

GOVERNMENT NOTICES

NATIONAL TREASURY

**SHORT-TERM INSURANCE ACT, 1998: AMENDMENT OF REGULATIONS MADE
UNDER SECTION 70**

I, Pravin Jamnadas Gordhan, Minister of Finance, under section 70(1)(e) and 70(2A)(a) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), hereby amend the Regulations made under section 70 of the Short-term Insurance Act and published under Government Notice R.1493 in *Government Gazette* 19495 of 27 November 1998 (as amended from time to time) as set out in schedule A.

**PRAVIN JAMNADAS GORDHAN, MP
MINISTER OF FINANCE**

SCHEDULE A

1. Amendment of Part 5 in the Regulations under the Short-term Insurance Act, 1998 as published in GN R.1493 of 1998 and amended by GN R.462 of 2008 and GN R.1076 of 2011:

Part 5 of the Regulations is hereby amended by:

- (a) The substitution of regulation 5.3 of the Regulations for the following regulation:

“Maximum commission payable

5.3(1) No commission shall exceed, in respect of –

- (a) a motor policy, 12,5 per cent of the premium payable under the policy;
- (b) a contract identified as an accident and health policy in category 1, 2 and 3 in the table under regulation 7.2(1) of the Regulations, the maximum commission specified in column two of the Scale below (in relation to the monthly premium band specified in column 1); and
- (c) any other short-term policy, 20 per cent of the premium payable under the policy.

SCALE

| Monthly premium band | Maximum Commission Level |
|----------------------|--------------------------|
| Column 1 | Column 2 |
| Above R1,200 | 5% |
| R601 to R1,200 | 10% |
| R 300 to R600 | 15% |
| Less than R300 | 20% |

”

- (b) The substitution of regulation 5.5 of the Regulations for the following regulation:

“5.5 Commission when short-term policy comprises combination of policies

- (1) If a short-term policy is a contract comprising a combination of any two or more of the short-term policies defined in section 1, the maximum commission payable shall be determined by aggregating the maximum payable in terms of this Part in respect of each of the separate kinds of policies comprising the combination by reference to the premium payable for each such policy, and if the premium attributable to each component is not specified in or ascertainable from the policy, the

maximum shall not exceed that which would have been payable had the policy been the kind of policy to which the lowest maximum rate of commission applies.

- (2) Despite sub-regulation (1), if a short-term policy is a contract comprising a combination of any two or more of the short-term policies defined in section 1 and one of the policies is an accident and health policy referred to in category 1, 2 or 3 in the table under regulation 7.2(1), the maximum commission payable shall be determined by aggregating the maximum payable in terms of this Part in respect of each of the separate kinds of policies comprising the combination by reference to the premium payable for each such policy, and if the premium attributable to each component is not specified in or ascertainable from the policy, the maximum commission payable for the whole of the policy shall not exceed the maximum commission allowable under Scale in Regulation 5.3(1).”

2. Substitution of Part 7 in the Regulations under the Short-term Insurance Act, 1998 as published in GN R.1493 of 1998 and amended by GN R.462 of 2008 and GN R.1076 of 2011:

Part 7 of the Regulations is hereby substituted for the following Part:

**"PART 7
CONTRACTS IDENTIFIED AS ACCIDENT AND HEALTH POLICIES UNDER SECTION
70(2A)(a) OF THE ACT**

7.1 Definitions and interpretation

In this Part 7, unless the context indicates otherwise-

“condition-specific waiting period” means a period in which a policyholder is not entitled to claim policy benefits under a policy in respect of a condition for which medical advice, diagnosis, care or treatment was recommended or received within a period of 12 months preceding the day on which the policy was entered into;

“general waiting period” means a period in which a policyholder is not entitled to claim any, or may only claim certain, policy benefits;

“hospitalisation” means any admission for a medical procedure or administration of a therapeutic or diagnostic medical intervention wherein a person is expected to stay overnight in a facility;

"insurer" means a short-term insurer or a Lloyd's underwriter;

