;
- (c) provide for the licensing and winding up of societies;
- (d) promote prudent management of medical aid societies; and
- (e) to provide for matters connected therein inclusive of consumer protection principles, as prescribed in the relevant domestic law.

### **5. Objectives, responsibilities and powers of the regulatory authority**

(1) The objective of a regulatory authority shall be to—

- (a) promote the maintenance of a fair, safe and stable market for medical aid societies;
- (b) promote financial stability;
- (c) protect members of medical aid societies; and
- (d) provide guidance on certain aspects of medical aid societies.

(2) The regulatory authority shall have the responsibility for the following—

- (a) licensing;
- (b) market conduct supervision;
- (c) prudential supervision;
- (d) respect differences in national financial markets where these do not unduly impinge on the coherence of the regional harmonisation;
- (e) combat Money Laundering/and the Financing of Terrorism and Proliferation;
- (f) performing such other functions as conferred upon the regulatory authority in terms of the domestic law.

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(3) The regulatory authority shall have power to—

- (a) issue rules, standards and guidelines by administrative means;
- (b) enforce rules, standards and guidelines by administrative means;
- (c) take immediate and/or adequate actions;
- (d) initiate and propose amendments to legislation;
- (e) regulate and supervise Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing;
- (f) exercise such other powers as may be conferred upon it in terms of the domestic law.

(4) Every medical aid society shall furnish the relevant authorities with relevant information for transactions deemed suspicious under the Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing laws and obligations.

(5) The regulatory authority shall ensure that members of medical aid societies are made fully aware of the functions and responsibilities of the regulatory authority and shall have adequate details of the regulatory authority that includes the regulatory authority's—

- (a) physical, postal and electronic mail address;
- (b) website; and
- (c) telephone number.

(6) The regulatory authority may take out and maintain professional indemnity insurance and fidelity guarantee insurance or any other relevant form of insurance from and up to such amount as the medical aid society's auditor may determine.

## PART II

### LICENSING OF MEDICAL AID SOCIETIES

#### **6. Licensing of societies**

(1) No person shall establish or conduct the business of a medical aid society unless licensed by the regulatory authority.

(2) Subject to the domestic law, an application for licensing as a medical aid society shall be accompanied by the following—

- (a) rules of the medical aid society;
- (b) a business plan of the society;
- (c) the appropriate fees;
- (d) individual profiles of each member trustee of the society; and
- (e) any other requirements as may be prescribed by the regulatory authority.

(3) The business plan of an application of a medical aid society referred to in subsection (2) shall include, or be accompanied by the following projections based on normal assumptions and the most and least favourable assumptions—

- (a) a projected annual statement of financial position for a prescribed period;
- (b) a projected annual statement of comprehensive income for a prescribed period;
- (c) a projected cash flow statement for a prescribed period;
- (d) any other account or report as may be prescribed by the regulatory authority.

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(4) If the regulatory authority is satisfied with the application made in terms of subsection (2), it shall license the medical aid society and may, in doing so, impose such terms and conditions as the regulatory authority deems necessary.

(5) The regulatory authority shall, as soon as practicable after licensing a medical aid society, publish a notice setting out—

- (a) the name and address of the medical aid society, and whether it is a restricted or open medical aid society;
- (b) the date of licensing of the medical aid society; and
- (c) any terms or conditions imposed on the medical aid society upon its licensing.

(6) Where the regulatory authority rejects the application, it shall notify the applicant in writing and within a prescribed period of such rejection and the reason for it.

(7) Any person aggrieved by the decision of the regulatory authority to reject an application made in terms of this section shall lodge an appeal with the relevant authority in terms of the domestic law.

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(8) A society which intends to change the category of its licence shall, prior to such change, apply to the regulatory authority for the change within such period as may be determined by the regulatory authority, and the regulatory authority shall, upon receipt of the application, evaluate and make a decision, and notify the society concerned.

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## **7. Restriction on use of names**

No person shall, without the consent of the regulatory authority, conduct any business under a name which includes the words “medical aid society”, “medical scheme” or any other name which is calculated to indicate or is likely to lead persons to believe that he conducts a medical aid society, unless such business is licensed in terms of the domestic law governing medical aid societies.

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## **8. Suspension of licence of society**

(1) Where a regulatory authority deems it necessary to suspend the licence of a medical aid society—

- (a) to facilitate an investigation into the society’s conduct; or
- (b) following the institution of proceedings for the society’s winding up or the placing of the society under judicial management;

it may, by notice in writing, suspend the licence of a society wholly or in part in relation to all or any of the activities permitted by the licence and shall inform the society of the grounds for the suspension.

(2) Unless the regulatory authority is of the opinion that notifying the society would permit the society concerned or any other person to dispose of any of the society’s assets or take any other action that would prejudice the society’s members or creditors, the regulatory authority shall, before suspending a licence of a medical aid society, give the concerned medical aid society an opportunity to make representations within prescribed timelines:

(3) The regulatory authority may at any time and by notice in writing to the society lift the suspension:

Provided the circumstances that may have caused the suspension are addressed.

(4) During the period under which the society is suspended, the society shall only perform such activities as the regulatory authority may permit it to perform.

## **9. Amendment of licence**

(1) A regulatory authority may at any time amend the licence of a medical society or any term or condition subject to which the society was licensed—



- (a) to correct any error in the register;
- (b) if the society requests the amendment;
- (c) if the regulatory authority considers the amendment necessary to reflect the true nature of the service which the society is providing; or
- (d) if for any other reason the regulatory authority considers the amendment necessary or desirable in the public interest.

(2) Before varying the licence of a society, otherwise than at the request of the society, the regulatory authority shall notify the society in writing of the nature of the amendment the regulatory authority proposes to make and of the reasons for wishing to make the variation, and shall give the society an opportunity to make representations in the matter within a prescribed period.

(3) Where the variation is at the instance of the medical aid society, the medical aid society shall furnish the regulatory authority with the reasons for the proposed variation.

(4) If the regulatory authority refuses to vary the licence of a society at the request of the society, the regulatory authority shall, within a prescribed period after reaching its decision, notify the society in writing of its decision and of the reasons for it.

