



18/12/2024

Mr E Gariseb

General Manager: Insurance and Medical Aid Funds

egariseb@namfisa.com.na

REGULATION 7 OF THE MAF ACT

Dear Mr. Gariseb,

Thank you for meeting with NPPF on 13 December 2024 to discuss the way forward.

In previous communications, NPPF had addressed, by implication, why the approval of the Fund rules constitutes a violation of Regulation 7.

To clarify and support our position, please allow NPPF to present the following arguments, which elaborate on why this opinion is maintained and Regulation 7 retains its relevance.

A. Arguments Supporting the View That NAMFISA Cannot Approve Fund Rules

1. Violation of Regulation 7(2)

- Regulation 7(2) explicitly prohibits funds from imposing conditions that result in withholding or limiting payment based on circumstances not contemplated in the regulation.
- The addition of ICD-10 code requirements emanates from NAMAFA, which has no statutory authority over healthcare service providers. NAMAFA's mandate is to regulate **medical aid funds**, not the clinical operations of service providers. ICD-10 is regulating providers not Funds as required by Section 18 of the MAF Act and ignored to date to the detriment of Fund members.

- Since the ICD-10 code requirement stems from NAMAf's **ultra vires** action, it cannot be considered a valid basis for fund rules. As such, NAMFISA approving these fund rules would amount to endorsing a condition that indirectly violates Regulation 7(2).

2. NAMAf's Ultra Vires Actions

- NAMAf's insistence on requiring ICD-10 codes for claims constitutes regulatory overreach. There is no statutory mandate that authorizes NAMAf to prescribe clinical coding systems or regulate providers in this manner.
- NAMAf has instructed funds to incorporate these rules into their operational framework, effectively bypassing the statutory process and imposing requirements not grounded in the Medical Aid Funds Act or associated regulations.

3. NAMFISA's Role in Approving Rules

- NAMFISA, as the regulatory authority, is required to ensure that fund rules comply with statutory requirements and regulations.
- By approving fund rules that require ICD-10 codes as a condition for payment, NAMFISA is arguably complicit in enforcing a provision that stems from an unlawful directive (NAMAf's ultra vires instruction) and contravenes Regulation 7.

4. Unlawful Delegation of Authority

- Allowing a third party (NAMAf) to dictate fund rules undermines the statutory framework by introducing conditions that are not contemplated in the legislation.
- This sets a precedent for external entities to impose non-statutory requirements, which could destabilize the regulatory framework and conflict with the principles of administrative law.

B. Critical Points Challenging the ICD-10 Argument

1. Outdated and Replaced System

- ICD-10 has been officially replaced in Namibia by ICD-11, which is recognized as more comprehensive, user-friendly, and better suited for modern healthcare systems.
- Continuing to mandate the use of an outdated system contradicts Namibia's national policy transition to ICD-11. Funds and healthcare providers are already adapting to ICD-11, making ICD-10 a redundant and regressive requirement.

2. Lack of Evidence Supporting ICD-10 for Curbing FWA

- NAMAFA claims that ICD-10 helps mitigate fraud, waste, and abuse, but this assertion lacks empirical support.
- In Namibia, funds using older or alternative systems reportedly achieve fraud control outcomes comparable to, or better than, those in South Africa, where ICD-10 is in use and there is no discernible difference between claim patterns as the following statistics released by the Council of Medical Aid Schemes in SA points out:

Membership grows, but coverage declines

According to the latest CMS Industry Report, only 14.7% of the population belonged to a medical scheme in 2023, down from 16% in 2000. – **Moneyweb** (27 Nov 2024)

“Despite the decline in overall coverage, total healthcare expenditure on benefits paid by medical schemes, rose by 9.44% in 2023, reaching R239bn. This increase pushed the average annual claim per beneficiary to R26,404.79, an 8.2% jump from the previous year. Hospital services continue to dominate healthcare expenditure, accounting for 35.56% of total spending. specialist care (27.67%), medication (14.49%), and supplementary health services (8.4%) follow as the largest expenditure categories.”

- Without evidence proving ICD-10's superiority, imposing its use cannot be justified as a necessity.

3. NAMAFA Benchmark Tariff and System Backlogs

- The NAMAFA Benchmark Tariff is outdated, based on the 2003 tariff framework from the South African Medical Association (SAMA), which has not been

updated to reflect scientific cost calculations, or modern medical practices.

- In 2014, there was already a backlog of 1,000 item codes, which highlights the inadequacy of the system to meet the needs of a modern healthcare environment. These inefficiencies undermine any claim that ICD-10 is beneficial or relevant for current healthcare administration.

4. Infringement of Copyrights

- NAMAF's reliance on copyrighted materials (e.g., the outdated SAMA tariff) without proper authorization raises legal and ethical concerns.
- This further discredits NAMAF's role in dictating operational requirements like ICD-10, as its practices may violate intellectual property rights.

5. IT Systems Limitations:

- Many funds in Namibia use IT systems incapable of effectively processing or interpreting ICD-10 codes. Implementing an outdated system that existing technology cannot support adds unnecessary complexity and inefficiency.
- Transitioning to ICD-11, already aligned with national policy, would likely be more cost-effective and beneficial for stakeholders.

6. Funds' Financial Contributions to NAMAF:

- Funds already pay a certain amount per main member to NAMAF, expecting meaningful benefits in return. Requiring the use of ICD-10 provides no tangible benefit and instead imposes operational and administrative burdens on funds and service providers.

C. Implications for NAMFISA's Role

1. NAMFISA's Mandate to Safeguard Stakeholders:

- NAMFISA's regulatory role includes ensuring that fund rules serve the best interests of members and dependents without imposing unjustified or burdensome conditions.
- Approving rules that mandate the use of an outdated system like ICD-10, especially when replaced by ICD-11, undermines this mandate. NAMFISA

must scrutinize whether such rules genuinely serve a legitimate purpose or merely reflect NAMAF's overreach.

