

## Draft law

# Regulating the activity of insurance intermediaries

Par Vaïk Müller le 31 May 2021

On 19 May 2021, the Federal Council adopted the [Dispatch on](#) the Federal Act on the Regulation of the Activity of Insurance Intermediaries. This draft law, which amends the [Federal Health Insurance Act \(LSAMal\)](#) and the [Federal Insurance Act \(LSA\)](#), aims to regulate the activity of intermediaries active in social health insurance and supplementary health insurance. As a reminder, the Federal Office of Public Health is responsible for supervising insurers active in social insurance, while the FINMA is responsible for supervising insurers active in supplementary insurance. This distinction is important with regard to the exercise of supervisory law instruments.

## Current situation

There is currently a [sector agreement](#) concerning intermediaries, drawn up by [Santésuisse](#) and [Curafutura](#). It came into force on 1 January 2021. Its objectives include (i) limiting the amount of commissions paid to intermediaries, (ii) renouncing cold calling, and (iii) improving the quality of advice. This agreement is based on Art. [19 para. 3 LSAMal](#) and [31a LSA](#). It applies to all health insurance funds (Art. [2 LSAMal](#)), as well as to insurers offering supplementary insurance (Art. [2 para. 1 let. a and b LSA](#)) provided that they have acceded to the agreement. The latter is also supplemented by a [set of regulations](#) on sanctions and the related procedure. The non-binding nature of these rules has been deemed insufficient, so that under certain conditions the bill intends to give the Federal Council the power to make certain points of the agreement binding by means of an ordinance, including for insurers who have not adhered to it.

## Concept of ‘insurance intermediary’

The concept of ‘insurance intermediary’, which currently appears in Art. [35 para. 1 OSAMal](#), would be transferred to the LSAMal (Art. 19a P-LSA), as is currently the case in the LSA. The Message specifies that this notion is broader than that used in the agreement, since it also covers persons linked to the insurer by an employment contract and whose activity consists of acquiring new customers.

## Powers of the Federal Council

The new Art. 19b P-LSAMal and 31a P-LSA would stipulate that the Federal Council may, at the request of insurers representing at least 66 % of the insured, by means of an ordinance, make binding, in the field of social/supplementary health insurance, for all insurers, the regulations of

the points of the agreement concerning :

- the prohibition of telephone canvassing of persons who have never been insured with them or who have not been for some time (*cold calling*). The agreement defines cold calling as any initial contact made with potential customers with whom there is no customer relationship or who have not been customers for more than 36 months, who have chosen to *opt out* or for whom the contact is not due to a recommendation from a third party known to the potential customer ;
- initial and continuing training (product knowledge) for intermediaries and the obligation for an insurer to work only with intermediaries who have received sufficient training. The Message specifies that insurers are nevertheless free to choose the training in question, provided that it is of a nature to achieve its objective ;
- the limitation of remuneration for the activity of insurance intermediary, which must be set according to the rules applicable in business economics ; and
- the drafting and signing of a report for the advisory interviews, which may be drawn up electronically. The Message adds that the signing of the report constitutes agreement on the part of the insured person to the proposal that the intermediary forwards to the insurer and confirms in particular that the interview was not obtained through cold calling.

## **Supervisory law instruments and sanctions**

For **social insurers**, the bill provides for the possibility for the supervisory authority, in the event of non-compliance with the binding rules, to prohibit the insurer from remunerating intermediaries with whom it is not bound by an employment contract and to order a limitation on the costs of prospecting for new clients. These measures could be taken for a maximum period of one year (art. 38a P- LSAMal).

For **private insurers**, the bill provides for the possibility for FINMA, in the event of non-compliance with the legally binding rules, to refuse to approve an insurer's tariffs, to order the adaptation of existing tariffs and to take security measures within the meaning of art. [51 LSA](#) (art. 38 para. 2 P-LSA). These measures would include, for example, the right to demand the dismissal of senior management and a ban on carrying out any insurance-related activity for a period of up to five years, as well as the removal of an intermediary from the register within the meaning of art. [42 LSA](#).

It should be noted that, in addition to these instruments, the bill also provides for criminal sanctions in the event of infringements of a regulation that has binding force (art. 54 para. 3 let. h and 4 P-LSAMal and art. 86 para. 1bis and 2 P-LSA).

## **Conclusion**

The bill comes as no surprise from a legislative perspective, and the rules it sets out in both the LSAMal and the LSA are part of a certain continuity in terms of regulatory action in the insurance sector (see in this regard the [Message of the](#) Federal Government concerning the partial revision of the LSA). Moreover, the existence of the industry agreement, widely adopted by the industry, should facilitate the implementation of these new rules.

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