#### **10. Cancellation of licence of society**

(1) The regulatory authority may cancel the licence of a medical aid society if it considers that the society —

- (a) is in an unsound financial condition;
- (b) is not operating in accordance with sound administrative and accounting practices and procedures;
- (c) has failed to comply with the minimum financial requirements prescribed by the regulatory authority and considers that it is unlikely to comply with them; or
- (d) has contravened the prescribed legislative requirements.

(2) Before cancellation of a licence, the regulatory authority shall give the concerned medical aid society an opportunity to make representations within prescribed timelines.

(3) On the cancellation of the licence of a medical aid society—

- (a) the medical aid society shall be dissolved or wound-up in accordance with the requirements of Part VIII and the rules of the medical aid society;
- (b) the regulatory authority shall take such steps and may impose such conditions as are necessary in the circumstances, which steps may include the transfer of the business of the medical aid society to another medical aid society as specified in Part VII, as appropriate; and
- (c) no distribution of the assets of the medical aid society shall be made without the prior approval of the regulatory authority.

#### **11. Regulatory authority may require unlicensed society to provide information**

(1) A regulatory authority may, by notice in writing, require any person whom it has reason to suspect is carrying on the business of a society which is not licensed to transmit to it, within

such period as may be specified in the notice, a copy of the rules, if any, in terms of which the business concerned is being operated, together with a copy of the last annual accounts or any other accounts recorded by that person in relation to that business, and such other information relating to the business carried on by that person as the regulatory authority may require.

(2) If a person who has been required in terms of subsection (1) to transmit any record, or information fails to comply with the notice within the period specified in the notice, the regulatory authority may investigate or appoint an inspector to investigate the affairs or any part of the affairs of that person.

(3) If it appears from inquiries in terms of subsection (1) or an investigation in terms of subsection (2) that the person concerned is carrying on the business of a society which is not licensed, the regulatory authority, subject to domestic law—

- (a) shall inform the person accordingly by notice in writing and cause the society to be licensed;
- (b) may wind up the society concerned or take any measures that the regulatory authority deems fit in a manner that minimises prejudice to members of the unlicensed society.

## **12. Governance of medical aid societies**

(1) Every medical aid society shall be governed by a board consisting of a prescribed minimum number of members, as prescribed in their rules, who are fit and proper, and who shall be responsible for *inter alia*, and in accordance with accepted principles of good corporate governance, formulating policies relating to the society's business and supervising the conduct of society's business:

Provided that the regulatory authority shall—

- (a) approve; or
- (b) not object to the appointment of;

every member of the board before such member undertakes his duty as a member of the board.

(2) A term of office of members of the board shall not exceed the period prescribed in the domestic law.

(3) The qualifications and disqualifications of members of the board shall be prescribed in the domestic law.

(4) Every medical aid society board shall establish such committees as may be required to ensure effective and efficient functioning of the board, in terms of the domestic law and in a manner prescribed by the regulatory authority.

(5) The board of every society shall—

- (a) ensure that effective internal controls are in place;
- (b) subject to the domestic law, have a framework to provide for cybersecurity and data protection matters.

(6) The board of a society shall meet at least once quarterly and the procedure in conducting meetings of the board shall be prescribed in the domestic law.

(7) A medical aid society shall appoint key responsible persons of a medical aid society who are—

- (a) fit and proper to hold office as such;
- (b) competent to perform the required duties and is likely to fulfil the responsibilities towards the society.

(8) Key responsible persons of a society shall be capable of demonstrating an understanding of the society's financial performance, including the reporting requirements.

(9) Any change in any key responsible person of a medical aid society, shall be approved by the regulatory authority prior to such change.

### PART III

#### CONDUCT OF MEDICAL AID SOCIETIES

#### **13. Officers of societies**

(1) The board of every medical aid society shall employ or appoint a principal officer or administrator of the society.

(2) Where a society employs or appoints both a principal officer and an administrator it shall notify the regulatory authority accordingly and specify which of them is primarily responsible for administering or managing the business of the society.

(3) If the post of the principal officer or administrator is vacant for more than a prescribed period, the medical aid society concerned shall immediately notify the regulatory authority in writing of that fact, and the regulatory authority shall address the non-compliance in terms of the domestic law and in a manner prescribed by the regulatory authority.

(4) A principal officer or administrator of a society shall, if appointed or elected as a member of the board of the society, not be present at any meeting of the board while the terms and conditions of his employment or appointment are being decided.

(5) No member of the board of a society shall participate in the discussion of any matter on the agenda of a meeting of the board in which the board member is interested, unless he has disclosed such interest to the board and the board has agreed that such member may participate in the discussion of, and voting on, that matter.

(6) Whenever a medical aid society appoints a new principal officer or administrator it shall submit to the regulatory authority, within a prescribed period of such appointment—

- (a) the reasons, in writing, for the cessation of the employment of the previous principal officer or administrator;
- (b) the particulars of the new principal officer or administrator as may be prescribed; and
- (c) in the case of the appointment of an administrator, a copy of the agreement appointing the administrator.

(7) An administrator shall keep and account for medical aid society's moneys separately from the assets of any other business carried on by the administrator.

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#### **14. Disqualification for appointment as officer of society**

- (1) No person shall be appointed or elected, or hold office, as a member of the board, or as a

principal officer or administrator of a society, if—

- (a) he is a member of the board of another society which is in competition with the first-mentioned society; or
- (b) under the domestic law—
  - (i) he has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged;
  - (ii) he has made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or
  - (iii) he has been convicted of an offence involving dishonest.

(2) The rules of a medical aid society may prescribe further disqualifications not inconsistent with this model law.

(3) The society shall notify the regulatory authority where an officer of a medical aid society is not or has ceased to be a fit or proper person to hold the office concerned.

(4) Where it comes to the attention of the regulatory authority that an officer of a medical aid society is or had ceased to be fit and proper, the regulatory authority shall—

- (a) furnish the society and the officer concerned with full details of all the information the regulatory authority has in his possession in that regard; and
- (b) request the society and the officer concerned to make written representations, in writing, to the regulatory authority on the matter within the prescribed period.

(5) The regulatory authority may—

- (a) after considering any representations received in terms subsection 4 (b); and
- (b) after determining that the officer is no longer a fit and proper person to continue holding such office;

direct the society in writing to commence proceedings for the removal of the officer concerned within such period as the regulatory authority shall specify.

