



GUIDE TO PRACTITIONERS ON ALLEGED MEDICAL AID FRAUD

Dear Practitioners

Council and its Professional Boards have for a long time been inundated with outcries from professionals across all Professional Boards about being subjected to extortion and being coerced by medical schemes into signing acceptance of liability and agreements to refund the schemes for funds allegedly paid fraudulently to the practitioner.

From concerns raised by practitioners about this matter, Council wishes to advise practitioners as follows:

1. Access to the member's clinical records held by a practitioner by a medical scheme?

In terms of Regulation 15J(2)© of the Medical Schemes Act Regulations, a medical scheme is entitled to access any treatment record held by a managed healthcare organisation or healthcare provider and other information pertaining to the diagnosis, treatment and health status of the

beneficiary in terms of a contract entered into pursuant to regulation 15A, but such information may not be disclosed to any other person without the express consent of the beneficiary. This entitlement is subject to the prescribed requirements for disclosure of confidential information. Council advises practitioners to further obtain written consent from their patients to disclose confidential information.

2. Prosecution of practitioners who are allegedly involved in fraudulent activities?

In terms of Section 66(2) of the Medical Schemes Act, a practitioner registered under the Health Professions Act may not be prosecuted under the Medical Schemes Act as any act of unprofessional conduct by practitioners registered with the HPCSA is punishable under the Health Professions Act. Section 16 of the Medical Schemes Act places an obligation on Council for Medical Schemes to report cases of improper or disgraceful conduct (Unprofessional Conduct) to a medical scheme by practitioners registered with HPCSA to the HPCSA as the statutory body which has jurisdiction over practitioners registered under the Health Professions Act. Where a criminal offence has been committed, the Council for Medical Schemes is obliged to refer such a matter to the National Prosecuting Authority. The medical schemes cannot discipline or prosecute health practitioners for unprofessional conduct, but may report practitioners to the HPCSA for unprofessional conduct or report any criminal offence to the South African Police Service (SAPS).

Section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) requires that anyone in position of authority or an entity (medical schemes, HPCSA, etc.) that suspects or has knowledge that a practitioner has been involved in a fraudulent activity that involves an amount of R100 000 or more to report such knowledge or suspicion to the South African Police Service. Failure of such a person or entity to comply with this provision of the law constitutes an offence under the Act mentioned above.

Practitioners are advised that those found guilty of unprofessional conduct involving fraud amounting to R100 000 or more will not only be subjected to penalties imposed in terms of Section 41 of the Health Professions Act but Council will also report such practitioners to the SAPS in terms of the Prevention and Combating of Corrupt Activities Act.

3. Recovery of benefits paid bona fide to a practitioner who was not entitled to receive such benefits

Section 59(3) of the Medical Schemes Act empowers the medical scheme to recover any amount which has been paid bona fide to which a practitioner is not entitled to or any loss which has been sustained by the medical scheme through theft, fraud, negligence or any misconduct which comes to the notice of the medical scheme.

The question is: How does the medical scheme recover such an amount?

- a. By deducting such amount from any benefit payable to the health practitioner. Council advises practitioners that the agreements they

reach with the medical schemes should be as prescribed in terms of this section of the Medical Schemes Act.

Or

- b. Through any other lawful arrangement made with a practitioner to refund the scheme.

4. Legal status of payment arrangements made between health practitioners and medical schemes

The payment arrangements between practitioners and the scheme are legally binding if they are lawful. For example an unlawful agreement is one which is reached with a condition that the medical scheme will not report a practitioner to any organ of state, including the HPCSA on a matter that such an organ of state has jurisdiction over. Although medical schemes may exercise their choice in terms of reporting unprofessional conduct to the HPCSA, they have a duty in terms of common law and section 66 of the Medical Schemes Act to report practitioners to the HPCSA.

5. Withholding of claims due to practitioners by medical schemes

In terms of Section 59(2) of the Medical Schemes Act, the scheme should pay a claim either to the member or practitioner within 30 days of receiving the claim. According to Regulation 6 of the Medical Schemes Act Regulations, if a medical scheme is of the opinion that an account, statement or claim is erroneous or unacceptable for payment, it must inform both the member and the relevant health care provider within 30 days after receipt of such account, statement or claim that it is erroneous

or unacceptable for payment and state the reasons for such an opinion and the member or health practitioner has sixty days to correct and resubmit such account or statement. Where the medical scheme has failed to either notify the member or health care provider within 30 days that an account/statement/claim is erroneous or unacceptable for payment, OR fails to provide an opportunity for correction and resubmission, the medical schemes bears the onus of proving that such account/statement/claim is in fact erroneous or unacceptable for payment when there is a dispute. Practitioners are advised to report medical schemes who unlawfully withhold claims due to them to the Council for Medical Schemes.

Conclusion

Council acknowledges that the guidance provided here is not exhaustive and practitioners are advised to approach Council for further advice and guidance on the following e-mail that has been dedicated specifically to provide guidance to practitioners on ethico-legal matters.

Professionalpractice@hpcsa.co.za.

Council commits itself to a turnaround time of 10 working days to respond to any request for advice and/or guidance through the e-mail provided above.