



13 February 2020

**The Health Industry Forum of Namibia  
C/o Anthea van Wyk  
Via email.: [Antheavw@namoncology.com](mailto:Antheavw@namoncology.com)**

Dear Ms van Wyk

### **COMMENTARY ON PROPOSED PSEMAS CONTRACT**

We refer to the proposed PSEMAS contract which you provided to us on 3 February 2020.

We sincerely appreciate your effort to obtain input and pursue further consultations with PSEMAS.

We do record that to date PSEMAS refuse to confirm to the NPPF that a formal consultative phase is included in the contract review process. Such formal consultative process was done two years ago, at the level of the Office of the Prime Minister. The NPPF finds the lack of consultation by PSEMAS unacceptable.

The NPPF provides comments herewith in the hope that they will be thoroughly discussed with and considered by PSEMAS. The NPPF is however not convinced that this will happen, and reserves its rights in this regard, especially taking into account the absence of a formal consultative process. Until this changes, the NPPF will continue to inform its members that PSEMAS has refused such consultative process.

#### **Comments on specific sections**

##### General

The page numbers in the Table of Contents do not match the content on the respective pages.

##### Ad clauses 3.8 and 3.10

Permanent healthcare practices are not feasible in most small towns in Namibia. The only way in which healthcare providers can extend their services to these towns is by way of satellite (regarded as multiple) practices. We are of the opinion that a limitation on healthcare providers with multiple practices is not only baseless and illogical, but an outright, purposeful denial by PSEMAS of healthcare services to rural patients. See also clause 3.8 in this regard. We urge PSEMAS to remove clause 3.10 and reconsider the practical implications of clause 3.8.

#### Ad clause 5.4

What is the purpose of delaying payment of the claim for another 30 days after it was assessed and validated? Also, a recent survey amongst 1,000+ healthcare providers found that healthcare providers are very frequently paid later than stipulated in the agreement.

We urge that payment should be made within five days after validation of claims, and that sufficient remedy is included for late payments. At the time of submitting these comments, PSEMAS payments are again late, presumably because government has a cashflow problem, and waiting for tax revenue by the end of February, but healthcare providers cannot pay their taxes due to late payments by PSEMAS. Only one of these parties will be regarded as having acted unlawfully while the other is solely responsible for creating this problem.

#### Ad clause 6

The contract indicates that the tariff will be included in Annexure B. Annexure B was not provided. The NPPF reserves its rights in this regard. PSEMAS has been informed that close to 90% of its contracted service providers regard the current tariffs as unsustainable. This directly affects service delivery to PSEMAS patients, out of no fault of the healthcare providers. If they cannot practice sustainably, they will close down, and all parties suffer.

The levy is payable to the healthcare provider. Any person has the right to waive any debt owed to him/her. No party may force such person to unwillingly pursue a debt. No clause forcing a healthcare provider NOT to exercise such right to waive a levy payment is valid. In in this regard see also clauses 5.3.6, 5.11 and 5.12.9.

#### Ad clause 10.9 and 10.10

This clause abolishes the laws governing contracts. I contract cannot provide one party powers to unilaterally change any term in that contract. There can then be no consensus between the parties, and the parties are no longer in a contractual relationship. It appears as if government is trying to impose some sort of unilateral law through a contractual instrument, which is simply not possible. We urge PSEMAS to remove this clause.

Clause 10.10 ads insult to injury, as it clearly confirms that future amendments by PSEMAS will not be done on a basis of contractual consensus, but rather such amendments will be forced upon all contracted healthcare providers by way of blackmail. The parties who will suffer most will again be the PSEMAS patients.

#### Ad clause 11.1

This paragraph makes no logical / grammatical sense.

#### Ad clause 11.4

This clause is non-sensical and grammatically erroneous. It is not clear on exactly what grounds PSEMAS reserves the rights not to contract. As it stands now it can be interpreted as basically any basis PSEMAS finds appropriate. That is discriminatory and irresponsible.

The clause is furthermore obfuscated by the fact that it is a clause IN a contract stating that one party reserves the right NOT to ENTER into that same contract. All contractual clauses can only be binding ONCE the parties already entered into the contract.

If the clause is meant to exclude some healthcare providers working with work permits, it is submitted that this will be arbitrary discrimination which is most likely unconstitutional. It will also serve to reduce healthcare services to PSEMAS patients.

If the aim of this clause is to curtail fraud, it is advised that PSEMAS does so through proper oversight and regular investigations into the administrator and PSEMAS personnel. All fraud is facilitated through these two offices. Punishing PSEMAS patients and honest healthcare providers legitimately working in Namibia, for the dishonesty of the administrator's and PSEMAS' employees is grossly unfair.

We look forward to your confirmation that the above matters have been considered by PSEMAS, and where PSEMAS refused to make amendments, that reasons are provide.

Please keep us informed of your progress in this regard, as we need to communicate the legal risks to our members.

Regards

**Eben de Klerk**

On behalf of the NPPF