## **15. Discrimination and exclusion of membership**

(1) No society shall, with respect to the admission of persons as members of the society or as between its members participating in the same class of scheme, discriminate against any person of a particular description by race, gender, marital status, ethnic or social origin, nationality, religion or creed—

- (a) by subjecting that person to a condition, restriction or disability to which persons of another such description are not made subject; or
- (b) by conferring on persons of another such description a privilege or advantage which is not conferred on persons of the first-mentioned description;

the imposition of that condition, restriction or disability or the conferring of that privilege or advantage is wholly or mainly attributable to the description by race, gender, marital status, ethnic or social origin, nationality, religion or creed of the persons concerned.

(2) Every person employed by or in a profession, trade, industry, calling, employer or class of employers in respect of whom or which a restricted medical aid society is registered shall be eligible for membership of the society concerned.

#### **16. Rules of society**

- (1) Every society shall have rules that shall provide for the following—
- (a) a provision to the effect that the society is a legal person with rights and obligations;
  - (b) the appointment or election of the members of the board of the society;
  - (c) the voting rights and procedure for voting at meetings;
  - (d) the appointment of a principal officer or administrator by the board;
  - (e) the appointment, removal from office, powers and remuneration of officers of the society;
  - (f) the appointment of the auditor of the society and the duration of such appointment;
  - (g) the appointment of actuary of the society and the duration of such appointment;
  - (h) the power to invest funds;
  - (i) the amalgamation and transfer of the business of the society;
  - (j) the manner in which, and the circumstances under which, the society shall be terminated and dissolved;
  - (k) the appointment of a liquidator in the event of dissolution of the society;
  - (l) the settlement of any complaint or dispute;
  - (m) the giving of advance notice to members of any change in contributions, membership fees or subscriptions and benefits or any other condition affecting their membership;
  - (n) the manner of calling the annual general meeting and special general meetings of members, the quorum necessary for the transaction of business at such meetings and the manner of voting thereat;
  - (o) the terms and conditions applicable to the admission of a person as a member;
  - (p) the payment of any benefits according to—
    - (i) a scale, tariff or recommended guide; or
    - (ii) specific directives prescribed in the rules of the society;
 and
  - (q) any other as may be prescribed in the domestic law.

(2) The business of the medical aid society shall be governed in terms of its rules.

(3) Where a society amends its rules, it shall notify the regulatory authority in writing and within a prescribed period of such an amendment and shall furnish the regulatory authority a copy of the amendment certified by the principal officer or administrator of the society.

#### **17. Minimum benefits to members**

(1) No registered medical aid society shall make available to its members or potential members any scheme which provides fewer or less favourable benefits than those prescribed by the regulatory authority from time to time.

(2) No registered medical aid society shall make available to its members or potential members any new benefits without such new benefits be approved by the regulatory authority for their financial viability.

### **18. Waiting and settlement periods**

(1) Subject to subsection (2), a medical aid society may impose a general waiting period of up to a prescribed period upon a new member of the society.

(2) A medical aid society may impose longer waiting periods, not exceeding a prescribed time for certain medical conditions.

(3) A medical aid society may not impose any waiting period upon a new member admitted to a scheme that is equivalent to the one he previously participated in as a member of another society and where such membership in the new society is done within the prescribed time after termination of his membership of the previous society.

(4) The regulatory authority shall prescribe the maximum settlement period for the reimbursement by a medical aid society of the expenses incurred in respect of medical or dental treatment by a member, the dependants of a member or any health-care provider.

(5) Where a dispute arises between a society and a health care provider or member as to the amount of any reimbursement, the health-care provider or member, as the case may be, may, within a prescribed period, lodge a complaint in writing with the regulatory authority or a body designated for that in terms of the domestic law.

(6) A health-care provider may charge interest on the amount of any claim lodged by that provider which—

- (a) is not settled within the period prescribed in terms of subsection (4);
- (b) in the case of a claim in which the amount of reimbursement is disputed, is not settled within a prescribed period from the date of settlement of the dispute.

(7) A medical aid society may deduct from the benefits payable to a member or to a health-care provider on the member's behalf—

- (a) any amount which has been paid in good faith to the member or provider but to which the member or provider is not entitled; or
- (b) any loss which has been sustained by the society through theft, fraud, negligence or any misconduct on the part of the member or health-care provider which comes to the notice of the society.

### **19. Restriction of member's choice of health services**

(1) A restricted medical aid society may require that any of its members be treated by a health-care provider employed or retained by it, or at a hospital or specialist medical unit or facility wholly or mainly owned by it.

(2) Subject to the domestic law, a restricted medical aid society shall be liable for the expenses incurred by a member who is treated by a health-care provider, or at a hospital, unit or facility, other than one referred to in subsection (1) if such treatment is ordinarily afforded to the member as part of the benefits of the scheme to which such member belongs but could not, at the time, be

offered to the member by the provider, or at the hospital, unit or facility, referred to in subsection (1).

(3) Where an open medical aid society invests any of its assets in the business of, or grant loans to, a health-care provider, hospital or medical facility, it shall not require or recommend that any of its members be treated by such provider or at such hospital, unit or facility, nor in any other way make the payment of any benefits to its members conditional upon treatment by such provider or at such hospital or facility.

(4) Where a health-care provider, in addition to any health service provided directly by him, owns or has any financial interest in any specialist medical facility, such health care provider shall not require a member to attend such specialist medical unit or facility to the exclusion of other such units or facilities that may be available

## **20. Whistle blowing and complaints handling procedures**

(1) Every medical aid society shall establish and maintain a clear whistle blowing and complaints handling mechanism that ensures quick and efficient resolution of complaints, in line with the domestic law.

(2) A medical aid society shall ensure that—

- (a) every complaint is attended to within a prescribed time from the date of receipt of the complaint and finalised within a reasonable time depending on the circumstances of each case;
- (b) complaints are handled by a person having the expertise in dealing with the cases and has authority to effect any remedial action that may be necessary.

(3) Where a complaint is not remedied, the medical aid society shall notify the complainant of his right to lodge a complaint with the regulatory authority or any other appropriate body.

(4) Subject to the domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing, a society shall keep a record of every complaint duly made to it for a period of at least 5 years after it was resolved and shall make the record available for inspection by the regulatory authority upon request.

