# Analysis and Commentary on National Health Insurance Bill 2019

*(As introduced in the National Assembly (proposed section 76) and Published in the Government Gazette No. 42598 of 26 July 2019)*

27 NOVEMBER 2019

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# 1. WHO IS BONITAS MEDICAL FUND

1.1. Bonitas Medical Fund ("Bonitas" / "the Scheme") Bonitas Medical Fund is a medical scheme duly registered and carrying on the business of a medical scheme in terms of the Medical Schemes Act 131 of 1998 ("MSA"). Bonitas is the second largest open scheme in the country, providing medical scheme benefits to approximately 723 000 beneficiaries. Essentially, Bonitas is a funder of healthcare services for its members.

1.2. Bonitas has been established for 37 years. It has existed for long enough to have developed a rich heritage and a solid understanding of the healthcare industry in South Africa. Bonitas' team of experts is always looking at innovative ways to reduce rising costs, whether it's keeping in touch with the latest technology, managing members' care so lifestyle diseases are identified before they become chronic, or negotiating better rates for its members. In summary we take all ***reasonable steps*** to ensure that the ***interests of beneficiaries*** in terms of the rules of the medical scheme and the provisions of the Medical Schemes Act ***are protected at all times.***

1.1. CONTACT DETAILS:

[redacted]

## 2. INTRODUCTION

2.1. On 26 July 2019, the Minister of Health ("the Minister") published the draft National Health Insurance Bill, 2019 ("the Bill") for comment by end November 2019.

2.2. Bonitas thanks the Parliamentary Portfolio Committee on Health for the opportunity to make a written submission on this important Bill.

2.3. We note that National Health Insurance ("NHI") aims to achieve Universal Health Coverage ("UHC") for all South Africans and acknowledge that the NHI Bill is only one aspect on the journey towards UHC.

2.4. Practically speaking not all the perspectives can be sufficiently dealt with in a Bill whose primary focus is health care financing. Therefore, we stress the importance of considering NHI within the broader framework of health and related legislation that surrounds it.

2.5. Since the publication of "the Bill" considerable questions have been raised on the future of Medical Schemes, such as Bonitas. Scheme members to whom the Scheme ultimately belong have been left with more questions than answers.

## 3. OUR POSITION

3.1. Bonitas recognizes the socio-economic injustices, imbalances and inequities of the past, it is the intention of the Minister to improve the life expectancy and quality of life of all citizens. The Minister envisions that the Bill will provide for mandatory repayment of healthcare services in the country in pursuance to Section 27 of the Constitution.

3.2. A further purpose of the Bill is to give all citizens access to good quality healthcare, whilst ensuring financial protection from its costs by creating a single framework for the public funding thereof.

3.3. The Act, once promulgated, will apply to all public and private health establishments.

3.4. It is noted that NHI is a health financing system that is designed to pool funds to provide access to quality affordable personal health services for all South Africans based on their health needs, irrespective of their socio-economic status.

3.5. We wish to explicitly state that Bonitas supports the notion of UHC and sees this Bill as a positive progression towards UHC for South Africa.

3.6. Through the process of consultation afforded to all South Africans, we plead that our inputs will be favourable considered in enhancing the various provisions as outlined in the Bill.

3.7. Bonitas believes that in ensuring that the noble goal of providing universal healthcare to all South Africans, a holistic and integrated approach should be considered so that the limited resources can be optimally utilized to ensure that access to healthcare is expanded, while at the same time ensuring that existing models and resources are not undermined, and that the ultimate beneficiaries (user as referred to under the proposed Bill), being the patients, are placed in a position to access healthcare services more effectively.

3.8. Bonitas supports the concept of NHI. However, in order for it to work effectively there are certain criteria that must be satisfied.

3.9. We trust that as previously communicated by the Department of Health ("DoH") that with the implementation of NHI, there will still be private medical schemes, although their roles may change.

3.10. We wish to affirm once again as per our previous submissions on NHI that it is our opinion informed by our experience that there is certainly a role for private medical schemes in supporting the goal of UHC.

## 4. COMMENTARY ON THE BILL

4.1. The intention and approach of our submission is not to dissect the Bill on each-and-every aspect and to be perceived as critical.

4.2. Bonitas as a Medical Scheme tasked to act in the best interest of members, we accordingly welcome this opportunity to make submissions as we do below, addressing the pertinent issues that impacts beneficiaries of health care services in South Africa.