"medical scheme" has the meaning assigned under section 1 of the Medical Schemes Act;

"member" has the meaning assigned under section 1 of the Medical Schemes Act;

"policy" means a short-term policy;

"product line" in relation to a category and type of contract referred to in Regulation 7.2(1), means accident and health policies that have the same or closely related contractual terms offered or entered into by an insurer;

"relevant health service" has the meaning assigned under section 1 of the Medical Schemes Act;

"this Part" means this Part 7;

"underwritten on a group basis" means where the risks relating to a policy forming part of a product line are rated based on the characteristics of a group of people (other than characteristics that relate to or may result in specific health conditions) together as opposed to that of the individual to whom the policy relates.

7.2 Categories and types of contracts identified as accident and health policies

(1) The categories and types of contracts set out in the table below are identified as accident and health policies. A contract will only be an accident and health policy for purposes of this Part if it meets the contract description and requirements relating to policy benefits of a specific category and type of contract set out in the table below.

TABLE

| Category | Contract Type | Contract description | Requirements relating to policy benefits |
|-----------------|---------------------------|--|---|
| 1 | Medical expense shortfall | A contract – (a) in terms of which a person, in return for a premium, undertakes to provide policy benefits if a health event contemplated in the contract as a risk event occurs; and (b) the purpose of which is to cover the difference or a part of the difference between the total costs or expenses of a relevant health service and the amount a person's medical scheme paid | Policy benefits – (a) are one or more sums of money; and (b) in aggregate, do not exceed R150 000,00 (one hundred and fifty thousand Rand) per insured person per annum. |

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| | | towards such costs. | |
| 2 | Non-medical expense cover as a result of hospitalisation | <p>A contract –</p> <p>(a) in terms of which a person, in return for a premium, undertakes to provide policy benefits if a health event contemplated in the contract as a risk event resulting in hospitalisation occurs; and</p> <p>(b) the purpose of which is to cover non-medical expenses associated with hospitalisation.</p> | <p>Policy benefits –</p> <p>(a) are a fixed some sum of money per insured per day not exceeding R3 000,00 (three thousand Rand) or a maximum lump sum amount of R20 000.00 (twenty thousand Rand) per annum irrespective of the number of days in hospital;</p> <p>(b) does not require hospitalisation for a period of longer than 3 days before they become payable;</p> <p>(c) once it becomes payable, are calculated from day 1 of hospitalisation; and</p> <p>(d) may not be paid or ceded to the provider of a health service.</p> |
| 3 | HIV, Aids, tuberculosis and malaria testing and treatment | <p>A contract –</p> <p>(a) in terms of which a person, in return for a premium, undertakes to provide policy benefits if a health event relating to HIV, Aids, tuberculosis or malaria (contemplated in the contract as a risk event) occurs; and</p> <p>(b) the purpose of which is to cover expenses for testing and treatment of HIV, Aids, tuberculosis or malaria.</p> | - |
| 4 | International travel insurance | <p>A contract –</p> <p>(a) in terms of which a person, in return for a premium, undertakes to provide policy benefits if a health event contemplated in the contract as a risk occurs; and</p> <p>(b) the purpose of which is to cover costs associated with a relevant health service while travelling in a country in which the insured persons are not ordinarily resident.</p> | - |
| 5 | Medical emergency | <p>A contract –</p> <p>(a) in terms of which a person, in</p> | - |

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| | evacuation or transport | <p>return for a premium, undertakes to provide policy benefits if a health event contemplated in the contract as a risk event occurs; and</p> <p>(b) the purpose of which is to -</p> <p>(i) cover the costs of or provide emergency evacuation or transport to a medical treatment facility; or</p> <p>(ii) cover the cost of emergency medical treatment.</p> | |
|--|-------------------------|---|--|

(2) All amounts referred to in sub-regulation (1) escalate annually, from the effective date of this Part, by the Consumer Price Index (CPI) annual inflation rate published by Statistics South Africa (as defined in section 1 of the Statistics Act, 1999 (Act No. 6 of 1999)).