(5) Subject to domestic law, the regulatory authority shall—

- (a) establish and maintain a clear complaint handling mechanism that ensures quick and efficient resolution of complaints;
- (b) establish and maintain a clear whistle blowing mechanism;
- (c) maintain complaints in writing;
- (d) handle and investigate complaints in a timely and fair manner; and
- (e) retain a record of complaints for a period of at least five years after resolution of the complaints.

(6) Where a complaint is not resolved to the member's satisfaction, the regulatory authority shall advise the member of any further steps available in terms of the domestic law.

## **21. Termination of membership and benefits**

(1) No medical aid society shall cancel or suspend a member's membership or that of any of the member's dependants, unless under the following circumstances—

- (a) failure by the member to pay the membership contribution within the time allowed in the society's rules or rules;
- (b) submission of a fraudulent claim;
- (c) committing any fraudulent act;
- (d) the non-disclosure of material information specifically requested by the society; or
- (e) any other reason as may be prescribed in the domestic law.

(2) Where a member dies, any dependant of the member shall, subject to payment of the deceased member's subscription being made by or on behalf of the dependant, continue to be entitled to receive the benefits available before the member's death until—

- (a) remarriage, in relation to the surviving spouse; or
- (b) attainment of the age of majority of the dependant;

subject to any other reasonable conditions prescribed by the rules of the society.

(3) Where a member of a restricted medical aid society or of an employee group benefits scheme operated by an open society retires from the service of his employer or his employment is terminated on account of age, ill-health or disability such member shall be entitled to continue as a member of the society, subject to the terms and conditions as shall be prescribed by the rules of the society.

## **PART IV**

### **RIGHTS AND OBLIGATIONS OF PARTIES**

## **22. Members rights**

(1) Every medical aid society must uphold the rights of members as set out in this Part.

(2) The regulatory authority shall put in place mechanisms to ensure the promotion of members' rights and ensure that members are treated fairly.

## **23. Right to fair and equitable treatment**

(1) Every member of a medical aid society has a right to be treated fairly and not be discriminated against on one or more grounds, including race, gender, age, marital status, ethnic or social origin, religion, sexual orientation, pregnancy, disability, and state of health.

(2) The society shall ensure that members of the society are provided with information to enable them to understand their rights, obligations and potential consequences for not upholding their obligations.

## **24. Right to have claims paid timeously**

Every member of a medical aid society has the right to—

- (a) have their claims paid timeously and in accordance with the rules of the society and subject to the domestic law;
- (b) be informed timeously if there are concerns regarding the claim and must be offered the



timeous opportunity to have the claim corrected and resubmitted;

- (c) as soon as reasonably possible, receive information to determine what benefits were legitimately funded.

## **25. Right to access to information**

(1) Every member of a medical aid society has the right of access to certain information belonging to the medical aid society, which shall include the following—

- (a) member benefits;
- (b) contributions payable;
- (c) rules of the society;
- (d) society's annual financial statements.

(2) Every member of a medical aid society has the right to be notified timeously of any changes pertaining to a member's benefits, contributions or any other condition affecting membership.

(3) Every medical aid society shall, within a prescribed period after one becomes a member of the society, furnish such member with written proof of membership containing the information referred to in subsection (1).

(4) Every member of a medical aid society shall be entitled to a simplified society communication method and have easy access to the medical aid society's communication, premises and officials.

## **26. Right to confidentiality of personal information**

Subject to domestic law and any applicable provisions relating to data protection, every member of a medical aid society has the right to confidentiality pertaining to their personal information, including, but not limited to, physical and mental health, medical history, disability, financial, or any other identifying number or contact information.

## **27. Right to complain**

(1) Every member of a medical aid society has the right to be furnished by their medical aid society with the full details of the complaint's procedure, including timelines for complaining and who to lodge the complaint with.

- (2) Every member of a medical aid society has a right to—
- (a) lodge a complaint with their respective medical aid society;
  - (b) be heard within a reasonable period;
  - (c) be furnished with a decision with the reason for such decision;
  - (d) where aggrieved by a decision of a medical aid society or its failure to make a decision, lodge a complaint with the regulatory authority or any other relevant authority in terms of the domestic law.

## **28. Right to participate in the governance of society**

(1) Every member of a medical aid scheme has the right to be informed of how the medical aid society is governed and how a member may participate in such governance structure of the medical aid scheme.

(2) The generally acceptable manner of participation by members into the affairs of the medical aid society shall be—

- (a) to elect from among themselves persons to serve as board members to manage the business of the medical aid society; and
- (b) by taking part in the medical aid society's annual general meeting or where necessary special general meetings.

(3) Every medical aid society shall ensure that rules of a medical aid society are in line with any applicable domestic law and international best practices regarding governance matters.

### **29. Duties of member**

(1) Every member of a society has an obligation to act honestly and in good faith and this shall include taking all reasonable steps to ensure that any information or claim the member submits to the society, health-care provider or any medical facility where the member may receive medical care or any service is true.

(2) A member shall, upon request in accordance with applicable laws, disclose to a medical aid society such information material to the business of a medical aid society and membership.

(3) Every member shall ensure that contributions and any other money due to the society are funded timeously and that contributions are kept up to date.

### **30. Duties of society**

(1) Every medical aid society shall have a duty to—

- (a) act in the interest of its members and public interest;
- (b) ensure the business contemplated by the society is in accordance with applicable laws and the rules of such society;
- (c) process claims and pay benefits timeously;
- (d) conduct its business ethically;
- (e) act with due care, skill, diligence and in good faith;
- (f) timeously furnish its members with complete, adequate and accurate information;
- (g) ensure easy access to information, particularly key terms and conditions.

(2) Every member of the board, officer or key responsible person of the society shall take all reasonable steps to avoid any potential, perceived, and actual conflict of interest.

(3) A medical aid society shall not absolve itself from its responsibility towards its members if any party contracted with the society is in default to provide any service in terms of such contract, medical aid society rules and any applicable laws.

(4) Every medical aid society shall ensure that any intermediary or service provider it contracts is licensed or accredited by the relevant authorities to provide any service in terms of the contract.