4.3. Bonitas does not resist the reasoning behind the Bill in principle and agrees with the notion that the right of access to quality personal health care services in South Africa is currently disproportionate.

4.4. Bonitas is interested in the manner and degree the NHI will impact everyday lives of current and prospective members of medical schemes as well as the population in general. Furthermore, Bonitas considered the pressure the enactment of the Bill will have on state resources and infrastructure.

4.5. Various obligations are imposed on Government in terms of the practicalities of managing the National Health Insurance Fund ("the NHI / the Fund") and Bonitas submits that it is the implementation of the internal structures and the execution of the mandate that is unclear. Accordingly, it is without the benefit of all relevant information (including but not limited to how the Fund will be funded) that these submissions are made.

# 5. CONSTITUTIONAL MATTERS

5.1. The NHI Bill must be constitutional, not only in its provisions, but also in its approach to health care financing. The financing system that the Bill creates must recognise and respect the constitutional rights of individuals to have access to health care services. It must reflect the government's commitment to protect, respect, promote and fulfil this right, along with the other rights in the Bill of Rights.

5.2. The NHI Bill needs to be reviewed on a few aspects. These aspects included but not limited to -

(1) the language used in the legislation;
(2) the constitutional issues raised by the Bill;
(3) corporate governance of the NHI Fund;
(4) flow of funding from the Fund to service providers; and
(5) Maintenance of the purchaser/provider split throughout the national health system

5.3. Bonitas has identified the below aspects in the Bill that might impede the implementation of NHI. These are –

5.3.1. legal certainty and the rule of law – this relates to the language used in the Bill;

5.3.2. restrictions on the right of health professionals to choose and practice their profession; and

5.3.3. restrictions on the right of access to health care services in the Bill

5.4. The Bill should not restrict the power (right) of beneficiaries / user / patient to access health care services and medicines by saying that the Fund is the single payer and single purchaser of health care services. If people have the means to purchase health care services outside of the Fund, they should be free to do so whether or not they are registered beneficiaries of the Fund.

5.5. Not all health care providers will be contracted to the Fund and not everyone will be a beneficiary / user. There will be circumstances where consumers will need

to access health care outside of the Fund. The Bill does not seem to recognise this possibility in section 2.

5.6. **Bonitas Medical Fund is opposed to the principle that medical schemes can only offer complementary cover as stipulated in section 33 of the draft Bill.** It is unconstitutional to restrict access to health care services in this way.

5.7. There is a contradiction between section 33 of the Bill (which says that the Minister will decide, when NHI has been fully implemented, through regulations in the Gazette when medical schemes can offer only complementary cover) and the Schedule of the Bill which amends the Medical Schemes Act to say that medical schemes can only provide complementary cover. If the Medical Schemes Act is amended in the manner contained in the Schedule to the Bill, then section 33 is unnecessary because when the amendments to the Medical Schemes Act come into effect is when medical schemes will only be able to offer complementary cover. Bonitas recommends that the proposed amendments to the Medical Schemes Act in the Schedule to the Bill are deleted as they are unnecessary in the light of section 33 of the Bill.

5.8. The proposed amendments to the Medical Schemes Act contradict the provisions of section 33 of the Bill and should therefore be deleted. In the near future it is envisaged that the Medical Schemes Act will be reviewed in its entirety. Any proposed changes should be dealt with holistically when the entire Medical Schemes Act is reviewed.

5.9. The Constitution requires the State to protect, respect, promote and fulfil the rights in the Bill of rights. This means that the State must protect the rights to access that people already have. The right of access to health care is much wider than the right to obtain health care through the State (public sector). It includes the right to purchase health care from the private sector if one can afford it. The purchasing power of the consumer is a legitimate means of access to health care even if it is not always the best form of access. People must have the right to apply their purchasing power (right) as they deem fit provided it is lawful. It

should not be unlawful for people to purchase health care services should they choose to do so. The NHI Bill in its current form suggests and makes it unlawful for people to purchase health care services that are covered by NHI. This is an infringement of their constitutional right of access to health care services.

5.10. The right to freedom is the right of individuals not to have restricted access as suggested in the Bill. The NHI Bill must enable access to health care without unduly restricting the rights of everyone to freedom and security of the person. If the healthcare provider they wish to use is not contracted to the NHI Fund, they must be free to purchase health care from that healthcare provider if they so choose, regardless of whether the service is covered by NHI.