2. Ultra Vires Nature of NAMAF's Directive:

- NAMAF's instruction to include ICD-10 requirements in fund rules falls outside its statutory mandate to regulate medical aid funds. Imposing this directive indirectly through fund rules constitutes regulatory overreach and circumvents Namibia's established healthcare policies.

3. Conflict with Namibia's Transition to ICD-11:

- NAMFISA must consider Namibia's adoption of ICD-11, which represents the current legal and policy framework for clinical coding. Approving rules that enforce ICD-10 conflicts with the national policy and undermines the regulatory coherence of the healthcare sector.

4. Administrative Law Principles:

- Under administrative law, NAMFISA has a duty to ensure decisions are rational, reasonable, and aligned with statutory and policy frameworks. Approving outdated and burdensome rules like those requiring ICD-10, when they contradict national policy and lack evidence of efficacy, could be legally challenged as arbitrary or irrational.

D: Key Points from the Fund Rules

1. Scope of Rules

Section 30 outlines provisions related to the governance of the fund, including trustee roles, benefit structures, administrative processes, and membership terms. There is no mention of regulating clinical practices or imposing obligations on healthcare providers.

2. Limitation of Authority:

- Section 30(l) and (m) pertain to setting minimum and maximum benefits and payment directives but do not extend to clinical governance. These provisions

are focused on defining benefits for members rather than dictating how healthcare providers should operate or be regulated.

- The fund rules are binding on the fund, its members, dependents, trustees, and employees (Section 30(3))—not on external healthcare providers.

3. **Exclusion of Clinical Governance:**

- The rules do not empower funds to create or enforce clinical governance mechanisms over practitioners, which would require a separate statutory mandate or explicit legislative framework.
- Any directive from NAMAF requiring funds to introduce clinical governance measures would therefore fall outside the scope of the existing fund rules unless explicitly included and lawfully approved.

4. **Regulation Alignment**

Regulation 7 explicitly prohibits funds from imposing conditions that limit or withhold benefits in a manner not contemplated by the regulation. Imposing ICD-10 as a prerequisite for payment, based on NAMAF's directive, could be interpreted as an unauthorized condition not supported by Section 30 or the Regulation.

5. **Barrier for Young, Healthy Members:**

- Section 30(d), which prohibits distributing surplus funds to members, may discourage young, healthy individuals from joining, as they may perceive limited personal benefit. This structural issue points to the need for reforms to make funds more attractive to younger demographics.

E. Conclusion and Recommendations

The arguments presented against ICD-10 significantly weaken NAMAF's justification for its imposition through fund rules. NAMFISA should:

1. **Limitations of inclusion in Fund Rules**

- There is no basis for funds to introduce clinical governance mechanisms or enforce NAMAF directives regarding ICD-10 codes.
- Any such requirement would need explicit inclusion in the rules, aligned with statutory authority and Regulation 7.

- NAMFISA’s approval of fund rules incorporating these directives could be challenged as inconsistent with the legal framework.
2. **Reject ICD-10 Requirements:** NAMFISA should refuse to approve fund rules that mandate ICD-10, given its outdated nature, the lack of evidence supporting its effectiveness in curbing FWA, and the national adoption of ICD-11.
 3. **Advocate for ICD-11:** As ICD-11 is already implemented in Namibia, NAMFISA should guide funds to align with this updated system, ensuring consistency with national policy and modern healthcare standards.
 4. **Review NAMAF’s Actions:** NAMFISA should investigate NAMAF’s role in enforcing ICD-10 and assess whether its actions constitute overreach or a violation of statutory mandates.
 5. **Ensure Compliance with Regulation 7:** NAMFISA must ensure that fund rules comply with Regulation 7 by not imposing unjustified conditions that do not demonstrably benefit members or align with the statutory framework.

By taking these steps, NAMFISA would fulfil its duty to protect the interests of fund members, ensure regulatory compliance, and promote rational and evidence-based healthcare policies.

F. Recommendations for the Way Forward

As previously highlighted, a reform of the system is essential to address current inefficiencies and challenges. The following steps are proposed:

- **Implement a Contemporary Funding System:** Develop a modern funding system based on recent advancements, supported by proper licensing mechanisms that allow for regular updates to ensure the system remains relevant and effective.
- **Mandate NAMAF to Fulfil Its Regulatory Role:** Enforce NAMAF’s statutory obligation to regulate medical aid funds under Section 18, ensuring funds are appropriately governed and members have recourse mechanisms, which they presently don’t have.

- **Establish a Medical Control Board:** Create an inclusive medical control board that facilitates meaningful participation from all stakeholders, including healthcare providers, fund representatives, and regulators.
- **Legislate Against FWA and Fund Misconduct:** Empower the medical control board to implement robust legislation aimed at curbing fraud, waste, and abuse (FWA) by practitioners, while also addressing acts and omissions by medical aid funds.
- **Promote a New Funding Model:** Within the Medical Control Board legislation allow for the design innovative funding models that attract younger demographics to invest in medical aid funds, ensuring sustainable capital injection and fostering long-term member retention.

It is trusted that sufficient cause has been shown as to why the relevance of Regulation 7 should be upheld in the statutory process, and why NAMAf must be guided back to fulfilling its mandate under Section 18. This is critical to ensuring that NAMAf remains within its statutory purpose for the benefit of medical aid members.

Yours faithfully,



Dr Jürgen Hoffmann
CEO – NPPF
Cell: 081 1242884
Email: nppfmanagement@gmail.com