### **31. Duties of regulatory authority**

The regulatory authority shall—

- (a) take all reasonable steps to ensure that the rights of members and public interest are always protected;

- (b) put in place mechanisms that promotes the protection of consumer rights, good business practice and effective compliance;
- (c) ensure that medical aid societies and related intermediaries conduct their business in compliance with this model law as shall be specified in the domestic law, and applicable domestic law;
- (d) develop mechanisms and programmes that assist consumers to develop the knowledge and skill to understand the business of medical aid societies.

## PART V

### SUPERVISION AND INVESTIGATION OF MEDICAL AID SOCIETIES

#### **32. Inspection and investigation of society**

- (1) The regulatory authority shall—
  - (a) be responsible for continuously monitoring and supervising medical aid societies to ensure that they comply with the law and the licensing requirements.
  - (b) as part of its supervisory approach, have the power to conduct on-site and off-site inspections into the affairs of a medical aid society;
  - (c) have the power to conduct investigations into the affairs of the medical aid society, where the regulatory authority considers such an investigation necessary for the purpose of preventing, investigating or detecting a contravention of the domestic law governing medical aid societies or any other applicable law;
  - (d) have the power to appoint inspectors who may assist the regulatory authority to conduct inspections or investigations and to ensure compliance with the law.
- (2) Subject to the domestic law, the regulatory authority or any person authorised or appointed by the regulatory authority, may at any time, inspect the society's books and accounts at any place where the society conducts its business.
- (3) The society shall cause its books and accounts to be produced to an inspector and shall ensure that its employees furnish such information as the inspector may reasonably require for the purposes of the inspection or investigation.
- (4) No person must obstruct or hinder an inspector or inspection of a society or its books and accounts.
- (5) The powers of the inspector shall be as prescribed in the domestic law.
- (6) The regulatory authority may recover the costs of the investigation from the medical aid society.

#### **33. Regulatory authority's actions in case of non-compliance**

- (1) If, following a report by an inspector after an inspection and, where appropriate, after considering any representations made by the society, the regulatory authority is satisfied that the society has contravened any of the terms and conditions of its licence, or any regulations, standards or directives issued, the regulatory authority may, after following due process as shall be prescribed in the domestic law, do any one or more of the following—

- (a) issue a warning to the society;
- (b) issue a written directive for the society to take remedial action;
- (c) direct the medical society to amend its rules, within a specified period;
- (d) instruct the society to suspend or remove its key responsible persons from their duties;
- (e) direct the society to suspend any or all its business;
- (f) appoint an administrator to manage the society's affairs;
- (g) suspend or cancel the society's licence.

(2) On completion of an investigation, an inspector shall forward his report thereon to the regulatory authority.

(3) On receipt of a report in terms of subsection (2), the regulatory authority shall, subject to domestic law and as may be determined by the regulatory authority—

- (a) communicate the findings of the inspection to the society; and
- (b) invite the society to make representations on the contents of the report.

(4) A society may submit to the regulatory authority representations on any of the contents of the report, within the time set by the regulatory authority.

(5) Following a report after an investigation and after considering any representations made by the society in terms of subsection (4), the regulatory authority is satisfied that the society has contravened any of the terms and conditions of its licence, or any regulations, standards or directives issued, the regulatory authority may, after following due process as shall be prescribed in the domestic law, do any one or more of the actions specified in subsection (1) (a) to (g)

## PART VI

### UNFAIR PRACTICES BY HEALTH CARE PROVIDERS AND SOCIETIES

#### **34. Unfair practices by societies to health-care providers**

(1) A society shall reimburse a health-care provider within the maximum settlement period prescribed in terms of section 18.

(2) In the case of a defective claim, the society shall reimburse the health-care provider within a period prescribed in the domestic law from the date on which the defect is made good.

(3) Where the regulatory authority has reason to believe that any society is committing or has committed any unfair practice or any society is alleged to be committing or to have committed any unfair practice upon a written complaint to the regulatory authority by a health-care provider the regulatory authority shall make such investigation into the suspected unfair practice or complaint as the regulatory authority deems fit.

(4) The regulatory authority shall afford the society being investigated in terms of subsection (3) an opportunity of making representations in the matter within a prescribed period.

(5) Where the regulatory authority is satisfied that the medical aid society is or has committed any unfair practice, the regulatory authority shall order the reimbursement to the health-care provider concerned of any claim proved to the satisfaction of the regulatory authority to be due by the society to the health care provider, together with interest at the rate prescribed in the domestic law.

## PART VII

## FINANCIAL MATTERS

**35. Solvency of societies**

(1) Every medical aid society shall hold and maintain the required amount of capital prescribed by the regulatory authority from time to time.

(2) The capital requirements referred to in subsection (1) shall be commensurate with the level of business written and risks assumed by the medical aid society.

(3) The regulatory authority shall prescribe requirements relating to the valuation of assets and liabilities for a medical aid society for the purposes of determining regulatory solvency.

**36. Encumbrance of funds of societies**

Subject to domestic law, no medical aid society shall—

- (a) encumber its assets; or
- (b) allow its assets to be held by another person on its behalf;
- (c) by means of suretyship or any other form of personal security, whether under a primary or accessory obligation, give security in relation to obligations between other persons;

without the knowledge of the regulatory authority.

**37. Investment of funds**

(1) In this section—

“associate” —

- (a) in relation to an individual means—
  - (i) the spouse of the individual;
  - (ii) the child, parent, stepchild, stepparent or sibling of the individual and the spouse of any such person;
  - (iii) a person who has entered into an agreement or arrangement with the individual relating to the acquisition, holding or disposal of, or the exercise of voting rights in respect of, shares or other ownership interests in an entity;
  - (iv) a corporate body or other juristic person or unincorporated entity controlled, directly or indirectly, by, or the affairs or part of the affairs of which are managed or administered by, or at the direction or instructions of the individual or any person referred to in subparagraphs (i) and (ii); and
  - (v) a trust controlled by the individual;
- and
- (b) in relation to a corporate body, other juristic person or other unincorporated entity means—
  - (i) an entity which is controlled, directly or indirectly, by, or the affairs or part of the affairs of which are managed or administered by, or at the direction or instructions of, the corporate body, juristic person or unincorporated entity;

- (ii) an entity—
  - A. which controls, directly or indirectly, the corporate body, juristic person or unincorporated entity;
  - B. which manages or administers the affairs or part of the affairs of the corporate body, juristic person or entity; or
  - C. on whose directions or instructions the affairs or part of the affairs of the corporate body, juristic person or entity are managed or administered.

