

This Bill replaces Bill No. 28 of 2024

Bill No. 5 of 2025

MEDICAL AID FUNDS BILL, 2025

(Published on 10th March, 2025)

MEMORANDUM

1. A draft of the above Bill, which it is intended to present to the National Assembly, is set out below.

2. The Non-Bank Financial Institutions Regulatory Authority Act (Cap. 46:08) was enacted in 2016 to exclude detailed regulatory and supervisory functions from the Act that establishes the Non-Bank Financial Institutions Regulatory Authority. One of intentions of the Non-Bank Financial Institutions Regulatory Authority Act is to enable the enactment of sector or industry specific legislation that detail regulatory and supervision requirements for the 30 categories of non-bank financial institutions that fall under its control. Medical aid funds are among these 30 non-bank financial institutions.

3. The object of the Bill is therefore to make provision for detailed regulation and supervision of medical aid funds to provide for, among other things, licensing requirements and penalties for breaches.

4. Part II of the Bill provides for requirement for licensing of a medical aid fund and also prohibits the operation of a medical aid fund without a licence (clause 3).

5. Part III provides for a non-profit operational model for medical aid funds so that any surplus funds are used for the benefit of the members.

6. The requirement for Rules of medical aid funds and their approval by the Non-Bank Financial Institutions Regulatory Authority is provided for in Part IV of the Bill.

7. Part V of the Bill provides for enrolment and underwriting, whereby medical aid funds are not allowed to refuse membership of a person who is resident in Botswana and who is willing and able to pay contributions charged by medical aid funds, in instances where a medical aid fund is not a restricted medical aid fund that limits membership in terms of its Rules. Further, Part V provides for the application of premium penalties for a late joiner (clause 20).

8. Provisions on investments of medical aid funds, insolvency and start-up capital are provided for in Part VI of the Bill.

9. Part VII of the Bill makes provision for the appointment, duties and remuneration of the Board of trustees and principal officers of medical aid funds. Part VII also provides for the establishment of sub-committees to carry out certain responsibilities under this Act.

10. Financial provisions are provided for in Part VIII of the Bill, while Part IX provides for what a medical aid fund is required to communicate to its members.

11. Part X provides for administration of medical aid funds by external administrators. The Part requires, among others, that external administrators be licensed by the Non-Bank Financial Institutions Regulatory Authority before they can provide administration services to medical aid funds (clause 46). Part X further provides for penalties for offences relating to administration of a medical aid fund (clause 52).

12. Part XI provides for protection of personal data of members of the medical aid fund (clauses 53 and 54) and its management (clause 57). This will be subject to the provisions of the Data Protection Act (Act No. 18 of 2024).
13. Part XII provides for managed care organisation arrangements (clause 56), including accreditation and issuance thereof of managed care organisations (clauses 57 and 58) and suspension or revocation of such accreditation (clause 59).
14. Part XIII makes provision for licensing of medical aid fund brokers (clause 60), registration of representatives of a broker (clause 61), compensation of brokers (clause 63) and reinsurance (clause 64).
15. Part XIV makes provision for a complaints policy that guides the handling of complaints. The Part further permits aggrieved parties to appeal to the Regulatory Authority Tribunal.
16. Part XV makes provision for medical savings accounts, medical savings trust bank accounts, as well as member co-payments.
17. Part XVI makes provision for appointment of a statutory manager and termination thereof.
18. Part XVII makes provision for amalgamation or transfer of registered medical aid funds, including a licensing requirement for medical aid funds that result from amalgamation or transfer.
19. Part XVIII makes provision for inspections and investigations in relation to a medical aid fund. The Part makes this provision by providing for the appointment of inspectors and investigators (clause 78). Clause 79 makes a provision for routine inspections of a licensed medical aid fund. A provision for investigations whereby an investigator may, for the purpose of investigating the offence or suspected offence, enter premises, make copies of records or documents is contained at clause 80.
20. Winding up of a medical aid fund is provided for at Part XIX, which has a provision for the voluntary winding up of a medical aid fund, (clause 82).
21. Part XX makes provision for general provisions such as the issuing of directions, exemption from provisions of Act, continuation of rights and obligations, general penalties and regulation making powers.

NDABA N. GAOLATHE,
Minister of Finance.

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A Bill

— entitled —

An Act to provide for the regulation and administration of medical aid funds, including medical aid fund administrators, medical aid fund brokers and managed care organisations operating in Botswana for the purpose of ensuring protection of members of medical aid funds and, enhancing their financial soundness; and for purposes incidental thereto and connected therewith.

*Date of Assent:**Date of Commencement:*

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*Short title and
commencement

Interpretation

1. This Act may be cited as the Medical Aid Funds Act, 2025, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

2. In this Act, unless the context otherwise requires —

“accumulated funds” means the net value of a medical aid fund, excluding any funds set aside for a specific purpose and any unrealised non-distributable reserves;

“actuary” means a fellow or associate member of a professional actuarial association which is a member of the International Actuarial Association (IAA) or such other body as may be approved by the Regulatory Authority;

“administration agreement” means a written agreement between an administrator and a medical aid fund, whereby all responsibilities, terms and conditions of both parties are outlined;

“administration fees” means the expenses incurred by a medical aid fund arising from administration services included in an administration agreement;

"administrator" means a person who provides administration or similar services to a medical aid fund in terms of an administration agreement and who has been licensed as such by the Regulatory Authority;

"auditor" means a person practicing as an auditor and registered with the Botswana Institute of Chartered Accountants under the Accountants Act and the Botswana Accountancy Oversight Authority established under the Financial Reporting Act;

Cap. 61:05

Cap. 46:10

"beneficiaries" means the principal members and dependants of a medical aid fund;

"benefit design" means the rules that describe the benefit option and determine the medical services to be covered and the co-payments that the beneficiaries are required to pay;

"benefit option" means the different plan options offered by a medical aid fund that are designed to provide specified benefits to members in relation to medical services;

"board of trustees" means a group of persons responsible for managing the affairs of a medical aid fund, as elected under the Rules of a medical aid fund and approved by the Regulatory Authority;

"break in cover" means any continuous period of time for which a person is not a member of a medical aid fund, measured from the first date that the person is not covered by a medical aid fund to the date of application for membership of the new medical aid fund or the first day of cover by the new medical aid fund;

"broker services" means the provision of service or advice in respect of the introduction or admission of members to a medical aid fund or the access to benefits or services offered by a medical aid fund;

"business of a medical aid fund" means a business of undertaking liability on behalf of a person, or group of persons, in return for a contribution paid by a person that directly relates to the cost incurred by such a person through hospital treatment, or any medical services;

"claim" means a request for payment submitted by a beneficiary of a medical aid fund or a medical services provider for medical services rendered to the beneficiary of a medical aid fund by a medical services provider;

"co-payment" means a portion of the total claim cost, as determined by a medical aid fund including any applicable taxes, payable by a member of the medical aid fund;

"community rating" means a rating structure whereby the level of contributions paid by a member are determined by the benefit option selected by the member, the number of dependants per member or the income earned by the member, or any combination of these factors;

"contribution" means the periodic amount paid by or in respect of a member and his or her registered dependants, as membership fees, including any amounts paid to the member's medical savings account;

"controller" has the same meaning assigned to it under the Non-Bank Financial Institutions Regulatory Authority Act;

"dependent" means a spouse or partner, dependent child, other members of a member's family or any other person in respect of whom a member takes care and supports and for whom a contribution is paid to the member's medical aid;

"emergency medical treatment" means treatment of an acute injury or illness that poses an immediate risk to a person's life or long-term health, where the absence of immediate medical attention could place a person's life at risk, or lead to the impairment of bodily functions, body parts or organs;

"essential health service package" means an integrated collection of cost effective, promotive, preventive, curative and rehabilitative interventions that address the main diseases, injuries and risk factors that affect the population;

"fidelity guarantee insurance" means an insurance policy that covers an entity from direct theft, fraud or malpractice committed by its own employees during their employment with the entity;

"financial crime" has the same meaning assigned to it under the Non-Bank Financial Institutions Regulatory Authority Act;

"fit and proper" means necessary qualities and traits that will allow a person to perform duties and carry out responsibilities in relation to his or her position with the regulated entity, and includes —

- (a) integrity demonstrated in personal behaviour and personal conduct;
- (b) soundness of judgment;
- (c) financial soundness;
- (d) sufficient degree of knowledge, experience;
- (e) professional qualifications; and
- (f) any other criteria, as may be determined by the Regulatory Authority;

"gross contribution" means a sum of the risk contribution and medical savings account contribution paid by a member of the medical aid fund and received by the medical aid fund from the member before any deductions;

"late joiner" means an applicant or an adult dependant of an applicant to a medical aid fund who, at the date of application for membership or admission as a dependant, is 35 years of age or older, but excludes any beneficiary who enjoyed coverage with one or more medical aid funds, without a break in coverage exceeding three consecutive months immediately prior to application;

- "late joiner penalty" means a penalty amount under section 20 that is added to the contribution payable by a late joiner to a medical aid fund;
- "managed care" means the clinical and financial risk assessment and management of healthcare, with a view to facilitating appropriateness and cost-effectiveness of relevant health services within the constraints of what is affordable, and through the use of rules-based and clinical management-based programmes;
- "managed care organisation" means a person who has contracted with a medical aid fund in terms of this Act to provide managed healthcare services;
- "medical aid fund" has the same meaning assigned to it under the Non-Bank Financial Institutions Regulatory Authority Act;
- "medical aid fund broker" means an entity that is licensed under section 61 and provides broker services for a medical aid fund;
- "medical savings" means a component of a medical aid benefit option which is a percentage of the annual contribution held in separate account and may be used to pay for medical expenses and other related expenses not covered by the member's selected benefit option;
- "medical service" means any healthcare treatment of a person by any healthcare professional, including —
- (a) mental or physical examination;
 - (b) diagnosis, treatment or prevention of any mental or physical defect, illness or deficiency, including advice in relation to such defect, illness or deficiency;
 - (c) advice in relation to, or treatment of, any condition arising out of pregnancy, including the termination thereof;
 - (d) prescribing or supplying any medicine, appliance or apparatus in relation to any defect, illness or deficiency or a pregnancy, including the termination thereof;
 - (e) nursing or midwifery; or
 - (f) an ambulance service,
- and the supply of accommodation in an institution established and registered in terms of any law as a hospital, maternity home, nursing home, or similar institution where nursing is practiced, or any other institution where surgical or other medical activities are performed, and such accommodation is necessitated by any physical or mental defect, illness or deficiency or by pregnancy;
- "medical services provider" means any person or entity that provides a medical service;
- "member" means a person admitted into a medical aid fund, who is entitled to receive benefits from the medical aid fund in exchange for the payment of a contribution to the medical aid fund, where this arrangement is with respect to the member or to his or her dependants;

