



Reference: DEMARCATION EXEMPTION - SECTION 50 APPEAL OUTCOMES  
Contact person: Ms Avril Jacobs  
Tel: 012 431 0542  
Fax: 0865017552  
E-mail: demarcation@medicalschemes.com  
Date: 2018/10/29

### Circular 50 of 2018: Demarcation Exemption Appeal Outcome

1. In March 2017, the Council for Medical Schemes (CMS) has, in consultation with the then Financial Services Board (FSB) now known as the Financial Sector Conduct Authority (FSCA), National Treasury and the National Department of Health, approved the Guideline Framework: Framework for the Exemption of Providers of indemnity products that are conducting the business of a medical scheme (Exemption Framework), for exemption from certain provisions of the Medical Schemes Act, 131 of 1991 (the Act).
2. The Exemption Framework was concluded and published on the CMS website on the 15<sup>th</sup> of March 2017, by means of Circular 19 of 2017. The Exemption is in terms of section 8(h) of the Act and is applicable for a period of two years, with effect from 1 April 2017 to 31 March 2019, subject to certain conditions.
3. The Exemption Framework is a transitional arrangement while the Department of Health leads the development of a Low Cost Benefit Option (LCBO) framework for medical schemes. In terms of the Exemption Framework, entities providing products that fall within the ambit of the business of a medical scheme, were given an opportunity to apply to be exempted from provisions of the Act. The Exemption Framework is exclusively applicable to insurers as defined in the Short-Term Insurance Act, 53 of 1998 (STI Act) or the Long-Term Insurance Act, 52 of 1998 (LTI Act), and to their related financial service providers.
4. This Office received, amongst others, exemption applications from entities that were offering to members of the public indemnity for health care expenses, but were not registered insurers as defined under the STI Act or the LTI Act, and the indemnity products are not underwritten by any insurers. The Council declined the applications made by these entities. The affected entities were instructed to cease doing the business of a medical scheme without being registered and to either register as a medical scheme in terms of section 24 of the Act or to move their members to insurers who were granted exemption in terms of the Exemption Framework.

5. The two affected entities submitted appeals in terms of section 50(3) of the Act, formally appealing Council's decision not to grant exemption.
6. The appeals served before the Appeals Board, and were heard by Justice Ngoepe and his assessors. These affected entities and Appeal Board rulings are:
  - 6.1. Discovery Health (Pty) Ltd; and
  - 6.2. Agility Insurance Administrators (Pty) Ltd.
7. The Appeals Board confirmed the decision of the Council and dismissed both appeals. The Appeals Board considered among other issues the effect on the pillars of the regime of open-enrolment governing medical schemes and said that, "cross-subsidisation would be undermined and medical schemes decimated, if there were to be other regimes in terms of which other entities conducting the business of a medical scheme are allowed to pick and choose members". The Appeals Board held that "unrelated entities cannot be allowed to continue doing the business of a medical scheme when they are not registered as such and regulated under the MSA [Medical Schemes Act], and these entities are not regulated by the STIA or the LTIA".
8. The Appeals Board ruled that the product offering by Agility Insurance Administrators (Pty) Ltd is business of a medical scheme, and it upheld the directive issued by the Council instructing Agility Insurance Administrators (Pty) Ltd to cease conducting business of a medical scheme through an unregistered entity.
9. The CMS hereby cautions members of the public, current and potential contractors of health products from the affected entities, Discovery Health (Pty) Ltd and Agility Insurance Administrators (Pty) Ltd that these products are unregulated and are prohibited. Discovery Health (Pty) Ltd is directed by the Appeals Board to move the approximately 22 000 members that are affected to a regulated product no later than 28 February 2019.
10. If you have purchased *Discovery Comprehensive Primary Care* or *Discovery Essential Primary Care* products from Discovery Health (Pty) Ltd you are urged to contact Discovery Health (Pty) Ltd to make arrangements for appropriate cover.
11. "The affected entities have a right to take the decision of the Appeal Board on review if they are so advised, however the CMS would like to warn members of the public to be mindful when taking out products and that the Appeal Board rulings remain binding unless set aside by a court of law"; says the acting Registrar, Dr Siphon Kabane.

12. The CMS has a list of insurers that have been granted exemption from doing the business of a medical scheme.  
This list can be obtained from the CMS website on <http://www.medicalschemes.com/Insurers.aspx>.

Your co-operation in this regard would be highly appreciated.



Dr Siphon Kabane  
Acting Chief Executive & Registrar  
Council for Medical Schemes