

HEALTH FUNDERS ASSOCIATION

THE ESTABLISHMENT OF A MEDICAL SCHEME BENEFICIARY REGISTRY

Presentation by: Altair Richards

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THE COUNCIL FOR MEDICAL SCHEMES PROPOSED BENEFICIARY REGISTRY

- ✓ The Council for Medical Schemes (“**CMS**”) is currently undertaking a project in terms of which a beneficiary registry (“**BR**”) will be created.
- ✓ The **BR** is intended to be a central repository containing certain personal information in respect of all medical scheme beneficiaries in South Africa, such information to be furnished by medical schemes and their administrators.

THE CURRENT LEGAL FRAMEWORK

- The position of medical schemes and administrators under the current legal framework is, in our view, quite clear.
- It would **not be legally permissible** for medical schemes or administrators to disclose the Personal Information of beneficiaries, without the explicit written consent of beneficiaries.

THE POSSIBLE FUTURE LEGISLATIVE FRAMEWORK

Further consideration on:

- The nature of the Personal Information;
- The scope of the Constitutional right to privacy; and
- The Purposes for the collection of the beneficiary Personal Information.

✓ The potential impact of:

- The Bill
 - ✓ The Bill is not yet in the public domain.
- The POPI Act
 - ✓ There are a number of carve outs in the POPI Act which could potentially allow for the CMS to be provided with the Personal Information of beneficiaries, without their consent.
- The NHI Act
 - ✓ Any provisions of the NHI Act requiring the disclosure of personal information of beneficiaries by medical schemes and beneficiaries would need to pass muster in terms of section 36(1) of the Constitution.

DUTIES AND POTENTIAL LIABILITY OF TRUSTEES

- ✓ In terms of sections 57(1) and 57(4)(i) of the MSA, amongst other things, the trustees of a medical scheme are required to manage the business of the medical scheme in accordance with applicable law and they have the **duty** to take all reasonable steps to **protect the confidentiality** of medical records concerning any member's state of health.
- ✓ The fundamental issue for trustees is that for so long as the disclosure of Personal Information of beneficiaries without written consent is unlawful in terms of section 14 of the NHA, they would be at risk (civilly and criminally) if they disclosed this information.

THANK YOU

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