5.11. The NHI Fund will not be able to cover everything. Beneficiaries / users of healthcare services will always need to be able to use their own resources to purchase and pay for health care. Even where the NHI does cover certain health care services there may be problems that result in lack of access e.g. stockouts, breakdown of medical equipment, lack of specialists, unavailability of doctors, not enough beds etc. It is a fact of life that resources for health care will always be limited under NHI. Section 2 by its wording is therefore an unconstitutional restriction on access to healthcare services by those with the means to pay for them.

5.12. Section 33 of the NHI Bill should be deleted. It is unconstitutional for the reasons referred to above. Medical schemes should not be restricted to complementary cover.

5.13. Bonitas recommends that Section 6 (o) must be amended to read “to purchase health care services through a registered medical scheme in terms of the MSA or through any other lawful form of funding for health care services available to him or her in circumstances where he or she is unable or unwilling to obtain health care services through the Fund”. The right of a beneficiary / user to all forms of access to health care services must not be restricted. NHI is just one form of access.

5.14. It must not be unlawful for a beneficiary / user to purchase health care services whether they are covered by the Fund.

5.15. Section 8 (2) must be amended to read –
"A person or beneficiary, may pay for health care services rendered directly, through a medical scheme or through any other resource available to him or her, if that person or beneficiary – "

5.16. The current wording says he "must" pay. It should be altered to read "may". The person or beneficiary must have a discretion whether to use a medical scheme.

5.17. We note that there is no such thing as a "medical insurance scheme". There are medical schemes and then there are insurance policies. By law insurance companies are not allowed to do the business of a medical scheme. This section of the NHI Bill ignores the Demarcation Regulations made in terms of the Long Term and Short-Term Insurance Acts which prohibit health insurance by insurance companies.

5.18. We appeal to the drafters of the Bill that the aforementioned sections of the Bill be revisited.

## 6. SINGLE PURCHASER AND SINGLE PAYER AND COMPLEMENTARY COVER:

6.1. Chapter 1 of the Bill states that *"**2.** The purpose of this Act is to establish and maintain a National Health Insurance Fund in the Republic funded through mandatory prepayment that aims to achieve sustainable and affordable universal access to quality health care services by— (a) serving as the **single purchaser and single payer of health care services** in order to ensure the equitable and fair distribution and use of health care services"*.

6.2. By definition, the word "single" implies that it will be the only *and no other alternatives or options*. This implies that there can be no other legal entity that can duplicate the functions of purchasing and paying for health care services as executed by the NHI Fund – whether the health care services being purchased

are of a complementary and/or duplicative nature. Given that the Bill indicates that in instances of conflict between the provisions of the Bill and any other Act, then the provisions of the NHI Bill take precedence, by implication it would be illegal for medical schemes (or health insurance firms) to exist even in a complementary form. This is suggested under **Application of the Act,** Section 3 (3) which states *"If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law, except the Constitution and the Public Finance Management Act or any Act expressly amending this Act, the provisions of this Act prevail."* However, this then defeats the definition of the "complementary cover" provision (Section 33) that the medical schemes industry would be expected to offer once NHI is fully implemented. As stated in the previous sections under constitutional matters, the section should be removed.

63. Alternatively, we recommend revising the definition into one that allows for a duplicative cover environment, consequently ensuring that medical schemes will also be able to act as purchasers and payers for health care services on behalf of their beneficiaries thus supplementing the Fund's duties, functions and deliverables.

64. The Bill defines **''comprehensive health care services''** as health care services that are managed so as to ensure a continuum of health promotion, disease prevention, diagnosis, treatment and management, rehabilitation and palliative care services across the different levels and sites of care within the health system in accordance with the needs of users. However, no further indication of the details of these services is provided except to indicate that medical schemes will offer what is referred to as **"complementary cover"** which is defined as third party payment for personal health care service benefits not reimbursed by the Fund, including any top up cover offered by medical schemes registered in terms of the Medical Schemes Act or any other voluntary private health insurance fund.