"minimum solvency requirement" means the minimum required accumulated funds that a medical aid fund must hold, as per the provisions of this Act;

"not-for-profit" means an operational model where —

- (a) surplus money generated in any year is carried over to the following year and applied for the benefit of members of a medical aid fund;
- (b) there are no shareholders; and
- (c) no dividends are payable to any of the employees of the medical aid fund;

"non-health care expenses" means any expenses incurred by a medical aid fund that are not directly related to the provision of medical services, such as administration fees, managed care fees and reinsurance premiums;

"principal officer" means the person appointed by the Board of trustees and is responsible for the daily management of a medical aid fund and accountable to the Board of trustees and the Regulatory Authority on behalf of that medical aid fund;

"Regulatory Authority" means the Non-Bank Financial Institutions Regulatory Authority established under the Non-Bank Financial Institutions Regulatory Authority Act;

"representative" means any natural person who renders intermediary services to a client for or on behalf of a medical aid fund or a medical aid fund broker;

"restricted medical aid fund" means a medical aid fund that restricts membership on the grounds of employment of a person;

"risk-based capital approach" means a method of measuring the minimum amount of capital appropriate for a reporting entity to support its overall business operations in consideration of its size and risk profile;

"risk contribution" means the monthly amount paid by or in respect of a member and his or her dependants, as membership fees, excluding any amounts paid to the member's medical savings account;

"Rules" means the Rules of a medical aid fund as provided for under section 14;

"schedule of benefits" means the schedule of information that outlines the healthcare cover that beneficiaries of a medical aid fund are entitled to;

"statutory manager" means a person, not associated with a medical aid fund, who is appointed by the Regulatory Authority to control and manage a business of a medical aid fund, under defined circumstances;

"trustee" means a member of the board of trustees of a medical aid fund; and

"waiting period" means a period of cover by a medical aid fund where contributions are payable by a member, and there are restrictions on some of the benefits received for a pre-defined period of time.

PART II — *Licensing Requirements*

3. (1) A person shall not carry out the business of a medical aid fund without a licence issued by the Regulatory Authority.

Prohibition
on operating
without
licence

(2) A person who carries on a business of a medical aid fund without a licence issued by the Regulatory Authority in terms of this section is liable to an administrative fine not exceeding P500 000 as may be imposed by the Regulatory Authority.

(3) A person who carries on a business of a medical aid fund without a licence after the imposition of a fine in terms of subsection (2), commits an offence and is liable to a fine not exceeding P5000 for each day that the offence continues, up to a maximum of 30 days, after which the offending person is liable to imprisonment for a term not exceeding five years.

4. (1) A person who wishes to carry out the business of a medical aid fund shall make an application to the Regulatory Authority in such form as may be prescribed, which application shall be accompanied by —

Licensing
requirements

- (a) such particulars as may be prescribed;
- (b) a non-refundable application fee as may be prescribed; and
- (c) the proposed rules of the medical aid fund.

(2) The Regulatory Authority shall process an application for a medical aid fund licence under subsection (1) within such period as may be prescribed.

(3) Where an application made under subsection (1) meets all the requirements, the Regulatory Authority shall issue a licence to the applicant in such form as may be prescribed.

5. (1) A licensed medical aid fund may sue or be sued under its registered name.

Effect of
licensing

(2) A medical aid fund whose license has been cancelled in terms of this Act may sue or be sued under the name by which it was registered.

(3) A person shall not have a claim on the assets or rights or be responsible for any liabilities or obligations of a medical aid fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the medical aid fund.

Refusal to
licence

(4) Any assets held by any person in trust for a medical aid fund, immediately before its licensed under this Act, shall be deemed to be the assets of the medical aid fund.

6. (1) The Regulatory Authority shall not licence a medical aid fund where —

- (a) the name under which the medical aid fund wishes to be licensed —
 - (i) closely resembles the name of another medical aid fund such that one might be mistaken for the other, or
 - (ii) is likely to be misleading to the public;
- (b) the medical aid fund does not have a registered office or does not operate wholly in Botswana;
- (c) any of its trustees, or its principal officer, is deemed not to be fit and proper to hold office;
- (d) the applicant has less than 1 500 members or is likely not to reach 1500 members within 12 months of being issued with a licence: Provided this requirement may be waived by the Regulatory Authority;
- (e) it unfairly discriminates against any person on any of the following grounds —
 - (i) race,
 - (ii) gender,
 - (iii) marital status,
 - (iv) ethnic or social origin,
 - (v) sexual orientation,
 - (vi) pregnancy status,
 - (vii) disability,
 - (viii) HIV/Aids status, or
 - (ix) state of health,
 whether through the application process or benefit design; or
- (f) the licensing of the entity is not in the public interest.

(2) Where an application for licensing is refused —

- (a) the Regulatory Authority shall notify the applicant, in writing, stating the reasons for refusing the application; and
- (b) the proposed medical aid fund may re-apply for licensing and a new application fee shall be payable.

7. A licence issued under section 4 shall once it is issued be valid, unless it is revoked and shall be subject to an annual fee as may be prescribed.

8. A medical aid fund licensed under this Act shall not change its name without prior written consent of the Regulatory Authority.

Validity of
licence

Change of
name for
medical aid
fund

Variation of
licence

9. The Regulatory Authority may, on the written request of a medical aid fund or on its own initiative, vary a licence by —

- (a) restricting the activities that can be carried on in terms of the licence; or

(b) including further conditions on the licence.

10. (1) The Regulatory Authority may at any time suspend or revoke a licence where the Regulatory Authority has ascertained that the medical aid fund —

Suspension or
revocation of
licence

- (a) has not carried out a business of a medical aid fund with integrity, prudence and professional skill;
- (b) is not financially sound;
- (c) has caused or promoted instability in the financial system;
- (d) has, without reasonable excuse, failed to comply with terms and conditions of the licence or a provision of this Act;
- (e) has been involved in a financial crime;
- (f) has failed to pay a fine imposed by the Regulatory Authority under this Act or any other financial services laws;
- (g) has made a material misrepresentation to the public in relation to its business;
- (h) has obtained its licence by means of fraud or misrepresentation; or
- (i) has failed, without reasonable excuse, to comply with a directive, order or requirement issued by the Regulatory Authority.

(2) Notwithstanding the provisions of subsection (1), the Regulatory Authority may suspend or revoke a licence issued under this Act on a written request by the medical aid fund.

(3) The Regulatory Authority shall, where it decides to suspend or revoke a licence —

- (a) give notice of such suspension or revocation, in writing, to the medical aid fund, which notice shall —
 - (i) state the reasons for such suspension or revocation, and
 - (ii) inform the medical aid to make any representation within a specified period, which shall not be more than 21 days; and
- (b) take into account any representation made by the medical aid fund in terms of paragraph (a) (ii).

(4) Where the Regulatory Authority has suspended a licence, under this section, the Regulatory Authority shall specify, in the notice referred to in subsection (3) (a), the business operations of the medical aid fund's licence that have been suspended.

(5) Where a licence has been suspended by the Regulatory Authority under this section, the medical aid fund shall —

- (a) not carry out the part of the business operation in relation to which the suspension relates; and
- (b) continue to be subject to the provisions of this Act as if the licence had not been suspended, unless directed otherwise by the Regulatory Authority.

(6) A medical aid fund that continues to carry out business operations for which the suspension relates is liable to an administrative fine not exceeding P50 000, as may be imposed by the Regulatory Authority.

(7) Where the Regulatory Authority has revoked a licence under this section, trustees, principal officer, manager or controller of the medical aid fund shall take the necessary steps to ensure the protection of members, including by —

- (a) ceasing to register new members;
- (b) ceasing deduction of premiums from members;
- (c) payment of outstanding member claims, including reimbursement of members for medical costs incurred;
- (d) providing for the issuance of certificates to members who wish to join other medical aid funds; and
- (e) any other activity deemed necessary by the Regulatory Authority.

(8) A medical aid fund that fails to comply with the provisions of subsection (7) is liable to an administrative fine not exceeding P100 000, as may be imposed by the Regulatory Authority.

(9) Any trustee, principal officer, manager or controller of the medical aid fund shall incur liability for contravention of subsection (7) and be liable to an administrative fine not exceeding P50 000, as may be imposed by the Regulatory Authority.

(10) For purposes of this section, "instability in the financial system" means disruption of the normal functioning of the financial sector.

Public notice

11. The Regulatory Authority shall, within 30 days of issuing, varying, suspension or revocation of a licence, give public notice, by publication in the *Gazette*, a newspaper of national circulation and such media as the Regulatory Authority considers appropriate.

PART III — *Operational Model*

Not-for-profit
structure

12. The operational model of a medical aid fund shall be not-for-profit and any surplus funds arising in a financial year shall be carried forward to the next financial year for the benefit of its members.

PART IV — *Rules of Medical Aid Fund*

Approval
of Rules of
medical aid
fund

13. (1) A medical aid fund shall have a set of governing Rules that shall be approved by the Regulatory Authority when licensing the medical aid fund in terms of section 4.

(2) The Rules referred to under subsection (1) shall contain such particulars as may be prescribed.

(3) The Regulatory Authority shall not approve the Rules of a medical aid fund, if the Rules do not comply with the provisions of this Act or any other written law.

Rules binding

14. Subject to the provisions of this Act, the Rules of a medical aid fund shall be binding on —

- (a) the medical aid fund;
- (b) the board of trustees and any other officers of the medical aid fund; and
- (c) the beneficiaries of the medical aid fund.

15. In the event of any conflict or inconsistency between the Rules of a medical aid fund and any marketing material issued by the medical aid fund or any of its agents, the Rules of the medical aid fund shall take precedence and shall govern the proper procedures to be followed.

Conflict with
other materials

16. (1) The Regulatory Authority may —

Amendment of
Rules

(a) direct that the Rules of a medical aid fund be amended if in the opinion of the Regulatory Authority, any part of the Rules is deemed —

- (i) detrimental to, or not in the best interest of the members, or
- (ii) to contravene any provision of this Act; or

(b) require a medical aid fund to consolidate its Rules and amendments into a set of revised Rules.

(2) The Regulatory Authority shall approve an amendment of the rules if it is satisfied that the amendment —

(a) has been adopted by a resolution approved by the members in terms of the Rules of the medical aid fund;

(b) is consistent with the provisions of this Act or any other financial services law;

(c) will not render a licenced medical aid fund unable to maintain a sound financial position;

(d) does not adversely affect the ability of the board of trustees to manage a licensed medical aid fund with integrity, prudence and professional skill;

(e) is not contrary to public interest; and

(f) will not affect any right of a creditor of a licensed medical aid fund.

