2. Prescribed Minimum Benefits: CMS threatens schemes and administrators

The Council for Medical Schemes has threatened self-administered medical schemes and medical scheme administrators with punitive action for non-compliance with the prescribed minimum benefit legislation.

In a recent circular the Council for Medical Schemes (CMS) stated that a number of medical scheme administrators and medical schemes failed to comply with the requirements of Regulation 8 in respect of the payment of prescribed minimum benefits (PMBs) at cost, despite the CMS making its stance in the matter clear through a number of circulars. Furthermore, the application for a declaratory order by the Board of Healthcare Funders of SA (BHF) in the High Court did not suspend the enforcement of Regulation 8 by the CMS. The CMS would consequently apply the interpretation of Regulation 8 in accordance with the Appeal Board ruling during 2008 in the *Kara v GEMS* matter until such time as judgment was passed in the BHF application.

The position was therefore that PMB benefits were legally payable at cost or invoice price and it was unacceptable and unlawful for beneficiaries to incur and be held liable for co-payments in relation to treatment for PMB conditions. It was also unacceptable and without merit for administrators to argue that they operated under specific instructions of schemes in relation to payments, which were unlawful and not in line with registered scheme rules. Such circumvention of the Regulations would be viewed by the CMS in a very serious light and action would be taken in those circumstances.

Schemes could continue to use Designated Service Providers (DSPs), preferred providers and other managed care interventions as provided for in Regulation 8. However, this should be effectively communicated to members.

Any instances of non-compliance identified by the CMS whether in the form of an accreditation evaluation or the investigation of complaints would result in punitive measures being taken against the responsible scheme officials including possible financial penalties for the scheme and the pursuit of other legal remedies. In the case of non-compliant administrators suspension or withdrawal of accreditation might occur.

The CMS required all administrators and self-administered schemes to explicitly declare whether or not they were compliant with the CMS interpretation of Regulation 8 by 8 April 2011**.** Full details of non-compliance, if any, also had to be indicated.

Subsequently, BHF formally noted an appeal in terms of section 49(1) against the decision by the Registrar that *"until such time as judgment is passed in the matter (seeking a declaratory order,) Regulation 8 must be applied in accordance with the ruling by the Appeal Board during November 2008 in the Kara vs GEMS matter and that all PMB benefits are legally payable at cost or invoice price and that it is unacceptable and unlawful for beneficiaries to incur and be held liable for co-payments in relation to such treatment"* on behalf of its membership. This would result in the suspension of the Registrar's ruling pending the appeal decision. BHF was also of the opinion that the Registrar's unjustifiable exercise of power had resulted prejudice that justified an investigation by the Public Protector in terms of the Public Protector Act 23 of 1994.

Furthermore, since it was expected that the Registrar would await the outcome of the *bona fide* application of BHF for a declaratory order in respect of Regulation 8 in the North Gauteng High Court, which matter was now *sub judice,* BHF threatened to bring the conduct of the Registrar to the attention of the Court. The North Gauteng High Court had recently burdened an organ of State (as CMS is) with a punitive cost order for wilful abuse of official duties.