



AFADWU

AGRICULTURAL, FOOD AND ALLIED DEMOCRATIC WORKERS UNION
Fighting for workers' rights

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Competition Commission South Africa Health Market Inquiry

Date 21 April 2019

Subject: Submission to the CCSA HMI

2 Introduction:

AFADWU is an association of workers, to be known as the Food and Allied Democratic Workers Union, which is a Union as defined in the Labour Relations Act, 1995 ("the Act"), is hereby established.

The aims and objectives of the union are:

- to recruit and unite workers in order to share their economic and social welfare;
- to educate workers about their rights;
- to regulate relations between workers and employers, including any employers organisation;
- to promote the interests of members and workers in general;
- to plan and organize its administration and lawful activities;
- to affiliate with and participate in the affairs of any other domestic or international workers organisation or the International Labour Organisation for the benefit of the members of the Union;
- to promote, support or oppose any legislative or other measures affecting the interests of members;
- to use every legitimate means to entice workers, who are eligible for membership, to become members;
- to provide legal assistance to members and/or Officials in connection with their employment, where it deems it in the interest of the Union to do so;
- to establish and administer funds for the benefits of its members and their dependants;
- to encourage the settlement of disputes between members and employers or employer organisations by conciliation, mediation or arbitration or any other lawful means;
- to promote job security of members to advance their employment prospects and to serve their individual and collective interest;
- to do such lawful things as may appear to be in the interest of the Union and its members and which are not inconsistent with the objectives or any matter specifically provided for in this Constitution.

The Union is an independent unincorporated voluntary association with perpetual succession capable of entering into contractual and other relations and of suing and being sued in its own name, AFADWU is an organisation not for gain.

We trust that the Commission would consider our submission favorably as we advance the interests of members of medical schemes in so far as their rights to associate or disassociate themselves as provided for in the Bill of Rights in the Constitution of the Republic, this right is contained in the Labour Relations Act as well as the Regulations of the Medical Schemes Act. This submission is not about AFADWU members, it is about creating fairness in the Medical Aid Industry as it relates to the following two matters:

- (i) Regulation 28(1); and
- (ii) Regulation 28(7) of the Medical Schemes Act 131 of 1998

3 Background

- (i) Regulation 28(1) of the Medical Schemes Act 131 of 1998:
Regulation 28(1) of the Act states that *"No person may be compensated by a medical scheme in terms of section 65 for acting as a broker unless such person enters into a prior written agreement with the medical scheme concerned."*
- (ii) Regulation 28(7) of the Medical Schemes Act 131 of 1998
Regulation 28(7) states that *"A medical scheme shall immediately discontinue payment to a broker in respect of services rendered to a particular member if the medical scheme receives notice from that member (or the relevant employer, in the case of an employer group), that the member or employer no longer requires the services of that broker."*

4 Submission

- 4.1. **Regulation 28(1):** Medical Scheme's, among other things, can refuse to enter into broker agreements with certain brokers at will, without even having to give justification for their refusal. We made a submission to the Council for Medical Schemes in this regard and the Council has not provided clear guidelines in this regard. Please refer to our submission to the Council in June 2015 **marked 1**. The Council issued guide lines on Broker Contracts, however, some of the key principles were not addressed, to this end, small and medium size and largely PDI run brokers remain vulnerable.
- 4.2. **Regulation 28(7):** There is a long history of engagement with the Council for Medical Schemes on this provision, we will do our best to summarize without compromising substance.
- 4.3. Our interpretation of this section of the Regulations is that the member of a medical aid scheme has the primary right to appoint a broker of their choice, further, that the member may appoint a third party to assist that member to exercise their right to appoint a broker of their choice, a third party may be the employer, a trade union etc. our engagement with the Council in the

interpretation of this Regulation started around 2009, as far as we're concerned, the matter was resolved on the 07th July 2014 by the Appeals Committee of the Council of Medical Schemes through the Ruling marked 6 issued by the Appeals Committee after the Councils' interpretation was appealed.

- 4.4. Proper interpretation of Regulation 28(7) of the Act is vitally important given its implication on the Bill of Rights in the Constitution of the Republic in respect to the right of association and disassociation. Before we appealed the Councils' interpretation of Regulation 28(7), there were extensive engagements with the council marked 2-5. We are of the view that the Ruling referred to above agrees with us and the Council has failed to implement the ruling.
- 4.5. **Therefore, we propose that in its final report, the HMI directs:**
 - 4.5.1. The Council for Medical Schemes to revise its Guidelines on Broker Contracts to provide for instances where medical schemes refuse to enter into broker contracts or terminate broker contracts without valid compliance/non-compliance issues etc.
 - 4.5.2. The Council for Medical Schemes implements the Ruling referred to above by providing Guidelines on broker appointments.
 - 4.5.3. Before the review of guidelines on broker contracts and development of guidelines on broker appointment in line with the Ruling referred to above, the Council for Medical Schemes gives the Industry an opportunity to comment.

5 Conclusion

We are looking forward to a favourable outcome of the HMI, further, we are available to present our submission to the HMI should it be required.

In all communications to us regarding this submission, please copy **buti@sigc.co.za**.

Yours Faithfully;
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General Secretary

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