(3) A principal officer of a medical aid fund shall submit to the Regulatory Authority three copies of any amendments to the Rules.

17. (1) A medical aid fund shall —

Provision of
Rules and
financial
statements to
members

(a) provide a copy of the Rules to every member;

(b) ensure that a copy of the Rules is delivered to a member within 30 days of commencement of membership through registered mail or through electronic mail; and

(c) provide a copy of the amended rules to the members within 30 days after approval of such amendments.

(2) Notwithstanding the provisions of subsection (1), a medical aid fund may charge a member a nominal fee for a subsequent printed copy of the Rules.

(3) A medical aid fund shall, within 14 days, provide a copy of the latest financial statements upon request by a member.

18. A medical aid fund that contravenes any provision under this Part is liable to an administrative fine, imposed by the Regulatory Authority, not exceeding P2 500 for each day that the contravention occurs, up to a maximum of 90 days after which the Regulatory Authority shall suspend the medical aid fund's licence.

Offences
relating to
Rules

PART V — *Underwriting, Late Joiner Penalties and
Waiting Period*

Enrolment and
underwriting

19. (1) A medical aid fund shall not refuse membership to a person who is a resident of Botswana and who is able to pay the contributions charged by the medical aid fund.

(2) Notwithstanding the provisions of subsection (1), a medical aid fund may refuse membership to a person where —

(a) the medical aid fund is a restricted medical aid fund that limits membership in terms of its Rules;

(b) there has been a non-disclosure of material information by the person; or

(c) the person has committed a financial crime or fraud.

(3) A person who is a member or beneficiary of more than one medical aid fund shall —

(a) disclose his or her membership of each medical aid fund to the other medical aid fund within 30 days of a change in their membership or dependency status;

(b) give permission for any personal claims information relating to the period of simultaneous membership or dependency to be shared between the medical aid funds in which he or she participates; and

(c) not receive benefits in excess of the total cost incurred for a particular medical service.

(4) A medical aid fund shall use community rating to determine the premiums charged to members and such premiums may only be determined on the basis of —

(a) income;

(b) the number and types of dependents; and

(c) the member's benefit option.

Late joiner
penalties

20. (1) A medical aid fund may apply premium penalties to a late joiner.

(2) The premium penalties referred to under subsection (1) shall not exceed the prescribed penalty bands.

(3) A late joiner status of an applicant or adult dependent of an applicant may be carried from one medical aid fund to another, regardless of any break in cover between registrations with the medical aid funds.

(4) A late joiner penalty may be applied at the discretion of a medical aid fund and may be applied to a member or adult dependent upon transfer to another medical aid fund.

(5) A medical aid fund shall report annually to the Regulatory Authority on the number of late joiners enrolled in each band during the previous year.

Waiting period

21. (1) A medical aid fund may impose a waiting period on benefits available to new members.

(2) The waiting period, which shall be at the discretion of the medical aid fund, shall apply where there was a break in cover immediately prior to applying for membership.

(3) The waiting period referred to under subsections (1) and (2) shall be limited to —

(a) a maximum three-month general and 24-month condition-specific waiting period where a person had a break in cover of more than 90 days immediately prior to application for membership to a medical aid fund; or

(b) a three-month general waiting period where a person had a break in cover of 90 days or less immediately prior to application for membership to a medical aid fund.

(4) During a three-month general waiting period referred to in subsection (3) (b), all claims may be excluded and emergency medical treatment shall be provided when needed:

Provided that such emergency medical treatment shall be covered by the benefits offered by a medical aid fund in the absence of a waiting period.

(5) During the 24-month condition-specific waiting period, referred to in subsection (3) (a), all claims related to a specified pre-existing condition may be excluded and emergency medical treatment shall be provided when needed:

Provided that such emergency medical treatment shall be covered by the benefits offered by a medical aid fund in the absence of a waiting period.

(6) For the purposes of subsection (5), "pre-existing condition" means any known illness or healthcare condition that a member had prior to joining a medical aid fund, whether or not during the application process the illness or healthcare condition was disclosed.

22. A medical aid fund shall not refuse to provide cover to a member for an illness or condition listed under an essential health service package as may be prescribed by the Minister responsible for health.

Essential
health service
package

PART VI — *Start-up Capital, Investments and Solvency*

23. A new medical aid fund shall be required to hold capital equivalent to 25% of the actuarially projected gross annual contributions for the first year's operations, as contained in the business plan submitted upon applying for licensing.

Start-up capital

24. (1) A medical aid fund may invest in assets which do not exceed the maximum limits per asset class as may be prescribed.

Investments of
medical aid
fund

(2) The maximum limit per asset referred to under subsection (1) shall be applicable to the total assets of the medical aid fund.

(3) A maximum exposure per entity shall apply as may be determined by the Regulatory Authority.

(4) Notwithstanding the provisions of subsections (1) and (3), the

Regulatory Authority may, on the written request of a medical aid fund, approve a request to exceed the maximum limits set out in this section.

(5) Any investments held by a medical aid fund shall hold a credit rating of no less than the equivalent of BBB from an acceptable credit rating agency as may be determined by the Regulatory Authority, except in the case of direct property investments and local assets.

(6) For the purposes of subsection (5) "BBB" means an international credit rating scale, indicating that a company has adequate ability to meet all its financial commitments.

(7) A medical aid fund shall hold liquid assets worth equivalent of the minimum balance of three months gross contributions of which cash shall be equivalent of one month's gross contributions.

(8) Where a medical aid fund's total asset are less than one month's worth of contributions, 100 per cent of its assets shall be held as immediate accessible cash.

(9) A medical aid fund shall not invest any of its assets in the business of —

- (a) an employer who —
 - (i) participates in the medical aid fund, other than if that employer is the Government, a local authority, a statutory body, a company listed on a stock exchange, a banking institution or a building society, registered in terms of any laws; and
 - (ii) owns or holds any shares, or has any financial or business interest, in an administrator, managed care organisation or medical aid fund broker;
- (b) any other medical aid fund;
- (c) any medical aid fund broker; or
- (d) any person associated with any entity in this subsection.

(10) For purposes of subsection (9) (d), any person associated with any entity in subsection (9) means —

- (a) a spouse or minor child of that person;
- (b) a company of which that person is a director;
- (c) an employee or business partner of that person; or
- (d) if the person is a company —
 - (i) a director of that company,
 - (ii) a subsidiary of that company, or
 - (iii) a director or employee of such a subsidiary.

(11) The board of trustees of a medical aid fund shall submit an investment policy statement to the Regulatory Authority, which shall include the medical aid fund's target asset allocation.

(12) For the purposes of subsection (11), "investment policy statement" means the policy that governs the investment of assets, and sets out the investment strategy, of a medical aid fund.

(13) A medical aid fund shall report on its investment structure annually as part of its annual financial statements in such manner as maybe determined by the Regulatory Authority.

25. A medical aid fund shall develop a risk-based capital model, which shall be certified by an actuary, to determine the required level of reserves to be held for solvency purposes.

Solvency

26. (1) A medical aid fund that fails, or is likely to fail to comply with the solvency requirements under section 25, shall without delay, notify the Regulatory Authority of the failure or the likelihood of such failure.

Minimum
solvency
requirements

(2) Where a medical aid fund notifies the Regulatory Authority in terms of subsection (1), or where the Regulatory Authority is satisfied that a medical aid fund is failing, or is likely to fail to comply with solvency requirements under section 25, the Regulatory Authority may, by notice in writing, direct the medical aid fund to furnish the Regulatory Authority, within a specified period, with —

(a) specified information relating to the nature and cause of the failure; and

(b) the medical aid fund's plan to ensure compliance with section 23.

(3) Where the Regulatory Authority has received the information and the plan referred to under subsection (2), the Regulatory Authority may, without derogating from its powers —

(a) authorise the medical aid fund to adopt the plan;

(b) authorise the modification of the plan, upon a written request by the medical aid fund, to the extent that the Regulatory Authority deems appropriate under the circumstances; and

(c) appoint a statutory manager in terms of section 70, if it is reasonably necessary in the interests of the members of the medical aid fund, at that time, or at any time thereafter.

(4) The donation of a medical aid fund shall be reported separately on a medical aid fund's annual financial statement.

(5) Subject to subsection (4), donation shall be included as part of the calculation for solvency.

(6) A medical aid fund shall not use loan financing as part of the solvency calculations.

PART VII — *Board of Trustees and Principal Officer*

27. (1) A medical aid fund shall have a board of trustees comprising of —

Board of
trustees

(a) at least five members, but not more than 11 members;

(b) a chairperson appointed from amongst the members;

(c) at least 50 per cent of the members who are appointed from its membership base through an election process; and

(d) at least 30 per cent of independent members appointed by the board of trustees.

(2) A medical aid fund shall ensure that the board of trustees is comprised of individuals who are fit and proper and possess the necessary skills and experience to effectively carry out their duties in respect of the medical aid fund.

(3) The board of trustees of a medical aid fund shall meet at least four times annually.

(4) The quorum at any meeting of the Board shall be a simple majority of the members.

Tenure of office
of board of
trustees

28. (1) Subject to section 27, a trustee shall hold office for a period of three years and shall, at the end of that period, be eligible for re-appointment for a further term not exceeding three years.

(2) A medical aid fund shall ensure that at least one-third of the members of the board of trustees is replaced by new trustees every three years and a trustee who was replaced may be eligible for re-election after two years.

(3) A trustee of a medical aid fund shall be appointed at the annual general meeting or at a special general meeting called by giving 30 days' notice to the members.

(4) For the purposes of subsection (3) —

(a) "annual general meeting" means an annual meeting of the members of a medical aid fund at which the annual report is presented and other matters, such as the election of trustees, are discussed; and

(b) "special general meeting" means a meeting of members called to address issues that are urgent and need timely attention.

(5) A person shall not be a trustee of a medical aid fund if —

(a) the person is associated in any way with the administrator, managed care provider, auditor, actuary of the medical aid fund, or any other related party as may be determined by the Regulatory Authority; or

(b) any other significant conflict of interest exists between such person and the medical aid fund.

