

BHF launches legal action against the Council for Medical Schemes

The Board of Healthcare Funders (BHF), the representative body for medical schemes and healthcare funders, has applied to the High Court in Pretoria to overturn the moratorium that effectively prohibits medical schemes from providing low-cost benefit options (LCBOs) to members of the public who cannot afford full medical-scheme membership.



Source: [Fixabay](#)

The regulator, the Council for Medical Schemes (CMS), the Registrar of Medical Schemes, and the Minister of Health are cited as first, second, and third respondents in this application, respectively. The application was lodged with the Pretoria High Court on 8 August 2022.

The BHF is the representative body for medical schemes and healthcare funders representing medical schemes and administrators with nearly 4.5 million beneficiaries in South Africa.

The applicant - the BHF - is seeking the Pretoria High Court to lift the moratorium preventing medical schemes from providing LCBOs in circumstances where the Council for Medical Schemes is refusing to grant applications for exemptions by schemes that enables medical schemes to provide LCBOs pending the finalisation of LCBO guidelines by the respondents and to declare that the failure by the respondents to develop and implement LCBOs guidelines to be irrational, unreasonable and unlawful.

The respondents have 15 days from the date of receipt of the application to indicate in writing their intention to oppose the application.

The BHF reiterates that the current state of the country's healthcare requires all parties to work together in preparation for the implementation of universal health coverage (UHC) through the proposed National Health Insurance (NHI).

Medical schemes unaffordable to members

"Currently, the State is overburdened and premiums for medical schemes are becoming unaffordable to many members and prohibitive to prospective members. The proposed solution seeks to pull towards the principles of universal health coverage to make sure that the healthcare system affords everyone access to quality and affordable healthcare – and ensure that it leaves no one behind," says Dr Katlego Mothudi, managing director of the BHF.

"This application seeks to push forward a progressive agenda for the public and private healthcare sectors to work collaboratively to alleviate the current challenges in our healthcare system; and the CMS and the minister have an important role to play in implementing policies that enable greater access to healthcare.



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Damian McHugh 30 Jun 2022



"However, it has been difficult to move forward with the LCBOs given that the CMS has not taken the necessary steps to implement reform following the publication of demarcation regulations in 2016 in this regard.

He added that the BHF seeks to work with both the CMS and the minister of health in driving efforts to enable access to quality and affordable healthcare, however, the department has a crucial role to play in effecting these changes to realise the right of access to LCBOs through the participation of medical schemes. These changes will come at absolutely no cost to the State.

Private quality healthcare a right

Mothudi says that the court application is informed by BHF's realisation that millions of low-income earners, who would otherwise afford private healthcare, are being denied access to healthcare services because of the prohibitive cost of membership to a medical scheme.

This is rendered inaccessible by the mandatory prescribed minimum benefits (PMBs), which are a set of defined minimum health services that all medical-scheme members are supposed to have regardless of the benefit option they have selected. The BHF has also previously expressed concern over the slow pace of reviewing the PMB regulations by the CMS.

Insurance companies offer health-insurance products (through exemptions from the CMS) similar to LCBOs while medical schemes are prohibited from offering similar benefits. This has been the case since before 2016, at which time the CMS was tasked to structure a framework to allow medical schemes to do so, after the promulgation of the demarcation regulations.



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Mothudi says that the reluctance on the part of the CMS to amend regulations governing LCBOs is inherently unjust and is

tantamount to the denial of access to quality healthcare services, as many people who may afford some form of medical cover by defraying certain expenses are deprived of the opportunity to do so.

According to the BHF, research has shown that there would be a significant uptake of medical-scheme cover by the public should there be medical cover that falls short of the full range of PMBs, which then renders that cover unaffordable.

20 million low-income earners stand to benefit

Some experts say that up to 20 million low-income South Africans could afford basic private healthcare services if the CMS can develop and amend a framework for low-cost benefit options. Studies by Stats SA also indicate that 28.2% of the population turned first to a private healthcare provider when they needed care, significantly more than the 15% of the population who have access to medical-scheme membership.

The interests of these people must be considered and promoted, and this is what this court action seeks to achieve. To that end, the BHF is of the view that the court order will promote the promulgation of policies that will enhance access to quality healthcare instead of the current policies that hinder it,” Mothudi adds.

He says that the BHF is awaiting a response from the respondents regarding the application and remain hopeful that this long-standing matter will be resolved expeditiously for the greater good of the population and to ensure that the industry can support in addressing some of the current healthcare challenges being faced by the State.

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