7.3 Limitations applicable to category 1, 2 and 3 contracts

Prohibition of policy benefits that fully or partially indemnifies against medical expenses under category 2

(1) A contract referred to in category 2 in the table under regulation 7.2(1) may not provide policy benefits that are fully or partially related to indemnifying the policyholder against medical expenses incurred in respect of a relevant health service.

Underwritten on a group basis and non-discrimination

- (2) A contract referred to in category 1, 2 and 3 in the table under Regulation 7.2(1) must –
- (a) be underwritten on a group basis; and
 - (b) not discriminate against a policyholder or potential policyholder on the basis of race, age, gender, marital status, ethnic or social origin, sexual orientation, pregnancy, disability, state of health or any similar grounds.
- (3) An insurer may not refuse to enter into a contract referred to in category 1, 2 and 3 with a potential policyholder unless where that potential policyholder has previously committed a fraudulent act related to insurance.
- (4) Despite sub-regulation (2)(b), an insurer may in respect of contracts referred to in category 1, 2 and 3 in the table under Regulation 7.2(1) require a policyholder that enters into a contract after a specific age to pay a higher premium than a policyholder that entered

into the contract at a younger age, provided that the same higher premium is payable by all policyholders entering into a product line after a specific age.

Waiting periods

(5) Despite sub-regulation (2), a contract referred to in category 1, 2 and 3 in the table under Regulation 7.2(1) may provide for a –

- (a) general waiting period of up to 3 months; and
- (b) condition-specific waiting period of up to 12 months.

(6) An insurer may not impose a condition-specific waiting period on a policyholder's accident and health policy if that policyholder, for at least 90 days before entering into that accident and health policy with the insurer, had an accident and health policy with materially similar benefits and had completed the condition-specific waiting period in respect of that accident and health policy;

(7) Where the condition-specific waiting period of a policyholder under a previous accident and health policy referred to in sub-regulation (6) had not expired at the time that that policyholder enters into a new accident and health policy with materially similar benefits, the insurer may only impose a waiting period for a period equalling the unexpired part of the waiting period in respect of that previous policy.

Variation of contracts

(8) For the purposes of this Part, the variation of a contract includes premium adjustments under a contract.

(9) Despite sub-regulation (2), a contract referred to in category 1, 2 and 3 in the table under Regulation 7.2(1) may be varied as a result of the health or claims experience of all policies forming part of a product line but may not be varied as a result of the health or claims experience of an individual policyholder.

Termination of contracts

(10) A contract referred to in category 1, 2 and 3 in the table under Regulation 7.2(1) may be terminated by an insurer only if –

- (a) the policyholder –
 - (i) fails to pay (within the time allowed in the contract and subject to any legislative requirements) the premium under the contract;
 - (ii) submitted fraudulent claims; or

- (iii) committed any fraudulent act; or
 - (b) the insurer will no longer be offering a specific product line as part of its short-term insurance business and the insurer has given all of that product line policyholders 90-day notice before termination.
- (11) For the purposes of this Part, termination of a contract includes the non-renewal of a contract by an insurer.

7.4 Requirements applicable to all contracts referred to in the Table under regulation 7.2(1)

Contracts may not require medical scheme membership

- (1) A contract referred to in categories 2 to 5 in the table under Regulation 7.2(1) may not provide that the policyholder or insured person must be a member of a medical scheme.

Information to be included in contract

- (2) A contract referred to in the table under Regulation 7.2(1) must in clear and easily understood language –
- (a) state the premiums payable and the policy benefits to be provided under the policy;
 - (b) state the events in respect of which the policy benefits are to be provided and the circumstances (if any) in which those benefits are not to be provided; and
 - (c) identify those representations made by or on behalf of the policyholder to the insurer which were regarded by that insurer –
 - (i) in respect of a contract referred to in category 1 to 3 in the table under Regulation 7.2(1), as having any relation or bearing to exclusions that apply under a condition-specific waiting period and reasons for differentiating premiums based on age; or
 - (ii) in respect of a contract referred to in category 4 or 5 in the table under Regulation 7.2(1), as being material to its assessment of the risks under the policy.