Duties of
board of
trustees

29. (1) The duties of a trustee shall include —

(a) establishment of proper corporate governance structures of the medical aid fund;

(b) appointing to the Regulatory Authority, a principal officer who is a fit and proper person to hold such office;

(c) appointment of an acting principal officer approved by the Regulatory Authority, in the absence of the principal officer, or where the principal officer is unable to perform his or her functions under this Act;

(d) notification of the termination or resignation of a principal officer or acting principal officer within 14 days of such termination or resignation;

(e) appointment and management of service providers who shall perform the functions required by a licensed medical aid fund, including —

- (i) an approved administrator, where the medical aid fund chooses not to be self-administered, in accordance with the provisions of this Act;
 - (ii) where a medical aid fund appoints an administrator, it shall not absolve the medical aid fund from its responsibility towards its members if any party is in default with regard to the provision of any service in terms of such appointment;
 - (iii) an approved actuary, and
 - (iv) any other service provider that may be necessary to ensure the continued execution of the medical aid fund's obligation to its members;
 - (v) an approved managed care organisation
 - (f) obtaining expert advice on legal, accounting and business matters as required, or on any other matter in which the trustees may lack sufficient expertise;
 - (g) ensuring that the Rules, operation and administration of the medical aid fund comply with the provisions of this Act as well as all applicable laws;
 - (h) ensuring that proper registers, books and records of all operations of the medical aid fund are kept, and that proper minutes are kept of all resolutions passed by the board of trustees;
 - (i) ensuring that proper control systems are employed by or on behalf of the medical aid fund;
 - (j) ensuring that all reasonable steps are taken to ensure that contributions are paid on time to the medical aid fund in terms of this Act;
 - (k) ensuring that adequate and appropriate information is communicated to the members regarding their rights, benefits, contributions and duties in terms of the Rules of the medical aid fund and including such matters as may be directed by the Regulatory Authority from time to time;
 - (l) ensuring an appropriate level of professional indemnity insurance and fidelity guarantee insurance, including directors' and officers' liability insurance, and that the appropriate amount of insurance cover is determined after taking into consideration the advice of a suitable expert as well as the risk to which the medical aid fund is exposed;
 - (m) protecting the medical aid fund against the dishonesty of trustees or any other official of the medical aid fund or any errors committed by such persons;
 - (n) taking all reasonable steps to protect the confidentiality of medical records concerning the state of health of any member;
 - (o) reporting any suspected breach in this Act to the Regulatory Authority within 14 days of becoming aware of such suspected breach; and
 - (p) ensuring the preparation, auditing, signing off of annual financial statements and their submission to the Regulatory Authority.
- (2) A trustee shall not provide consultancy services to a medical aid fund in return for any compensation.

(3) A medical aid fund that fails to appoint an approved auditor, an approved actuary or an approved administrator if not self-administered, is liable to an administrative fine not exceeding P250 000 after which the medical aid fund's licence shall be suspended by the Regulatory Authority.

(4) A trustee who fails to comply with the provisions of this Part is liable to an administrative fine not exceeding P20 000, as may be imposed by the Regulatory Authority.

(5) A trustee who fails to comply with the provisions of this Part after the imposition of an administrative fine imposed in subsection (4), commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding two years.

(6) Notwithstanding the provisions of subsections (4) and (5), a trustee shall not be liable where —

- (a) he or she reported the failure to the Regulatory Authority; or
- (b) the trustees' objections to the board of trustees' decision which led to non-compliance is specifically recorded in the signed minutes of a meeting or other documentation.

30. (1) A licensed medical aid fund shall appoint a principal officer with relevant qualifications and expertise, as prescribed, in the management and oversight of medical aid funds.

(2) A principal officer appointed under subsection (1) shall —

- (a) in addition to the requirements set out therein, meet other prescribed criteria;
- (b) be approved by the Regulatory Authority;
- (c) be resident in Botswana; and
- (d) avoid any conflicts of interest with the medical aid fund while performing his or her duties.

(3) A medical aid fund that fails to appoint a principal officer without reason is liable to an administrative fine, imposed by the Regulatory Authority not exceeding P5000 for each day the offence occurs, up to a maximum of 60 days, after which the medical aid fund's licence shall be suspended by the Regulatory Authority.

31. A principal officer shall —

- (a) inform the Regulatory Authority in writing, within five days of becoming aware of any matter relating to the affairs of the medical aid fund which, in the opinion of the principal officer, may prejudice the medical aid fund or its members;
- (b) submit amendments of Rules of a medical aid fund to the Regulatory Authority;
- (c) submit annual financial statements to the Regulatory Authority;
- (d) ensure that decisions taken by trustees are executed;
- (e) ensure that the medical aid fund complies with the provisions of this Act, and any other written law; and
- (f) take responsibility for any other duty that may be delegated by trustees or prescribed by the Regulatory Authority.

Principal
officer

Duties of
principal
officer

32. (1) A principal officer —

- (a) who resigns his or her position with a medical aid fund; or
 - (b) whose appointment has been terminated by the medical aid fund,
- shall, within 14 days of his or her resignation or termination, inform the Regulatory Authority of the resignation or termination in writing, and of any matter relating to the affairs of the medical aid fund of which he or she became aware of in the performance of his or her duties, and which may prejudice the medical aid fund's ability to comply with the provisions of this Act.

Resignation or
termination of
employment
of principal
officer

(2) Notwithstanding the provisions of subsection (1), the medical aid fund shall inform the Regulatory Authority, in writing, of the resignation or termination of employment of the principal officer, stating the reasons for the termination.

(3) A principal officer who fails to inform the Regulatory Authority of his or her resignation or termination of employment, in terms of subsection (1) is liable to an administrative fine, imposed by the Regulatory Authority, not exceeding P2 500 for each day that the offence occurs, up to a maximum of 30 days.

(4) A medical aid fund that fails to inform the Regulatory Authority of the resignation or termination of employment of a principal officer, in terms of subsection (2) is liable to an administrative fine, imposed by the Regulatory Authority, not exceeding P50 000.

33. (1) A principal officer shall not be remunerated for any service provided to a medical aid fund, including consultancy services, which are not directly related to his or her role as the principal officer.

Remuneration
of members of
board of
trustees and
principal
officer

(2) A trustee shall not be remunerated for any service provided to a medical aid fund which is not directly related to his or her role as a trustee of the medical aid fund.

(3) Any remuneration received by a trustee or a principal officer shall be reasonable and shall be disclosed in the medical aid fund's annual financial statements.

34. (1) The Board of trustees may establish sub-committees to delegate any of its powers and functions to the sub-committees to oversee the following functions —

Establishment
of sub-
committees

- (a) operations;
 - (b) audit and risk;
 - (c) finance and investment;
 - (d) *ex-gratia*;
 - (e) complaints;
 - (f) compliance; and
 - (g) any other function deemed necessary by the trustees or the Regulatory Authority.
- (2) For the purposes of subsection (1), the —
- (a) "operations function" shall entail monitoring and overseeing all operational activities of a medical aid fund, including operations outsourced to an administrator;

- (b) "audit and risk" function shall entail evaluation of the efficiency of the internal control systems, accounting practices, information systems and auditing processes and risk management practices of a medical aid fund;
 - (c) "finance and investment" function shall entail monitoring and overseeing the finance and investment operations and policies of a medical aid fund;
 - (d) "ex-gratia" function shall entail overseeing and making decisions on the *ex-gratia* payments by the medical aid fund;
 - (e) "complaints" function shall entail overseeing and making decisions on complaints; and
 - (f) "compliance" function shall entail ensuring compliance with relevant legislation.
- (3) Any sub-committee established by the board of trustees, under subsection (1) shall have a representative of the trustees and any person serving on a sub-committee shall be duly qualified to do so.
- (4) For the purposes of this section, "sub-committee" means a subdivision of the board of trustees, dedicated to manage a particular component of the medical aid fund operations.

PART VIII — Financial Provisions

Financial year

35. The Regulatory Authority may determine the financial year of a medical aid fund.

Payment into
medical aid
fund

36. (1) An administrator shall deposit all contributions by members and any money under administration into a bank account in the name of the medical aid fund, no later than one business day after the receipt of such funds.

(2) A medical aid fund shall appoint at least two signatories from the medical aid fund to approve any activity on the bank account in the name of a medical aid fund.

(3) The Regulatory Authority may require information on administration of funds from a medical aid fund and its administrator from time to time.

(4) The information referred to under subsection (3) shall be in the format specified by the Regulatory Authority and may be used for industry-wide consolidation and statistical purposes.

Disbursement
from medical
aid fund

37. (1) There shall be paid from the medical aid fund —

- (a) health care expenses;
- (b) non-health care expenses;
- (c) amounts to be invested by the medical aid fund in terms of this Act; and
- (d) such other amounts as the Regulatory Authority may, in writing, approve.

(2) Where a medical aid fund has outsourced its administration function, the disbursements shall be paid by the administrator from a separate disbursement account.

(3) A medical aid fund shall appoint at least two signatories from the administrator to approve any activity on the disbursement account in the name of the medical aid fund.

(4) A medical aid fund shall not make payment directly or indirectly to any person as a dividend, rebate or bonus except where the payment is for the performance related bonuses for medical aid fund employees.

(5) Any bonus payable under subsection (4) shall be disclosed in full in the annual financial statements of the medical aid fund.

38. (1) A medical aid fund shall, in respect of each financial year, prepare a statement of accounts detailing, the assets and liabilities, income and expenditure of the medical aid fund.

Accounts and
audit

(2) Any fine incurred in relation to the provisions of this Act and directly related to a medical aid fund shall be disclosed, with detailed reasons, on an annual basis in the medical aid fund's audited financial statements.

(3) A medical aid fund shall, with the approval of the Regulatory Authority, appoint an auditor to audit the accounts of the medical aid fund in respect of each financial year.

(4) The Auditor shall, without delay, inform the Regulatory Authority, in writing, of any matter which he or she becomes aware of in the performance of his or her duties and which in the opinion of the auditor —

- (a) constitutes a contravention of any provision of this Act; and
- (b) may in future compromise the medical aid fund's ability to comply with any provision of this Act.

(5) Any records under subsection (1) shall be kept and maintained by a medical aid in such manner as may be prescribed.

(6) A person who contravenes the provisions of this section is liable to an administrative fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

39. (1) A medical aid fund shall maintain records relating to the medical aid fund transactions undertaken by the medical aid fund, in such manner as may be prescribed.

Preservation of
records

(2) A medical aid fund which contravenes this section shall be liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

40. (1) A medical aid fund shall furnish returns to the Regulatory Authority in such manner as may be prescribed.

Returns to the
Regulatory
Authority

(2) Where the Regulatory Authority is satisfied that a return furnished in terms of subsection (1) is incomplete or incorrect, the Regulatory Authority may, by notice in writing —

- (a) direct the medical aid fund to furnish to it, within a specified period together with, such information or documents as may be specified by it, which the Regulatory Authority considers necessary to complete or correct the return; or
- (b) reject the return and require the medical aid fund to furnish the Regulatory Authority, within a specified period, with returns which are complete and correct.