65. While it is accepted that the details of comprehensive health care services that will be covered by the Fund cannot be included in the NHI Act, it is important that the right for UHC is managed in a responsible manner for the current medical schemes industry and South Africans are made aware of the services

that would be covered. This will also assist key industry players to have a better understanding of what healthcare services they will have to cover as part of the non-duplicative cover environment envisaged under NHI and will assist the industry transition process while ensuring member stability and industry sustainability. Failure to manage and provide a clearer position on these matters will aggravate the risk of skills losses. Greater clarity can also be used to guide more constructively focused public discourse on private sector health delivery in the NHI environment as compared to its current more emotive nature.

6.6. On a technical level one can argue that the notion of a single payer/ single purchaser belongs in policy statements, not in law.

# 7. Governance Matters

7.1. Sound corporate governance is of critical importance in preventing mismanagement of assets, corruption, inefficiency, illegality, unethical conduct, abuse of the Fund's resources and the collapse of the Fund.

7.2. While the Governance provisions in the Bill endeavours to create a governance structure which has an Independent Board, and a Chief Executive Officer ("CEO") who is responsible for the day-to-day running of the Fund, the Bill have some weaknesses that need to be addressed.

7.3. In our experience of managing a Fund of similar nature, the sustainability of the Fund is highly dependent on Governance structures in fulfilling its fiduciary duties.

7.4. Our recommendations attempt to point areas for review:

**7.4.1. Composition of the Board**

7.4.1.1. The Minister (being the Minister of Health) should be responsible for the appointment of the Board, through the assistance of an ad hoc advisory panel. Clearer guidelines / criteria should be set for the appointment of the ad hoc advisory committee.

7.4.1.2. It is apparent that the Minister has unwarranted powers which may result in a conflict of interest.

7.4.1.3. The Minister should be solely responsible for the appointment of the Board and the Board should appoint the CEO.

7.4.1.4. The appointment of Trustees and Principal Officers of medical schemes is clearly defined, and it would be beneficial if similar fiduciary and accountabilities are defined in a framework and included in the Bill.

**7.4.2. Role of The Board**

7.4.2.1. Section 15 (f) indicates that the Board must advise the Minister on any matter concerning collective bargaining. It is unclear what the term "collective bargaining" refers to. We request that this be clarified and the recommendations from the Health Market Enquiry be considered.

**7.4.3. Advisory Committees**

7.4.3.1. Chapter 7 of the Bill provides for the Minister to appoint three advisories committees – the Benefits Advisory Committee (BAC), the Health Care Benefits Pricing Committee and the Stakeholders Advisory Committee.

7.4.3.2. It is important that clear roles, responsibility and authority levels be delineated between the Minster, Board and the CEO. Failure to do so may negatively impact the effective and efficient management of the Fund.

**7.4.4. Health Information Systems**

7.4.4.1. Both the NHI and the Medical Schemes Amendment Bill ("MSAB") which was published for comment on the same date as the Bill require patient and healthcare professional data to be collected.

7.4.4.2. Given the already burdensome regulatory requirements on healthcare professionals, care should be taken that the NHI and MSAB do not create additional layers of regulatory compliance which would simply place onerous requirements for information to be submitted by healthcare professionals. Rather, a single database should be compiled, and all relevant stakeholders should have access to the information contained therein.

7.4.4.3. Medical schemes already collect significant member information – rather than

the NHI seeking to create its own database, it might be advisable to rather obtain an exemption from the provisions of the Protection of Personal Information Act and allow for member information to be shared with the NHI and the Council for Medical Schemes rather than creating a parallel database.

7.4.4.4. On this score, it might also be mentioned that unless synergies can be found between medical schemes and the NHI, one may find that healthcare provision is fragmented and may lead to beneficiaries not being optimally serviced.

7.4.4.5. Therefore, where there is a proper sharing of patient data, subject to protection of medical information (which could still exist on a single database, but only accessible by those healthcare practitioners who treat the patient), there would be a greater opportunity to render more efficient and effective healthcare services, with enhanced patient care.

**Other Matters**

7.5. At this stage it is unclear how the NHI will be funded since we have not had any guidance from Treasury.

7.6. The NHI Bill should include provisions on corporate governance similar to those in the Conduct of Financial Institutions Bill. Bonitas submits that there are major accountability issues with regards to corporate governance of the Fund.

7.7. We appeal that consideration be given in this regard in relation to good Corporate Governance such as King Codes

7.8. Bonitas does not agree or support the proposed amendments to the Medical Schemes Act as set out in the Schedule to the Bill. For the reasons already stated, allowing medical schemes to provide only complementary cover is unconstitutional.