7.5 Marketing and disclosures requirements

- (1) Any marketing activity or marketing material in respect of a contract referred to in category 1, 2 and 3 in the table under regulation 7.2(1) must –

- (a) not identify that contract by the term "medical", "hospital" or any derivative thereof, except –
 - (i) where using the term "medical" to describe a contract referred to in category 1 in the table under regulation 7.2(1), in which case the term must always be succeeded by the words "expense shortfall";
 - (ii) where using the term "hospitalisation" to describe a contract referred to in category 2 in the table under regulation 7.2(1), in which case the term must always be preceded by the words "non-medical expense cover as a result of"; or
 - (iii) where such terms are used in the contract itself to describe policy benefits;
- (b) not in any manner create the perception that the contract –
 - (i) is a substitute for medical scheme membership; and
 - (ii) in the case of a contract referred to in category 2 in the table under regulation 7.2(1), indemnifies a policyholder against medical expenses incurred as a result of a relevant health service; and
- (c) display the following statement in clear legible print in a prominent position:

"This is not a medical scheme and the cover is not the same as that of a medical scheme. This policy is not a substitute for medical scheme membership."

7.6 Reporting requirements

- (1) An insurer must, at least 1 month prior to marketing or offering a new product line, submit to the Registrar and Registrar of Medical Schemes a summary of the benefits, terms and conditions and marketing material of the accident and health policy or policies forming part of the product line.
- (2) The Registrar may at any time request information on the benefits, terms, conditions and marketing material of a contract that, in the opinion of the Registrar or the Registrar of Medical Schemes, is or may be a contract referred to under regulation 7.2(1).
- (3) The Registrar of Medical Schemes may at any time advise the Registrar that the Registrar of Medical Schemes is of the opinion that the benefits, terms and conditions or marketing material relating to a contract under sub-regulation (1) or (2) is contrary to the objectives and purpose of the Medical Schemes Act and the principles referred to in sections 70(2A)(b)(i)(cc)(A) to (C) of the Act, and the reasons for this opinion.
- (4) The Registrar may at the Registrar's own accord or after due consideration of an opinion of the Registrar of Medical Schemes referred to under sub-regulation (3), by notice to an insurer, object to any of the benefits, terms and conditions and marketing material of an accident and health policy under sub-regulation (1) and (2), and instruct the insurer to –

- (a) stop marketing the accident and health policy or policies;
- (b) stop offering or renewing the accident and health policy or policies to the public and within 90-days of the date determined by the Registrar, terminate such accident and health policy or policies; or
- (c) by a date determined by the Registrar, amend any of the benefits, terms and conditions and marketing material of an accident and health policy or policies in accordance with the requirements of the Registrar.

7.7 Transitional arrangements

(1) Contracts entered into before this Part took effect must comply with this Part by 1 January 2018.

3. Insertion of Part 8 in the Regulations under the Short-term Insurance Act, 1998 as published in GN R.1493 of 1998 and amended by GN R.462 of 2008 and GN R.1076 of 2011:

Part 8 is hereby inserted after Part 7 of the Regulations:

"PART 8 TITLE AND COMMENCEMENT

- 8.1 These regulations are called the Regulations under the Short-term Insurance Act, 1998.
- 8.2(1) Regulations 1 to 5, other than regulation 4.2, came into operation on commencement of the Act. Regulation 4.2 came into operation on 25 April 2008.
- (2) Regulation 6 came into operation on 1 January 2012.
- (3) Regulation 7 and the amendments to regulation 5.3 and 5.5 comes into operation on 1 April 2017.
- (4) Any amendments to regulations 1 to 7 come into operation on the date of publication thereof in the *Government Gazette* or on such other date specified by the Minister in the *Government Gazette* or specified in a regulation."