Actuarial
report

(3) Where the Regulatory Authority is satisfied that a statement forming part of the returns furnished by the medical aid fund in terms of subsection (1) requires further investigation, the Regulatory Authority may, by notice in writing, direct the medical aid fund to furnish it, within a specified period, with a report containing the required information in such form as may be prescribed, compiled by a person nominated by the Regulatory Authority at the cost of the medical aid fund.

(4) A medical aid fund that fails to comply with the provisions of this section shall be liable to an administrative fine not exceeding P250 000 as may be imposed by the Regulatory Authority.

41. (1) A medical aid fund shall appoint an actuary to compile an annual report stating whether the current or proposed contributions are adequate to cover the benefits stated in the schedule of benefits, as well as any non-healthcare expenses that the medical aid fund may incur.

(2) The actuary appointed under subsection (1) shall —

- (a) be approved by the Regulatory Authority;
- (b) be a member of a professional actuarial association, which is a member of the International Actuarial Association; or
- (c) be a member of any other body as may be approved by the Regulatory Authority.

(3) The report compiled under subsection (1) shall —

- (a) be based on the expected membership profile of the medical aid fund and other assumptions about the environment in which the medical aid fund operates;
- (b) assist with determining the adequate level of contributions for the next year; and
- (c) provide an opinion on whether or not a medical aid fund is in a financially sound position and whether the minimum solvency requirements are currently being met, within the required deadlines.

(4) An actuarial report shall be completed at least three months prior to implementation of contribution rates, with the actuarial report forming part of the Rules submissions required for any rule changes.

(5) Where a medical aid fund —

- (a) is not in a financially sound position; or
- (b) does not meet the minimum solvency requirements,

the medical aid fund shall engage an actuary to assist with the development of a business plan, that shall be submitted to the Regulatory Authority, detailing the potential actions that the board of trustees should take in order to ensure the sustainability of the medical aid fund.

(6) An actuary shall comply with the relevant actuarial guidelines provided by a professional body of which he or she is a member.

PART IX – *Communication*

Change in the
rules of medical
aid fund

42. A member of a medical aid fund shall be provided with at least 30 days' notice of any changes to the Rules of the medical aid fund.

43. Upon the acceptance of an application of a new member to a medical aid fund, the medical aid fund shall issue to the member a written proof of membership, either electronically or otherwise, stating the following particulars —

Proof of
membership

- (a) the name of the applicable medical aid fund;
- (b) contact details of the medical aid fund;
- (c) membership number;
- (d) surname, initials, gender, and the national identity number or passport number of the member and any of his or her dependants covered by a medical aid fund;
- (e) date on which membership to a medical aid fund and benefit becomes effective;
- (f) the benefit plan option that the member has selected;
- (g) any waiting period or late joiner penalty applicable to membership, a description of these conditions, and the reasons for these conditions placed upon membership;
- (h) whether the medical service covered is limited to a specific medical service provider or group of medical service providers;
- (i) a detailed list of the benefits that the member and his or her dependants are entitled to which shall be in the form of a —
 - (i) brochure or pamphlet, or
 - (ii) a reference to information contained on the website of a medical aid fund; and
- (j) any co-payments attached to any of the benefits of a medical aid fund.

44. Upon the acceptance of an application of a new member to a medical aid fund, the medical aid fund shall issue the member with a membership card, stating the following particulars —

Issue of
membership
card

- (a) name of the applicable medical aid fund;
- (b) contact details of the medical aid fund;
- (c) medical aid fund membership number;
- (d) surname, initials, gender and the national identity card number for citizens or passport number for non-citizens, of the member or any of his or her dependants covered by the medical aid fund;
- (e) date on which membership to a medical aid fund and benefit entitlement becomes effective; and
- (f) the benefit plan option that the member has selected.

45. (1) Where a beneficiary of a medical aid fund submits a claim to the medical aid fund, or a medical service provider submits a claim on behalf of a member for any medical service received by the member, a detailed claims statement from such medical aid fund shall be provided to member, containing such information as may be prescribed.

Claims
statement

(2) A claims statement shall —

- (a) be issued on request by a member;
- (b) reflect any balances of benefits with limits attached to it; and
- (c) notify the member that —

- (i) any liability arising from medical services received in respect of rejected claim remains with the member, and
 - (ii) he or she has the right to lodge a complaint in terms of this Act.
- (3) Upon termination of membership to a medical aid fund, the medical aid fund shall, within one week, supply, on request of a former member or his or her dependents, a certificate of membership, stating the following —
- (a) the period of membership;
 - (b) the dependents covered and the period of membership per dependent;
 - (c) if applicable, the member's medical savings account balance at the termination date;
 - (d) the total contributions paid for the tax period;
 - (e) any late joiner penalties that apply to the member or his or her dependents at the termination date; and
 - (f) any waiting periods that are still effective at the termination date and the expected date that these waiting periods will be lifted.
- (4) A medical aid fund that fails to comply with the provisions of this Part shall be liable to an administrative fine not exceeding P50 000 as may be imposed by the Regulatory Authority.

PART X — *Administration of Medical Aid Fund*

Licensing of
administrators

46. (1) An administrator shall not provide medical aid fund administration services except in terms of a licence issued by the Regulatory Authority.

(2) An application for licensing as an administrator shall be in such form as may be prescribed, which application shall be accompanied by —

- (a) a non-refundable application fee as may be prescribed; and
- (b) such particulars as may be prescribed.

(3) Where a medical aid fund is to be self-administered, it shall, to the satisfaction of the Regulatory Authority, demonstrate that it has the required resources, capacity and such skills as may be prescribed, to self-administer in compliance with the provisions of this Act.

(4) Where the Regulatory Authority deems it necessary, the Regulatory Authority may undertake a site visit to a self-administered medical aid fund to satisfy itself that the medical aid fund has the required resources, capacity and skills to self-administer in compliance with the provisions of this Act.

47. The Regulatory Authority shall, where it is satisfied that an application made in terms of section 46 (2) meets the requirements for the issue of a licence, issue to the administrator, a licence in such form as may be prescribed.

48. An administrator licence issued in terms of section 47 shall once it is issued be valid, unless it is revoked and shall be subject to the following conditions —

Issue of
administrator
licence

Validity of
administrator
licence

- (a) the payment of such annual fee as may be prescribed;
- (b) the submission of audited annual financial statements and annual reports to the Regulatory Authority in such manner as may be prescribed; and
- (c) any other conditions as may be prescribed by the Regulatory Authority.

49. (1) The Regulatory Authority may at any time suspend or revoke a licence where an administrator —

- (a) is no longer in a position to render administration services;
- (b) no longer has the necessary resources, systems, skills and capacity to render administration services;
- (c) is in an unsound financial position;
- (d) did not fully disclose all relevant information, or disclosed misleading or false information during the licensing process;
- (e) conducts business in a way that is contrary to public interest; or
- (f) does not comply with any provision of this Act.

(2) The Regulatory Authority shall, where it proposes to suspend or revoke an administrator's licence, give notice of such suspension or revocation, in writing, to the administrator.

(3) The notice referred to under subsection (2) shall —

- (a) state the grounds for suspension or revocation;
- (b) state the period of suspension;
- (c) state any conditions imposed to the suspension or revocation; and
- (d) require the administrator to show cause, in writing, within such time as may be specified in the notice, as to why the licence should not be suspended or revoked.

(4) The Regulatory Authority shall, after considering the response of the administrator made in terms of subsection (3) (d), make a decision and inform the administrator in writing of such decision and the reasons thereof.

(5) Where the urgency of the matter so requires, the Regulatory authority may immediately suspend an administrator licence on the grounds specified in subsection (1).

(6) Where an administrator licence is suspended, the administrator shall take remedial steps as may be directed by the Regulatory Authority.

(7) Where an administrator's licence is revoked or suspended, the terms of the revocation or suspension shall be determined on a case-by-case basis by the Regulatory Authority to minimise the impact to the members of the medical aid fund.

(8) In the case of a self-administered medical aid fund, the Regulatory Authority may impose suspension or revocation in terms of subsection (1) that is specific to the administration activities of the medical aid fund.

50. (1) An administration agreement between a medical aid fund and an administrator shall provide such particulars as may be prescribed.

Suspension
or revocation
of administrator
licence

Administration
agreement

(2) Where an administration agreement between a medical aid fund and an administrator is terminated, the administrator shall submit to the Regulatory Authority a report which confirms —

- (a) that all information relating to member's records, claims and contribution information, asset information, financial records, minutes of meetings and any other information in relation to the medical aid fund has been handed over to the medical aid fund within the required timelines;
- (b) the date that the information referred to in paragraph (a) was handed over; and
- (c) that the medical aid fund has received all the information referred to under paragraph (a) from the administrator.

(3) The report referred to under subsection (2) shall be —

- (a) signed by the administrator and the medical aid fund; and
- (b) submitted to the Regulatory Authority within one month from the date of termination.

(4) An administrator that fails to submit the report as provided for under subsection (3) (b) shall be liable to an administrative fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

51. An administrator of a medical aid fund shall keep and maintain an appropriate level of indemnity and fidelity guarantee insurance as may be determined by the Regulatory Authority.

52. (1) An administrator that provides administration services to a medical aid fund without a licence granted by the Regulatory Authority is liable to an administrative fine not exceeding P500 000 as may be imposed by the Regulatory Authority.

(2) An administrator that continues to provide administration services after its licence or approval in case of a self-administered fund has been suspended or revoked shall be liable to an administrative fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

PART XI — *Data Protection and Data Management*

53. (1) Subject to the provisions of the Data Protection Act, a medical aid fund shall have the right to collect, store and process the personal data of its members.

(2) A medical aid fund shall —

- (a) ensure that the personal data of its beneficiaries is captured accurately and is updated; and
- (b) not use its beneficiaries personal data for —
 - (i) any purpose other than that of conducting the business of a medical aid fund, and
 - (ii) marketing purposes, without the consent of the member.