(2) Subject to subsection (3), a medical aid society may invest its funds in any manner provided by its rules subject to any other requirements as may be set out by the regulatory authority from time to time.

(3) No medical aid society shall invest any of its assets in the business of or grant loans to—

- (a) an employer who participates in the society, other than if that employer is the State, a local authority, a company listed on a Stock Exchange, a banking institution or building society registered in terms of the domestic laws or a statutory body;
- (b) another society;
- (c) any member of the board or administrator of the society;
- (d) any principal officer or employee of the society unless, in the case of the provision of loans, such loans are provided as part of the officer's or employee's remuneration or condition of service;
- (e) any associate of any person or society mentioned in paragraph (a), (b), (c) or (d).

[ ]

### **38. Appointment of an auditor**

(1) Every medical aid society shall, appoint as its auditor a person who is registered and certified as an auditor in terms of the domestic laws.

(2) An auditor appointed in terms of subsection (1) shall be approved by the regulatory authority .

(3) No person who is an officer or employee of the society shall be qualified for appointment as an auditor of the society.

(4) An auditor of a medical aid society shall be responsible for—

- (a) auditing the society's accounts and reporting on its statement of comprehensive income and statement of financial position;
- (b) planning and carrying out audit procedures designed to detect non-compliance or irregularities and illegal acts in the conduct of the society's business;
- (c) communicating to the society, any evidence he may have relating to non-compliance or that irregularities or illegal acts have been committed in the course of the society's business, whether or not they may have led to material misstatements in the society's accounts or records; and
- (d) communicating to the regulatory authority any evidence he may have that irregularities

or illegal acts have been committed by—

- (i) the medical society or board
- (ii) any officer or employee of the society; or
- (iii) any other person;

if there is a reasonable possibility that they may significantly damage the society's financial stability.

(4) The auditor shall, in every report referred in subsection (3) (a) state whether the accounts of the society concerned fairly present the state of affairs and the business of the society, and shall record—

- (a) any irregularity or illegal act which he has ascertained, or which he suspects has occurred in relation to the conduct of the business of the medical aid society;
- (b) any other matter which, in his opinion, requires rectification or attention by the society; and
- (c) any recommendations for improving the society's financial administration.

(5) The auditor shall as soon as possible send to the regulatory authority a copy of any report in which any matter referred to in subsection (4) (a), (b) and (c) is included.

(6) The auditor shall submit to the regulatory authority reports referred to subsection (3) (a) and such other reports as the regulatory authority may direct.

(7) The auditor of a medical aid society shall comply with his obligations under this section—

- (a) to submit reports or to include information in reports; and
- (b) to provide information;

notwithstanding any duty of confidentiality to the contrary, and shall not be held liable in any proceedings arising out of compliance with any such obligation unless it is proved that he acted in bad faith.

### **39. Powers of an auditor**

The auditor of a society shall—

- (a) have a right of access at all reasonable times to such of the society's books, accounts, vouchers and securities; and
- (b) be entitled to require such information and explanations from any officer, employee or agent of the society; as, in the opinion of the auditor, is required in order to enable him to perform the duties as an auditor.

[ ]

### **40. Accounts of society**

(1) A medical aid society shall—

- (a) keep proper accounts and records relating to the affairs of the society;
- (b) submit regulatory returns and regulatory financial reports within a period specified in the domestic law; and

(c) at the end of each financial year, prepare a financial statement reflecting the business of the society, in accordance with sound accounting practices as prescribed by the regulatory authority.

(2) The medical aid society shall, in accordance with the International Financial Reporting Standards or any other international reporting standards as may be specified in the domestic law, submit to the regulatory authority, within the period prescribed by the regulatory authority after the end of each financial year, audited financial statements.

(3) A bank at which a medical aid society keeps an account, shall, whenever so required by the regulatory authority, furnish to the regulatory authority a signed certificate of account statement or balance certifying the amount(s), if any, standing to the credit or debit of that trust account as at such dates as may be specified by the regulatory authority:

Provided that the regulatory authority may directly request the information from the bank or financial institution or the authority responsible for the regulation of the bank or financial institution in question.

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#### **41. Actuary of society**

(1) A medical aid society shall appoint in terms of its rules an actuary who shall not be an officer of the society.

(2) An actuary appointed in terms of subsection (1) shall be approved or not objected to by the regulatory authority .

(3) A medical aid society shall cause its financial condition to be investigated and reported upon by an actuary as may be prescribed from time to time, and submit within a prescribed period the signed report with a summary of the key findings of the actuarial report to the regulatory authority.

(4) The actuary shall present the solvency statement for the medical aid society along with the accounts.

(5) The actuary shall—

(a) have a right of access at all reasonable times to such of the society's books, accounts, vouchers and securities;

(b) be entitled to require such information and explanations from any officer, employee or agent of the society; as, in his opinion, is required in order to enable him to perform his duties as an actuary;

(c) communicate to the regulatory authority any evidence he may have that irregularities or illegal acts have been committed by—

(i) the medical society or board;

(ii) any officer or employee of the society; or

(iii) any other person;

if there is a reasonable possibility that they may significantly damage the society's financial stability.



## PART VIII

## AMALGAMATION, TRANSFER AND DISSOLUTIONS

**42. Amalgamations and transfers**

- (1) No medical aid society shall, without the approval of the regulatory authority —
- (a) amalgamate with any other medical aid society;
  - (b) transfer its business or any part thereof to any other society; or
  - (c) take transfer from another society of the whole or part of any of its business.
- (2) The amalgamation or transfer must be approved by the majority of the members as contained in the society rules.
- (3) The application procedure for an amalgamation or transfer shall be as prescribed in the domestic law.
- (4) The application procedure referred to in subsection (3) shall include matters relating to—
- (a) publication of a notice of the proposed amalgamation or transfer using a media with wide circulation; and
  - (b) lodging of objections or representations in regard to the application within such period as may be specified in the notice.
- (5) If the regulatory authority is of the opinion that the amalgamation or transfer will not be detrimental to the interests of the majority of the members of the societies concerned or to the public interest, it shall approve it subject to such conditions as regulatory authority thinks fit:
- Provided that the regulatory authority shall ensure that objections raised are addressed before approving the amalgamation.
- (6) When an amalgamation or transfer has been approved by the regulatory authority in terms of subsection (5), it shall cause a notice to be published in a media with wide circulation stating that the amalgamation or transfer has been approved.
- (7) On and after the date of the publication of the notice referred to in subsection (6), the agreement effecting the amalgamation or transfer shall be binding on all parties concerned, and shall have effect notwithstanding any conflicting provision contained in the rules of the medical aid societies concerned.
- (8) The merging societies or transferee and transferor societies shall ensure member data is transferred to the new society or transferee society after an amalgamation or transfer and that data is not lost during the transfer or merging process.

