

Rights of medical aid members to dispute scheme's refusal of benefits

 By [Neil Kirby](#)

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Medical aid schemes' decisions in respect of the accessibility of benefits by certain members may not prove advantageous or beneficial to members, especially where medical schemes refuse to provide benefits to a member, particularly members suffering with chronic conditions such as various forms and types of cancer.

Cancer, as a chronic condition, can be an expensive ordeal for a member as far as continued access to treatment and medicines is concerned, as the majority of newer cancer treating agents are expensive and may quickly drain a member's benefits.

Where a member is of a view that a particular decision by a medical scheme is unfair or contrary to the rules of the medical scheme, that member has certain rights available to him or her in order to deal with that decision.

Exercising member rights

The first step in exercising one's rights is to bring the decision to the attention of the Principal Officer of the medical scheme. Should interaction with the Principal Officer not resolve the matter, the patient may exercise his or her rights to access the medical scheme's internal dispute resolution mechanism, which is to be found in the rules and is usually a Dispute Resolution Committee. Three independent persons, ie independent of the medical scheme, appointed by the medical scheme to hear the member's complaint, usually constitute a Dispute Resolution Committee.

The Disputes Resolution Committee usually determines its own procedure and may, in certain circumstances, allow both written and oral submissions to be made about the decision by both a member and the medical scheme and possibly the administrator of the medical scheme. Should oral submissions be made, the Disputes Resolution Committee will usually determine a date on which the parties and their representatives are available to make oral submissions. The Disputes Resolution Committee will then make a decision on the dispute, which is normally set out in writing and reasoned.

Where a medical scheme does not have an appointed Disputed Resolution Committee or a member is dissatisfied with the decision of a Disputes Resolution Committee, the member may refer his or her complaint to the Registrar of Medical Schemes in terms of section 47 of the Medical Schemes Act No. 131 of 1998, as amended ("the MSA").

The procedure under section 47 of the MSA is designed and intended to be member-friendly as far as the Council for Medical Schemes has created a complaints or disputes resolution unit manned by officers who are able to deal with complaints by members. Members are required to complete a form supplied by the Council for Medical Schemes, which is

available on the website operated by the Council for Medical Schemes, setting out the details of the complaint. The details of the complaint are an important part of the structuring of a complaint.

Formulating a complaint to the Registrar of Medical Schemes

Members should, ideally speaking, include in the information submitted to the Registrar of Medical Schemes, at least, the following:

- as much detail as possible about the treatment the member is receiving or has received in respect of a particular condition both at the time of the occurrence of the dispute and historically where the condition with which the member is suffering is a chronic condition and the dispute is related to a decision about access to treatment for that chronic condition;
- previous decisions by the medical scheme in respect of access to treatment by the member of treatment regimens or medicines related to the chronic conditions;
- the circumstances surrounding the treatment being sought by the member, especially where the treatment sought by the member may have been obtained from a non-designated service provider or preferred provider or where a particular medicine sought is not on the medical scheme's formulary or a particular treatment regimen is not part of the recognised protocol by the medical scheme or its managed health provider. In such circumstances, members must carefully motivate why particular treatment regimens, treatments or medicines are being sought. In this regard, the role of the member's medical practitioner is crucial. Motivations by a medical practitioner as to why a particular member requires access to a particular treatment regimen or medicine or both are crucial to the adjudication of a dispute;
- motivations and medical records, as stated above, are crucial to the adjudication of a complaint. Therefore, medical practitioner's consulted by the member should prepare careful and detailed motivations relating to the appropriateness and necessity of particular treatment regimens and medicines to which a member is requiring access and that may have been denied by a medical scheme thus forming the basis of the dispute. Therefore, medical practitioners have a particularly important role to play supporting members in respect of initial steps being taken for purposes of dealing with complaints and disputes. With reference to Disputes Resolution Committees, as stated above, there is nothing that prevents a medical practitioner from supporting a member before a Disputes Resolution Committee; and
- literature and learning are an important supporting mechanism of any motivation for access to a particular treatment regimen or medicine especially where novel or new treatment regimens or medicines are available to a member but access may have been declined to the financing of novel or new treatment regimens or medicines by a medical scheme. More often than not, medical practitioners have access to literature that may originate internationally and will be able to complement any motivation that the medical practitioner provides with such international learning and opinion.

The decision making process that occurs during a section 47 complaints process is not necessarily expedient, as the Council for Medical Schemes may take a 120 days to deal with the dispute and produce a decision. The period that is taken for the resolution of a dispute in terms of section 47 may not be strategically appropriate for persons suffering with acute chronic conditions. If time is of the essence, this fact must be stated in the dispute and, where appropriate, properly motivated by a medical practitioner. A member should be careful to set out the nature of the prejudice he or she will suffer because of any undue delay in the resolution of a dispute whether before the Council for Medical Schemes or a Dispute Resolution Committee appointed by a medical scheme.

Conclusion

There is nothing that prevents a member, in certain serious and urgent circumstances, from approaching the courts for assistance but prior to any decision of that nature being taken by a member, he or she should seek proper legal advice.

One factor, however, remains constant throughout the entire process of a patient disputing a decision by a medical scheme, whether or not it be through the medical scheme's internal resolution process or by external means, is the need for a robust and comprehensive clinical submission. Such a submission is vital to a patient being able to deal with any arguments that arise in respect of any denial of treatment.

ABOUT NEIL KIRBY

Neil Kirby is director: health care and life sciences law of Werksmans. He is the chair of the Medicine and Law Committee of the International Bar Association. Kirby has been named as a leading lawyer in Dispute Resolution by Chambers Global: The World's Leading Lawyers for Business (2008 - 2013), and has published numerous articles in his various fields of speciality.

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