(3) Notwithstanding the provisions of subsection (2), a medical aid fund may provide its members' personal data to the following persons —

Indemnity and
fidelity
guarantee
insurance

Offences
relating to
administration
of medical aid
funds

Protection of
personal data
Act No. 32 of
2018

- (a) the contracted administrator of the medical aid fund;
 - (b) the contracted managed care organisations of the medical aid fund, where applicable;
 - (c) medical service providers for their use in rendering medical treatment to beneficiaries and for claims administration;
 - (d) actuaries, auditors, and anyone else contracted to perform professional services for the medical aid fund; and
 - (e) the Regulatory Authority.
- (4) A person referred to in subsection (3) shall adhere to the provisions of this Act with regard to the protection of personal data and any other information relating to a medical aid fund.
- (5) A medical aid fund shall —
- (a) have measures in place to protect its members' personal data; and
 - (b) upon request, demonstrate to the Regulatory Authority that it has put measures in place to protect its members' personal data.
- (6) A medical aid fund shall have measures in place to protect its own sensitive data, and this information shall include —
- (a) claims and medical treatment data;
 - (b) premium or contribution income;
 - (c) financial services;
 - (d) corporate strategy data, including future contribution increases or benefit changes, planned amalgamations or membership transfers; and
 - (e) any other sensitive data specific to a medical aid fund.
- (7) The protection of data referred to under this Part refers to protection against —
- (a) accidental loss of data due to electronic data systems failure, or physical damage to electronic data systems, or the accidental loss of paper files;
 - (b) deliberate loss of information due to unlawful actions of employees, controllers or contractors to the medical aid fund;
 - (c) loss of information due to cybercrime; or
 - (d) misuse of information, for purposes other than conducting the business of a medical aid fund.
- (8) For the purposes of paragraph 7 (c), "cybercrime" means any criminal act under the Cybercrime and Computer Related Crimes Act.
- (9) A medical aid fund that fails to comply with the provisions of this Part is liable to an administrative fine not exceeding P50 000 as may be imposed by the Regulatory Authority.
- 54.** An administrator or a managed care organization of a medical aid fund shall, in accordance with the provisions of this Part, ensure the protection of personal data of members of the medical aid fund and the medical aid fund data that it handles.
- 55.** (1) A medical aid fund shall be responsible for its sound data management.

Protection of
personal data by
administrator
and managed
care organisation

Data
management

(2) Notwithstanding the provisions of subsection (1), the administration and data management services of a medical aid fund may be outsourced from a licensed administrator.

(3) In the case of outsourced administration, the data management and data collected shall not be commercialised nor shared without the consent of the medical aid fund.

(4) For the purposes of this section —

(a) "data management" means the process of organising, documenting, and tracking all information collected and produced by a medical aid fund; and

(b) "sound data management" means the development, execution and supervision of plans, policies, programs and practices that control, protect, deliver and enhance the value of data and information assets relating to a medical aid fund.

PART XII — *Managed care*

Managed care
organisation
arrangement

56. (1) Where a medical aid fund wishes to provide managed care services to its members with a specific managed care organisation, the terms of the arrangement shall be clearly set out in a written contract between the medical aid fund and the managed care organisation.

(2) A managed care service provided to a medical aid fund by a managed care organisation shall not absolve a medical aid fund from its responsibility toward its members if any party to an arrangement under subsection (1) is in default with regard to the provision of any service in terms of such arrangement.

Approval
of managed
care
organisation

57. (1) A person who wishes to provide a managed care organisation service shall make an application for approval to the Regulatory Authority in such form as may be prescribed.

(2) A medical aid fund shall not appoint the services of a managed care organisation unless such an organisation has been approved by the Regulatory Authority.

Issue of
approval

58. (1) The Regulatory Authority shall, if satisfied that the applicant has fulfilled all the requirements for a grant of approval in terms of section 57, issue an approval to the applicant.

(2) An approval certificate issued under subsection (1) shall once it is granted, be valid, unless it is revoked.

Suspension or
revocation of
approval

59. (1) The Regulatory Authority may at any time suspend or revoke the approval of a managed care organisation where it has been ascertained that the managed care organisation —

(a) did not fully disclose all relevant information or disclosed misleading or false information that might have affected the Regulatory Authority's decision during the accreditation process;

(b) conducts its business in a way that is contrary to public interest;

(c) is disqualified from providing managed care services in terms of any written law; or

- (d) has failed to comply with any provision of this Act.
- (2) The Regulatory Authority shall, where it decides to revoke or suspend the approval certificate of a managed care organisation —
- (a) give notice of such suspension or revocation, in writing, to the managed care organisation which notice shall state —
- (i) the grounds for the suspension or revocation,
 - (ii) the period of suspension,
 - (iii) any conditions imposed to the suspension or revocation, and
 - (iv) that the managed care organisation may make a representation within 21 days; and
- (b) take into account any representation made by the managed care organisation in terms of paragraph (a) (iv).
- (3) Where a managed care organisation's approval is —
- (a) suspended, the managed care organisation may not render managed care services until the period of suspension has ended; or
 - (b) revoked, such managed care organisation may no longer render services to the medical aid fund.
- (4) A managed care organisation shall have a period of 30 days to hand over any information requested by the medical aid fund, that it was rendering services to, so as to minimise the effect of the revocation or suspension on the members of the medical aid fund.
- (5) A managed care organisation that provides managed care services to a medical aid fund without an approval granted by the Regulatory Authority is liable to an administrative fine not exceeding P100 000, as may be imposed by the Regulatory Authority.

PART XIII — *Medical Aid Fund Brokers and Reinsurance*

- 60.** (1) A person shall not render services as a medical aid fund broker without a licence issued by the Regulatory Authority.
- (2) A person referred to in subsection (1) shall make an application to the Regulatory Authority in such form as may be prescribed, which application shall be accompanied by —
- (a) a non-refundable application fee as may be prescribed; and
 - (b) such particulars as may be prescribed.
- (3) A person who wishes to apply for a licence as a medical aid fund broker under this Act shall be a company registered under the Companies Act.
- (4) A licence issued under this section shall once it is issued be valid, unless it is revoked and shall be subject to the following conditions —
- (a) the payment of such annual fee as may be prescribed; and
 - (b) any other conditions as may be prescribed by the Regulatory Authority.
- 61.** (1) A person who wishes to render services or continue to render services as a medical aid fund broker shall maintain a register of all representatives.

Licensing of
medical aid
fund brokers

Cap. 42:01

Register of
representatives

Reporting of
misconductCompensation
of medical aid
fund brokers

(2) The register referred to under subsection (1) shall be submitted to the Regulatory Authority on a quarterly basis, in the manner determined by the Regulatory Authority.

62. A medical aid fund broker shall report, to the Regulatory Authority, any misconduct or contraventions to this Act, by one of its representatives, within 14 days of becoming aware of such misconduct or contravention.

63. (1) A person may not be compensated by a medical aid fund for rendering services as a medical aid fund broker unless such person —

(a) is licensed as a medical aid fund broker in terms of this Act; and

(b) enters into a prior written agreement with a medical aid fund approved by the Regulatory Authority.

(2) An agreement referred to under subsection (1) shall specify the terms and conditions of the services offered by a medical aid fund broker and both the medical aid fund and the medical aid fund broker shall keep a record of such agreement.

(3) A medical aid fund shall not differentiate the amount of compensation offered to medical aid fund brokers based upon the anticipated claims experience, age, health status or employment status of the members being introduced to the medical aid fund.

(4) A medical aid fund broker shall not receive, hold or in any other manner deal with any member's contribution.

(5) A medical aid fund may not compensate more than one medical aid fund broker at any time for broker services provided to a particular member.

(6) Any medical aid fund that has paid a medical aid fund broker compensation where there has been a material misrepresentation, or where the payment is made consequent to unlawful conduct by the medical aid fund broker, shall be entitled to the full return of all the money paid in consequence of such material misrepresentation or unlawful conduct.

(7) A medical aid fund that compensates any person for rendering broking services where such person does not hold a valid licence issued by the Regulatory Authority is liable to an administrative fine not exceeding P100 000, as may be imposed by the Regulatory Authority.

(8) A person who contravenes any provision of this Part for which no penalty is provided shall be liable to an administrative fine not exceeding P50 000, as may be imposed by the Regulatory Authority.

64. (1) A medical aid fund may enter into a reinsurance contract with an insurance company that is licensed to provide reinsurance by the Regulatory Authority.

Reinsurance

- (2) A medical aid fund shall submit to the Regulatory Authority —
 - (a) a copy of the proposed or existing reinsurance contract; and
 - (b) an independent report on the evaluation of the proposed reinsurance contract.
- (3) The Regulatory Authority shall either approve or reject the application for reinsurance within 60 days of receipt of a complete application from the medical aid fund.
- (4) A medical aid fund shall —
 - (a) not implement any unapproved reinsurance arrangements or changes to existing contracts, without approval by the Regulatory Authority; and
 - (b) effect any changes to existing reinsurance contracts or implement any reinsurance contracts within 90 days of approval by the Regulatory Authority, failing which, such approval shall become void and the medical aid fund shall be required to re-apply in terms of subsection (2).

PART XIV — *Complaints*

- 65. (1) A medical aid fund shall have a complaints policy that governs the handling of complaints from its members. Complaints
- (2) The complaints policy referred to in subsection (1) shall be shared with all members, and displayed in a prominent place at the premises of the medical aid fund and its administrator.
- (3) Where a complaint between a member and a medical aid fund cannot be resolved, the complaint may be lodged with the Regulatory Authority, in accordance with the set complaints procedures issued by the Regulatory Authority.
- (4) Upon receipt of a written complaint, the Regulatory Authority shall notify the affected parties within 30 days of receipt of such complaint and request the affected party to respond to the Regulatory Authority within 14 days.
- (5) The Regulatory Authority after receipt of any comments furnished to it under subsection (4), make a determination on the matter.
- (6) The Regulatory Authority may direct any party licenced or accredited under this Act in relation to a complaint.
- (7) A person who fails to adhere to a directive issued under subsection (6) shall be liable to an administrative fine not exceeding P50 000, as may be imposed by the Regulatory Authority.
- 66. Any person who is aggrieved, or whose interests are affected by a decision of the Regulatory Authority may, in terms of the Non-Bank Financial Institutions Regulatory Authority Act, apply to the Non-Bank Financial Institutions Tribunal for the review of such a decision. Review of decision

PART XV — *Medical Savings, Medical Savings Account
and Co-payments*

Medical
savings

67. (1) A medical aid fund may offer a medical savings account as one of its benefit options.

(2) Any funds allocated to a member's medical savings shall be for the exclusive use of that member and his or her dependants.

(3) The sum of a member's annual contribution to a medical savings account shall not exceed 25 per cent of the annual gross contribution paid by the member.

Medical
savings
account

68. (1) A medical aid fund shall open and maintain a bank account for the keeping of medical savings contributions received in terms of section 67 and such account shall be an interest bearing trust account and be separate from any account which the medical aid fund may open and maintain for the keeping of its own funds.

(2) A medical aid savings account under subsection (1) shall be maintained in compliance with any applicable financial services laws.

(3) Any interest earned on a medical savings account under subsection (1) shall —

(a) accrue to the medical savings account balances of each member and shall not be retained by the medical aid fund; and

(b) be pro-rated, at the end of each month, based on the proportion of each member's medical savings account balance to the total trust account balance.