**43. Voluntary dissolution of society**

- (1) A medical aid society may be voluntarily dissolved—
- (a) upon a resolution by the members that a medical aid society be dissolved; or
  - (b) where the rules or rules of a society provide that the society be automatically dissolved upon the expiry of a specified period or the occurrence of a specified event.
- (2) Where a society is to be dissolved in terms of subsection (1) (b), the board of the society shall, with the approval of the regulatory authority, appoint a liquidator, and the liquidation shall

be deemed to commence as from the date of such approval or any future date as may be agreed and approved by the regulatory authority.

(3) During such liquidation this model law, as shall be specified in the domestic law, shall continue to apply to the medical aid society as if the liquidator was the person administering or managing the business of the society.

(4) The regulatory authority shall prescribe the dissolution procedures to be followed by the liquidator which shall include the following—

- (a) depositing with the regulatory authority within a prescribed period, a preliminary account and a preliminary statement of financial position signed and certified by the liquidator as correct, showing the assets and liabilities of the society at the commencement of the liquidation and the manner in which it is proposed to realise the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members;
- (b) furnishing the regulatory authority with a report drawn up by an independent valuator;
- (c) inspection of the preliminary account, preliminary statement of financial position and report by the public for a prescribed period;
- (d) lodging of objections by interested persons within a period stated in the notice and how such objections shall be dealt with by the liquidator, or any relevant person as may be prescribed.

(5) If no objections are lodged with the regulatory authority or after the resolution of the objections raised, in terms of subsection (4), the regulatory authority shall direct the liquidator to complete the liquidation.

(6) Within a prescribed period after the completion of the liquidation, the liquidator shall lodge with the regulatory authority a final account and a final statement of financial position, signed and certified by the liquidator as correct, showing the assets and liabilities of the society at the commencement of the liquidation and the manner in which the assets have been realised and the liabilities, including any liabilities and contingent liabilities to or in respect of members, have been discharged.

(7) All claims against the society shall be proved to the satisfaction of the liquidator.

(8) If the regulatory authority is satisfied that the final account and a final balance sheet are correct and that the liquidation has been completed, it shall cancel the licence of the society, and thereupon the society shall be deemed to be dissolved.

(9) The regulatory authority shall publish the dissolution in a media with a wide circulation as shall be prescribed in the domestic law.

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#### **44. Compulsory winding up of society**

(1) The regulatory authority may direct that a society be wound up if—

- (a) it is in an unsound financial condition;
- (b) it is not operating in accordance with sound administrative and accounting practices and procedures, and not adhering to proper risk-management policies; or
- (c) it fails to comply with the law and regulatory requirements.

(2) Where a regulatory authority directs that a society be dissolved, provisions of section 43 (2) to (9) shall apply.

#### **45. Interim management of society**

(1) Where the regulatory authority determines that a medical aid is in default and there is a likelihood of it recovering from such default, the regulatory authority shall issue a written direction to the board of the society to convene a special meeting of members presided over by the regulatory authority and place for the purpose of voting upon the following proposal—

- (a) that the board of the society should be dissolved; and
- (b) that an interim manager vested with all the powers of the board and the principal officer or independent administrator should be appointed by the members with the approval of the regulatory authority to manage the affairs of the society for the period specified in the direction.

(2) Unless the regulatory authority is of the opinion that notifying the society's board would permit the board concerned or any other person to dispose of any of the defaulting society's assets or take any other action that would prejudice the society's members or creditors, the regulatory authority before issuing a direction in terms of subsection (1) shall, inform the board concerned of its intention to do so and the reasons for forming that intention, and shall afford the board, within a prescribed period, an opportunity to make representations in the matter.

(3) The regulatory authority shall prescribe the procedures to be followed at the special meeting of members referred to in subsection (1).

(4) Before the end of the period for which an interim manager was elected or appointed, the interim manager shall convene a special or general meeting of members for the purpose of electing or appointing a new board of the society, whereupon the interim manager shall vacate office.

(5) If the interim manager reports to the regulatory authority in writing that, in his or her opinion, there is no reasonable prospect of restoring the society to a sound financial condition, and the interim manager recommends the winding up of the society or the transfer of its business to another society, the regulatory authority may cause the winding up of the society, and provisions of section 43 (2) to (9) shall apply, or cause the transfer of the society's business to another society.

#### **46. Transfer of business of society in lieu of cancellation of licence**

(1) Where, the regulatory authority decides to cause the transfer of the business of a society pending the cancellation of the society's licence, it shall invite offers from any licensed medical aid society to take transfer of the business of the society in accordance with a scheme of transfer proposed by the transferee, the terms of which shall not be less favourable than those described in subsection (2).

- (2) The proposed transferee shall—

- (a) in exchange for the assets of the defaulting society, take transfer of all the liabilities of that society, including liabilities to health-care providers and members under claims which have been submitted and assessed but not yet paid as at a date not earlier than a prescribed period before the date on which the regulatory authority approved the scheme of transfer.
- (b) undertake to admit every member of the defaulting society as may be prescribed;
- (c) waive any waiting period in relation to a person referred to in paragraph (b) who has been a member of the defaulting society.

(3) Where a regulatory authority directs that a society's business be transferred, provisions of section 42 shall apply.

