



06/06/2025

The Chair: Independent Principal Officer Forum

Ms Jo-Anne Crossmann

Via email: po@nmcfund.com

Dear Ms Crossman,

Ongoing Overreach by Medical Aid Funds and the Misapplication of the Benchmark Tariff Framework

We write to express our concern regarding ongoing overreach by several medical aid funds directed at members of the Namibian Private Practitioners Forum (NPPF). These actions raise significant questions about the legal authority and ethical practices underpinning funder conduct, particularly in relation to clinical data requests and the misapplication of NAMAF's benchmark tariff framework.

1. Legal Framework: Absence of Statutory Authority for Benchmark Tariffs

We refer to the position previously conveyed to the NAMAF Management Committee and reiterate our concern that NAMAF's public interpretation of its legal mandate—especially as stated in its recent press advertisements—is misleading and not supported by the law.

NAMAF appears to assert an inherited right to issue benchmark tariffs, allegedly rooted in practices of predecessor organisations such as NAMS, RAMS, and/or BHF. However, no such mandate exists in the Medical Aid Funds Act, 1995 (Act No. 23 of 1995), its predecessors—including the Medical Schemes Act, 1967 (Act No. 72 of 1967) and the Medical Aid Scheme for Government Service Extension Act, 1982 (Act No. 13 of 1982)—nor in any of the amendment Acts. These tariff-setting provisions were introduced under a different statutory regime that predates Namibia's independence and has since been largely repealed or rendered inapplicable under the current legal framework.

Despite NAMAF's claim that the benchmark is non-binding, the MC failed to disclose that this benchmark lacks contemporary relevance, has not undergone a scientifically rigorous revision since 2003, and is still based on SAMA codes that remain under copyright

protection. An independent cost study commissioned by the NPPF in 2014 exposed serious methodological shortcomings in NAMAFA's tariff-setting practices. After 2014 NAMAFA hid the tariffs behind a digital wall, to avoid independent scrutiny. The current model enables funders to dominate and manipulate a tariff structure that serves their financial interests—despite having no statutory mandate to do so.

2. Clinical Data Requests and De Facto Regulation

Parallel to this, NAMAFA and several funds have adopted practices that amount to the assumption of clinical governance powers without statutory mandate or oversight. Specifically, funds are requesting detailed clinical information, ostensibly to assess medical necessity. In practice, this enables interference in clinical decision-making in ways that appear aligned more with internal cost-containment policies than with patient care.

Practitioners acknowledge the potential value of clinical data in system planning, but any such data sharing must occur within a transparent, accountable, and lawful framework—none of which currently exist.

The NPPF's stance below is informed by queries we have received and is based on prevailing legal norms, ethical obligations, and the evolving policy environment in Namibia.

3. Key Legal and Ethical Positions

a) Patient Consent and Health Information Disclosure

Legal Context: Namibia currently lacks a dedicated data protection statute equivalent to South Africa's POPIA, although draft legislation is under consideration. In the interim, obligations relating to patient confidentiality are governed by:

- The Namibian Constitution (Article 13: Privacy),
- The Health Professions Act, 2024 (Act No. 16 of 2024),
- The HPCNA Code of Conduct, and
- Relevant international human rights instruments to which Namibia is a signatory.

Ethical Context: Healthcare practitioners have an ethical and professional obligation to maintain confidentiality. Disclosure requires informed consent, unless compelled by law (e.g. via court order).

NPPF Position: Until a binding statutory framework exists, informed patient consent remains legally and ethically required. A contractual waiver between a patient and a fund does not supersede the practitioner's obligations under the Health Professions Act. Clinical information may only be disclosed when such disclosure is:

- Lawful,
- Consensual, and
- Limited to the minimum necessary.

b) Clinical Motivations Without Compensation

Current Practice: Funds often require practitioners to provide detailed clinical motivations without offering compensation for the time or expertise involved.

Legal Position: There is no legal requirement for practitioners to provide unpaid clinical motivations. In the absence of contractual obligation or fair compensation, such requests may constitute **unjust enrichment** or breach basic principles of labour and commercial fairness.

NPPF Position: This practice is exploitative and unsustainable. Practitioners are advised to:

- Record and **invoice** these requests as "administrative medical services", and
- Refer refusals to compensate to NPPF for escalation.

c) Refusal to Accept Consent Templates

Context: In some instances, funds have refused to accept practitioner-initiated patient consent templates. This reflects systemic ambiguity about data-sharing norms and a problematic reliance on non-binding processes promoted by NAMAf, which lacks regulatory authority under the Medical Aid Funds Act.

Legal Implications: A funder's refusal to engage with a consent process does not absolve the practitioner of their legal and ethical duty to safeguard patient confidentiality. Moreover, since NAMAf has not issued any binding rules under Section 18(2) of the Medical Aid Funds Act, it has no mandate to regulate or enforce funds' acts or omissions. Similarly, NAMFISA's remit is limited to financial oversight—it does not extend to clinical governance, nor has it responded substantively to questions regarding alternative, patient-centric financing models. Its endorsement of NAMAf's assumed regulatory role further erodes public trust and patient protection.

NPPF Recommendation to practitioners:

- Continue to require informed patient consent for all clinical disclosures;
- Refuse administrative demands that are not grounded in law or contractual agreement;
- Document obstructive behaviour by funders that compromises access to care;

- Encourage patients to lodge formal complaints directly with the Ministry of Health and Social Services (MoHSS), as the competent authority responsible for oversight of healthcare access, ethics, and systemic governance.

4. Structural Concerns and Governance Failures

These issues reflect deeper governance failures in the administration of private healthcare funding. NAMAF currently exerts disproportionate influence over medical aid funds through non-binding guidelines that are treated as de facto rules. This effectively reverses the statutory hierarchy: funds are managing their mandate under NAMAF's influence, rather than NAMAF fulfilling a support role to independently governed funds.

The NPPF is actively advocating for structural reform, including the establishment of a Medical Control Board under statute, and we have escalated these issues to the Office of the Prime Minister, the Ministry of Health, and other oversight bodies.

5. Conclusion and Forward Position

While NPPF has suspended direct engagement with Funds until NAMAF reimburses the unlawful practice number renewal fees and structural reforms are instituted, we remain open to forwarding this correspondence to the IPO Forum and the Ministry of Health and Social Services for their urgent attention.

As long as funders continue to operate in misalignment with administrative law, statutory obligations, and international practice, practitioners will continue to resist such overreach—both individually and collectively. This resistance is not antagonistic, but necessary to preserve ethical integrity, clinical autonomy, and the sustainability of private healthcare in Namibia.

We trust that funds will begin to reassess the legal and operational credibility of NAMAF's prevailing narrative and take appropriate steps toward lawful, transparent, and accountable practice.

Yours faithfully,



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