(4) Any costs that relate directly to a medical savings account such as bank charges or investment fees, may be recovered from the funds in the medical savings account.

(5) Any administration costs of a medical aid fund shall not be recovered from the funds in the medical savings account.

(6) Where a member of a medical aid fund terminates his or her membership, then within four months of the termination of membership, if the member transfers his or her membership to a different medical aid fund, he or she shall be presented with the option to transfer the balance of the medical savings account to the other medical aid fund, should the member's benefit option on the other medical aid fund have a medical savings account.

(7) Where a member is transferring to a medical aid fund which does not have a medical savings account, the amount in the medical savings account may be transferred to a verified personal account of the member.

(8) In the event of termination of membership by way of death of a member, the balance of the medical savings account shall, within a period of four months, be paid to the beneficiaries appointed by the deceased member.

(9) Where a medical aid fund is wound up, the funds held in the medical savings account shall not form part of the medical aid fund's assets for winding up and shall belong to the members.

(10) The balance of a medical savings account shall be reflected separately in the financial statements of a medical aid fund and shall be treated as payable by the medical aid fund to its members.

(11) A person who contravenes any provision of this Part shall be liable to an administrative fine not exceeding P100 000, as may be imposed by the Regulatory Authority.

69. (1) A medical aid fund may, in terms of its rules require a co-payment to be paid by a member in respect of any benefit.

Co-payments

(2) A co-payment under subsection (1) shall be determined with reference to the amount of the benefit payable by a medical aid fund in terms of its rules and not with regard to the amount charged by a medical service provider for a particular medical service.

PART XVI — *Statutory Management*

70. (1) The Regulatory Authority may appoint a statutory manager for a medical aid fund if it appears to the Regulatory Authority that —

Appointment
of statutory
manager

(a) the medical aid fund —

- (i) is not complying with a financial services law,
- (ii) is or is likely to be in an unsound financial position,
- (iii) is or may be involved in financial crime; and

(b) it is necessary to appoint a statutory manager urgently to protect —

- (i) the interests of the members of the medical aid fund,
- (ii) the stability, fairness, efficiency and orderliness of the financial system, or
- (iii) the safety and soundness of financial institutions.

(2) An appointment in terms of subsection (1) shall take effect immediately, and the Regulatory Authority shall, as soon as practicable after the appointment and in any event within five business days after the appointment, apply to the High Court for an order confirming the appointment.

(3) On application, the High Court shall, by order, confirm the appointment unless satisfied that the Regulatory Authority was not entitled to make the appointment, or that the grounds for making the appointment no longer exist.

(4) The High Court may, on application by any other person, and with the prior written consent of the Regulatory Authority, appoint a person to be a statutory manager of a medical aid fund.

(5) The High Court may only make an appointment under subsection (4) if it appears that the medical aid fund —

- (a) is not complying with a financial services law;
- (b) is or is likely to be in an unsound financial position; or
- (c) is or may be involved in financial crime,

and the Court considers it in the interests of the stakeholders of the medical aid fund or the financial system to make the appointment.

Statutory
management

(6) On an application in terms of this section, the High Court may also make further ancillary orders, including as to costs, as is just.

71. (1) A person shall not be appointed or hold office as a statutory manager of a medical aid fund unless the Regulatory Authority has approved the person as the statutory manager of the medical aid fund.

(2) A statutory manager of a medical aid fund shall —

(a) manage the affairs of the medical aid fund to the exclusion of its directors and other persons;

(b) have power to repudiate a contract to which the medical aid fund is a party, but only if the statutory manager considers the contract detrimental to the interests of the members of the medical aid fund; and

(c) be entitled to receive such remuneration from the medical aid fund as the High Court orders.

(3) A repudiation of a contract in terms of subsection (2) (b) shall not affect any rights of the parties that have accrued before the repudiation.

(4) A statutory manager shall manage the affairs of the medical aid fund with the greatest economy possible compatible with efficiency and, as soon as practicable, shall report to the Regulatory Authority the steps to be taken to ensure that the medical aid fund —

(a) complies with the financial services laws;

(b) will be financially sound; or

(c) will not be involved in financial crime;

Provided the statutory manager considers that it is not practicable to take steps referred to in this section —

(i) whether steps should be taken to transfer the business of the medical aid fund to another appropriate person and, if so, to whom and on what terms, and

(ii) whether the medical aid fund should be wound up.

(5) A statutory manager of a medical aid fund shall comply with written directions from the Regulatory Authority in relation to his or her functions and the Regulatory Authority may, where necessary, restrict the statutory manager's powers, to the extent it considers appropriate.

(6) A statutory manager of a medical aid fund may apply to the High Court at any time for directions in relation to his or her functions.

(7) A Regulatory Authority may at any time remove a statutory manager from office, and appoint a replacement, for whom the Regulatory Authority shall apply to court for an order confirming the appointment in terms of section 70.

(8) The statutory manager shall not be liable for any loss that the medical aid fund suffers unless it is established that the loss was caused by the statutory manager's fraud, dishonesty, negligence or wilful failure to comply with the law.

72. The Regulatory Authority shall ensure that a statutory manager remains as the statutory manager until such time that the Regulatory Authority —

Termination
of statutory
management

- (a) is satisfied that the grounds for making the appointment no longer exist; or
- (b) applies for the medical aid fund to be wound up on the basis that the Regulatory Authority considers that the medical aid fund is insolvent and is unlikely to return to solvency within a reasonable time.

73. The Regulatory Authority shall publish in the *Gazette*, a newspaper with national circulation and such media as the Regulatory Authority may consider appropriate, a notice of appointment or termination of a statutory manager.

Notice of
appointment or
termination of
statutory
manager

PART XVII — *Amalgamation or Transfer*

74. Subject to the provisions of this Act and with the approval of the Regulatory Authority —

Amalgamation
or transfer

- (a) two or more licensed medical aid funds may amalgamate and become one licensed medical aid fund; and
- (b) a licensed medical aid fund may transfer all or any of its assets and liabilities to another licensed medical aid fund.

75. (1) Notwithstanding any provision of the Rules, all stakeholders shall be given at least four weeks written notice of intention to lodge an application for amalgamation or transfer, together with any such information that the Regulatory Authority may require, except where a stakeholder has waived, in writing, the requirements for notice.

Notice of
intention of
amalgamation
or transfer

(2) The four weeks referred to in subsection (1) shall be the notice period of the proposed amalgamation or transfer.

(3) A notice to stakeholders on the intended amalgamation or transfer shall be in any official language that the stakeholders can reasonably be expected to understand, and shall set out the terms of the amalgamation or transfer.

(4) A notice of any proposed amalgamation or transfer and the terms of the notice, shall be submitted to the Regulatory Authority, together with —

- (a) a copy of the exposition of the proposed transaction, including a copy of every actuarial or other statement taken into account for the purpose of the proposed transaction;
- (b) particulars of voting at any meeting of its members at which the transaction was considered; and
- (c) such additional information as the Regulatory Authority may require.

(5) The Regulatory Authority may, after the submission of the notice of amalgamation or transfer, require additional information from a person who has submitted the notice, including any special report by an actuary or auditor as the Regulatory Authority may determine.

(6) A stakeholder may lodge an objection, in writing, to the proposed amalgamation or transfer with the principal officer of either medical aid fund involved in the proposed transaction during the notice period.

Licensing
requirement
for new
medical aid
fund created as
consequence of
amalgamation
or transfer

(7) An objection lodged by a stakeholder under subsection (6) shall be considered by the board of trustees before submitting an application to the Regulatory Authority, and a summary of such objection and the action taken by the board of trustees in response to the objection shall be attached to the application submitted.

76. (1) Where a new medical aid fund is to be created as a consequence of an amalgamation or transfer, the new medical aid fund shall submit an application to the Regulatory Authority for licensing in terms of this Act.

(2) The Regulatory Authority shall, on receipt of an application referred to in subsection (1), grant a licence to the applicant if it is satisfied that —

- (a) the proposed amalgamation or transfer has given full recognition to the transferring of members' rights and reasonable expectations in respect of their benefits prior to the effective date of the transfer or amalgamation;
- (b) the proposed amalgamation or transfer would not render any medical aid fund that is a party to amalgamation or transfer and which will continue to exist if the proposed amalgamation or transfer is completed, unable —
 - (i) to meet the requirements of this Act,
 - (ii) to remain in a sound financial condition, and
 - (iii) in the case of a medical aid fund that is not in a sound financial condition, to attain such a financial condition within a period considered by the Regulatory Authority to be satisfactory; and
- (c) the provisions of any Rule of a medical aid fund that is a party to the proposed amalgamation or transfer have been complied with, or that adequate arrangements have been made to ensure that such provisions will be complied with at the appropriate time.

Completion of
amalgamation
or transfer

77. (1) Upon completion of the transfer of all the assets and liabilities of a medical aid fund —

- (a) a medical aid fund shall be deemed to be dissolved and the Regulatory Authority shall revoke the licence of the medical aid fund;
 - (b) if a change of name in the new medical aid fund has been agreed upon, the Regulatory Authority shall enter the new name in its records in place of the name of the dissolved medical aid fund, and shall issue a new licence reflecting the new name; and
 - (c) the assets of the dissolved medical aid fund shall be transferred to the new medical aid fund, and the new medical aid fund shall assume the liabilities of the dissolved medical aid fund.
- (2) The amalgamation of two or more licensed medical aid funds or the transfer of assets and liabilities under this Act shall not affect the rights of a creditor of a party to the transaction.

(3) A person who contravenes any provision of this Part is liable to an administrative fine not exceeding P50 000, as may be imposed by the Regulatory Authority.

PART XVIII — *Inspections and Investigations*

78. (1) The Regulatory Authority may, by instrument in writing, appoint a person to be an inspector or an investigator.

Appointment
of inspectors
and
investigators

(2) An inspector or investigator, when exercising a power conferred by this Act, shall, on reasonable demand, produce his or her identity card for inspection.

79. (1) An inspector may at any time inspect the affairs of a person who is, or at any time has been, licensed or approved under this Act, to check whether the person —

Inspections

(a) is complying or has complied with the financial services laws and the provisions of this Act;

(b) satisfies criteria or standards set out in or made under financial services laws; or

(c) is or has been involved in financial crime.

(2) For the purpose of such an inspection under subsection (1) an inspector may —

(a) enter any premises used or apparently used by the entity for business purposes, at any reasonable time; and

(b) inspect and make copies, or take extracts from, any relevant records, documents or items in the premises under paragraph (a).

(3) A controller, officer or an employee of an entity under this Act shall afford an inspector full access to the premises, records and documents of the entity that are relevant to the inspection.