## PART IX

### GENERAL

#### **47. Register of medical aid societies**

- (1) The regulatory authority shall establish and maintain a register of medical aid societies.
- (2) The regulatory authority shall enter into the register particulars of all medical aid societies, wherein it shall record the following details regarding the society—
  - (a) the name of the society;
  - (b) the physical address of the society;
  - (c) whether it is a restricted or open society;
  - (d) the date of licensing of the society;
  - (e) the name and contact details of the principal officer and trustees or administrator of the society;
  - (f) any terms or conditions imposed on the medical aid society upon licensing;
  - (g) the particulars of the cancellation of any licence, and of the restoration of any such cancelled licence; and
  - (e) such other information as may be required by the regulatory authority.
- (3) The register shall lie open for inspection by members of the public under such terms and conditions as may be set by the regulatory authority.

#### **48. Codes of conduct**

The regulatory authority may prescribe a code of conduct for medical aid societies which shall provide for requirements, limitations or prohibitions in respect of the operational conduct of societies.

#### **49. Exemptions**

- (1) Subject to domestic law the regulatory authority may exempt certain medical aid societies from complying with certain sections of this model law as shall be specified in the domestic law.
- (2) The exemptions referred to in subsection (1) shall be exercised depending on the nature, size and complexity of the medical aid society.

## **50. Making of false statements**

No person shall, in any form, return, report or other document required to be submitted to the regulatory authority, make a statement that is false, knowing the statement to be false or not having reasonable grounds for believing it to be true.

## **51. Multiple claims prohibited**

No person shall, in respect of the same treatment—

- (a) knowingly claim from a medical aid society the reimbursement of expenses which that society has already reimbursed; or
- (b) knowingly claim payment or accept benefits from more than one medical aid society in respect of the same treatment, medication or other service supplied by a health-care provider.

## **52. Records of transaction**

(1) Subject to the domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing, every medical aid society shall maintain, in a safe place, all records pertaining to the medical aid society operations, which may be in physical or electronic form, for a period of not less than five years following completion of the transaction or termination of the business relationship.

(2) The society's records maintained in terms of subsection (1) must be sufficient in such nature as to—

- (a) reveal clearly and correctly the society's state of the business affairs and financial condition;
- (b) explain the transactions so as to enable the regulatory authority to determine whether the society has complied with the prescribed requirements;
- (c) clearly identify assets and obligations of the society; and
- (d) reconstruct in detail all transactions undertaken on behalf of the members.

(3) Where practicable, original or copies of documents relating to transactions shall be kept and shall be maintained in a medium that allows the storage of information so that—

- (a) the regulatory authority can access them readily and reconstitute each material stage of each transaction;
- (b) any corrections or other amendments to the records, and the contents of the records prior to such corrections or amendments, can be easily ascertained; and
- (c) except as provided in paragraph (b), the records cannot be manipulated or altered.

## **53. Indemnity of medical aid society and staff**

(1) The medical aid society and its staff shall—

- (a) act with integrity and observe the highest professional standards, including observing conflict of interest rules;
- (b) have the necessary legal protection against lawsuits for actions taken lawfully and in good faith while discharging their duties;

(c) be adequately protected against the costs of defending their actions while lawfully and in good faith discharging their duties.

(2) The medical aid society shall take insurance cover against any loss because of negligence or dishonesty of any of its staff and other personnel.

#### **54. Preventive measures, corrective measures and sanctions**

(1) The regulatory authority shall—

(a) take prompt and effective action to deal with cases of non-compliance with measures designed to prevent a breach of the legislation from occurring, where such non-compliance could put members at risk or impinge on any other regulatory objectives;

(b) quickly enforce corrective action where problems involving medical aid societies are identified;

(c) issue directives to the society to take particular actions or to desist from taking particular actions to address problems identified;

(d) impose restrictions on the business and financial activities of a society;

(e) take measures, or to require others to take measures, to reinforce the financial position of a society;

(f) have mechanisms in place to check compliance by the society once corrective action has been taken or remedial measures, directions or sanctions have been imposed;

(g) have mechanisms in place to assess effectiveness of the corrective action taken or remedial measures, directions or sanctions imposed on a society.

(2) The regulatory authority may replace or restrict the power of the following persons as a means of addressing management and governance problems—

(a) board;

(b) appointed actuary;

(c) auditor;

(d) other key responsible persons in control functions.

(3) The regulatory authority may, in extreme cases where a society is failing to meet prudential or other requirements, take the following actions—

(a) impose curatorship over a society;

(b) appoint other specified officials or receivers to take control of a society;

(c) make other arrangements for the benefit of the members.

(4) The regulatory authority shall have the power to enforce preventive and corrective measures and impose sanctions, which are timely, necessary to achieve the objectives of supervision, and based on clear, objective, consistent, and publicly disclosed general criteria.

(5) The regulatory authority may take action against individuals or entities who—

(a) conduct medical aid society business without being licensed; and

(b) fails to operate in accordance with the following—

(i) legislative and regulatory requirements;

(ii) supervisory rules, guidelines and standards; or

(iii) sound business practices.

(6) The regulatory authority shall ensure that there is a progressive escalation in actions or remedial measures that are to be taken if the problems become worse or a society ignores requests from the regulatory authority to take preventive and corrective action.

(7) The regulatory authority shall—

- (a) require the society to take actions that address the regulatory authority's identified concerns;
- (b) have the power to require a society to develop an acceptable plan for prevention and correction of problems; and
- (c) periodically check that the society is taking action and assesses the effectiveness of the society's actions.

## **55. General offences and penalties**

(1) The regulatory authority shall have the power to impose penalties and sanctions on a society and individuals proportionate to the breach of regulatory requirements or other misconduct.

(2) The sanctions and penalties the regulatory authority may impose on a society and individuals and the circumstances under which the sanctions may be imposed shall be clearly defined in the domestic law.

(3) The domestic law shall set out the procedures to be followed by the regulatory authority in imposing sanctions and penalties.

(4) The procedures set out in subsection (3) shall consider the right of the alleged defaulting person to be heard before a penalty or sanction is imposed against such person.

## **56. Appeals**

(1) Any person aggrieved by the regulatory authority's decision may appeal to the relevant authority as set out in the domestic law.

(2) The appeal authority referred to in subsection (1) must be independent.

(3) The procedures an aggrieved person may follow to lodge an appeal against a regulatory authority's decisions shall be as set out in the domestic law.

(4) The procedures referred to in subsection (3) shall—

- (a) be specific and balanced to preserve supervisory independence and effectiveness; and
- (b) not unduly impede the ability of the regulatory authority to make timely interventions to protect members' interests.