(4) A person who contravenes subsection (3), commits an offence and shall be liable to a fine not exceeding P 2500 for each day on which the refusal or failure to comply occurs or continues to occur, up to a maximum period of 90 days, to be imposed by the Regulatory Authority.

(5) Where a person continues to contravene subsection (3), the Regulatory Authority shall, after a period of 90 days, revoke the licence with immediate effect.

80. (1) This section shall apply if an investigator —

Investigations

(a) has reasonable grounds to believe that —

(i) an offence under a financial services law has been or may have been committed, or

(ii) a licensed medical aid fund is not complying with, or has not complied with, a financial services law; and

(b) suspects, on reasonable grounds, that a person has in its possession or under its control anything that may afford evidence relevant to the matter.

(2) For the purpose of investigating the offence or suspected offence, the investigator may do any of the following —

- (a) subject to subsection (7), enter any premises used or apparently used by the licensed medical aid fund for business purposes, at any reasonable time and search for any record, document or other thing that the investigator considers may be relevant to the investigation;
 - (b) inspect and make copies of, or take extracts from, and where necessary in an appropriate case to take possession of, such records, documents or things;
 - (c) give a direction orally or in writing to the licensed medical aid fund, to a controller or employee of the medical aid fund, or to the relevant person, to produce the relevant evidence to the investigator as specified in the direction;
 - (d) give a direction orally or in writing to a relevant person to do any of the following —
 - (i) produce to the investigator, at a reasonable time and place specified in the direction, any relevant evidence,
 - (ii) give the investigator explanations or further information about the relevant evidence, or
 - (iii) attend before the investigator at a reasonable time and place specified by the investigator and answer under oath questions relating to the matter.
- (3) A licensed medical aid fund, its controllers, officers or employees, shall allow an investigator full and free access to the premises, records and documents of the institution as are relevant to an investigation under this section.
- (4) A person who, without reasonable excuse, refuses or fails to comply with a direction in terms of subsection (2) shall be liable to such an administrative penalty not exceeding P5 000 for each day on which the refusal or failure to comply occurs or continues to occur, up to a maximum period of 90 days, to be imposed by the Regulatory Authority.
- (5) Where a person continues to contravene subsection (2) after a period of 90 days, the Regulatory Authority shall revoke the licence with immediate effect.
- (6) A person who says anything, in answering a question put to the person by an investigator in terms of this section that —
- (a) the person knows to be false or misleading in a material particular; or
 - (b) is reckless as to whether it is false or misleading in a material particular, commits an offence and is liable to a fine not exceeding P100 000.
- (7) An investigator shall not enter any premises in terms of subsection (2) (a) unless —
- (a) with the consent of the person apparently in charge of the premises at the time of entry;
 - (b) in accordance with a warrant issued under subsection (8); or
 - (c) in an emergency, under subsection (10).

(8) A warrant for the purposes of this section shall be a warrant issued by a magistrate on application by an investigator.

(9) A magistrate shall not issue a warrant under this section unless satisfied that this section applies to the case, as provided in subsection (1).

(10) An investigator may enter premises and exercise powers under this section without the consent mentioned in subsection (7) (a) or a warrant mentioned in subsection (8) in an emergency, only if there are reasonable grounds to suspect that it is necessary to do so to prevent loss or destruction of, or damage to, relevant evidence.

(11) The provisions of this part shall, with necessary modifications, apply to a medical aid fund broker and an administrator.

PART XIX — *Winding up*

81. (1) The Regulatory Authority shall approve a resolution, demand or other step to wind up a medical aid fund.

Winding up

(2) The Regulatory Authority may apply to the High Court for an order that a medical aid fund be wound up where —

(a) a statutory manager has been appointed to the medical aid fund; and

(b) the Regulatory Authority is satisfied that the medical aid fund is insolvent and cannot be restored to solvency within a reasonable period.

(3) An application to the High Court for winding up that is not made by the Regulatory Authority shall be approved by the Regulatory Authority.

(4) The Regulatory Authority shall give approval in terms of subsection (3) if —

(a) the medical aid fund's licence is revoked; or

(b) the Regulatory Authority is satisfied that adequate provision has been made to protect the interests of the members of the medical aid fund.

(5) The provisions of this part shall, with necessary modifications, apply to a medical aid fund broker and an administrator.

82. (1) A medical aid fund may, by way of resolution from its members in an annual general or a special general meeting, apply to the Regulatory Authority for voluntary winding up.

Voluntary
winding up

(2) Notwithstanding the provisions of any other written law, a medical aid fund shall not be wound up voluntarily without the written consent of the Regulatory Authority.

(3) The Regulatory Authority may authorise a medical aid fund to wind up voluntarily, where the medical aid fund is solvent and submits a declaration to the effect that arrangements satisfactory to the Regulatory Authority have been made by the medical aid fund to meet all its obligations to its members, prior to the winding up.

- (4) Where a medical aid fund has received the authorisation of the Regulatory Authority under subsection (3), the medical aid fund shall —
- (a) immediately cease to do business, retaining only the power to carry out the necessary medical aid fund business for the purpose of effecting an orderly winding up; or
 - (b) make necessary arrangements to discharge its obligations to its members; and wind up all operations undertaken.
- (5) A medical aid fund shall —
- (a) not later than 30 days from receipt of an authorisation under subsection (3), send a notice of voluntary winding up, detailing such information as the Regulatory Authority may specify, to all members, creditors and other persons entitled to the funds or assets held by the medical aid fund; and
 - (b) cause a notice of the voluntary winding up to be published in such manner as the Regulatory Authority may specify.

PART XX — General Provisions

Issue of
directions

83. (1) If it appears to the Regulatory Authority that an entity under this Act —
- (a) has contravened a financial services law;
 - (b) is likely to contravene a financial services law;
 - (c) is conducting its affairs in an improper or in a financially unsound way;
 - (d) is causing or promoting instability in the financial system, or is likely to do so; or
 - (e) is involved in financial crime,
- the Regulatory Authority may give the entity written direction as to the way in which the affairs of the entity are to be conducted to protect the interests of the members.
- (2) Without limiting subsection (1), a direction may require an entity under this Act to do any of the following —
- (a) to comply with the whole or a specified part of a financial services law;
 - (b) to cause a person (such as an auditor) chosen by the Regulatory Authority to audit the records of the institution, at the expense of the institution, and give the report to the Regulatory Authority;
 - (c) to ensure that a specified controller or employee of the institution does not take part in the management or conduct of the business of the institution except as permitted by the Regulatory Authority;
 - (d) to appoint any person to an office specified in the direction;
 - (e) to remove an auditor or actuary of the institution from office;
 - (f) not to borrow a specified amount, or any amount;
 - (g) not to pay a dividend;
 - (h) not to pay or transfer an amount to a person, or create an obligation (contingent or otherwise) to do so;

- (i) not to undertake a financial obligation on behalf of another person; and
 - (j) to take any other action the Regulatory Authority considers necessary or desirable to deal with the case in the interests of the institution, the clients of the financial institution or the financial system.
- (3) A direction may include a direction to remove a controller or officer of the institution from office but only if the Regulatory Authority is satisfied that —
- (a) either —
 - (i) the institution has contravened a financial services law or been involved in financial crime, and
 - (ii) the controller or officer was knowingly concerned in the financial crime; or
 - (b) the controller or officer has contravened a financial services law or has been knowingly concerned in financial crime whether or not related to the institution.
- (4) A direction in terms of subsection (2) not to pay or transfer an amount shall not apply to the payment or transfer of money under an order of a court or a process of execution.
- (5) A direction in terms of this section may specify the time by which, or period during which, it is to be complied with.
- (6) An entity under this Act that has been given a direction in terms of this section shall comply with it despite anything in its constituting documents or rules, and despite any contract or arrangement to which it is a party.
- (7) A direction in terms of this section shall not be a ground on which a person may terminate, repudiate or cancel a contract with the institution, accelerate a debt under such a contract or close out a transaction with the institution, despite any provision to the contrary in any document.
- (8) The Regulatory Authority may revoke a direction at any time, by written notice to the institution concerned.

84. (1) Subject to subsection (2), the Regulatory Authority may by notice, exempt a medical aid fund, an administrator, a medical aid fund broker or a managed care organisation from any of the provisions of this Act.

Exemption
from provisions
of Act

(2) An exemption made under subsection (1) shall not apply to sections 3, 4, 12, 13, 17, 22, 23, 25, 27, 30, 37, 38, 39, 40, 41, 46, 47, 51, 53, 54, 56, 57 and 60 of this Act.

85. (1) Any person who fails to comply with any provision of this Act after an imposition of a fine, in the same area of non-compliance, is liable to an administrative fine not exceeding P5 000, as may be imposed by the Regulatory Authority, for each day the contravention occurs, up to a maximum of 90 days, after which the offending party's licence or accreditation shall be revoked by the Regulatory Authority.

General
penalties

Regulations

Transitional
provision

(2) Any person who contravenes any provision of this Act where no specific penalty is provided is liable to an administrative fine not exceeding P100 000, as may be imposed by the Regulatory Authority.

86. The Minister may, in consultation with the Regulatory Authority, make regulations for the better carrying out of the objects and purposes of this Act and for giving effect to its objectives, principles and provisions.

87. (1) Any person who, prior to the commencement of this Act, other than a company registered under the Companies Act, was authorised to carry on the business of a medical aid fund, shall within a period of six months after the commencement of this Act make an application to the Regulatory Authority for licensing.

(2) Any company registered under the Companies Act, who prior to the commencement of this Act was authorised to carry on the business of a medical aid, shall within a period of 36 months, after the commencement of this Act —

(a) make an application to the Regulatory Authority for licensing;

(b) change its operational model to that of not for profit; and

(c) comply with the provisions of this Act.

(3) Any person who, prior to the commencement of this Act, carried on the business of an administrator or a medical aid fund broker shall, within a period of six months after the commencement of this Act, make an application to the Regulatory Authority for licensing.

(4) A trustee of a medical aid fund who has served for period of six years or more before the commencement of this Act shall have his or her tenure terminated automatically 12 months after the commencement of this Act.

(5) A medical aid fund that is in existence at the commencement of this Act shall meet the minimum requirement of 1500 members within 24 months of the commencement of this Act.

(6) Any fines imposed by the Regulatory Authority before the coming into operation of this Act, shall continue as if imposed under this Act.

(7) Any decision or action taken or purported to have been taken or done by the Regulatory Authority before the coming into operation of this Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been taken or done under the corresponding provisions of this Act.

(8) Any right existing or any liability towards any person under any contract shall continue to be in force as if made under this Act.

(9) A person who fails to comply with the provisions of this section is liable to an administrative fine not exceeding P50 000 as may be imposed by the Regulatory Authority.