## 8. FUNDING

8.1. The aim of the Bill is that the Fund is the primary financer of health services and it is a mandatory repayment health services system. It is the Fund's responsibility to maintain its efficiency and ensure stability, by establishing Rules and mechanisms for payment of the funding of health services, the prices of which are determined annually in consultation with stakeholder.

8.2. The NHI Bill provides that the NHI Fund will be funded from four main sources of funding. We are particularly concerned about ***Section 49 (2) (a) (ii)*** which indicates that the part of the funding for NHI will be sourced from the "*reallocation of funding for medical scheme tax credits paid to various medical schemes towards the funding of National Health Insurance".* This implies that in the short to medium term, government intends to do away with the current tax credits that medical scheme members receive as part of their contributions towards medical scheme premiums. We would like to caution that this would potentially lead to increased pressure on the already strained public health system as scheme members, due to affordability constraints, move from utilizing private healthcare services to the public sector. If managed inappropriately, it could result in adverse impacts on the quality and timely accessibility of services in the public sector, especially for the most vulnerable persons in our society and hence produce counter-effects on the intended benefits of NHI. Our recommendation here is that the medical tax credits regime needs to be kept stable as per the current structure, as it already ensures progressivity in terms of cross-subsidy between the various income groups. The envisaged adjustments, if any, should only be considered in later years when NHI is fully implemented and is fully functional.

8.3. The chapter in the Bill on Financial Matters is missing some important provisions. It contains no requirements for financial management of the Fund, financial planning or budgeting.

8.4. There must be strict provisions in this section for maintaining the purchaser/provider split. The role of the Fund purely as a purchaser of health

care services and health goods must be entrenched in this section. The Fund must not finance health service delivery programs or run such programmes. It must only pay for personal health care services and health goods provided to beneficiaries or persons.

8.5. With regards to section 49(2)(*a*)(ii) it is noted that tax credits are not paid to medical schemes. Section 49(2) as a whole is unnecessary and inappropriate and should be deleted. It is sufficient to say that the Fund will be entitled to money appropriated annually by Parliament. It should be up to the National Treasury to decide how best to finance the NHI. The shifting of funds from the provincial equitable share could be unconstitutional. The Bill should avoid being too prescriptive of how the money for NHI is found. These provisions are best contained in a money Bill, which, according to the Constitution is required for the raising of money. The NHI Bill is not a money bill and so should not contain provisions that must be contained in a money Bill.

## 9. THE ROLE OF THE PRIVATE SECTOR WITHIN A UNIVERSAL HEALTH SYSTEM:

9.1. There exists a significant requirement for a fine balance between, ensuring that taxpayers have access to needed services, and progressively ensuring affordability of covered services, considering the current economic climate and the fragmented nature of the health system. Pragmatically, the path to UHC through the phased implementation of NHI must start with cover for the vulnerable groups before it is expanded to cover better-off sections of the population. This implies that there will be an inevitable period of co-existence between medical schemes (as they currently exist) and the NHI Fund. In this scenario, the NHI Fund should start by offering comprehensive primary health care services before adding higher cost items such as hospitalisation, especially considering that there are planned changes with the central hospitals moving to national that is still to unfold.

9.2. Therefore, allowing medical schemes to provide duplicative cover i.e. providing the same or similar set of benefits covered by the NHI Fund, allows for better alignment in health benefits irrespective of the environment in which the benefits

can be accessed. This would allow time for developing the necessary purchasing capability within the NHI Fund. Adopting this more pragmatic approach also provides the State with more options in terms of a transitional path in that it ensures improved delivery to the more vulnerable citizens. In this respect, we suggest that the policy position outlined in Section 33 of the Bill must be restructured to cover the same scope of services as offered by the NHI Fund. This process would be consistent with the Health Market Inquiry final recommendations on introducing *a standardised base benefit package, to create an enabling environment for strategic purchasing and value-based contracting and performance-based reimbursement and contracting linked to quality health outcomes*.

9.3. We believe that various policy interventions and enabling levers are available to government to create a fair, transparent and sustainable playing field that would ensure that the NHI Fund and existing healthcare organisations compete on innovative, quality and health outcomes focused product offerings that benefit the entire population without negating the objective of UHC nor adversely on private rights or the desire for reasonable choice.

## 10. CONCLUDING REMARKS

10.1. The notion is commendable, but the intricacies of the NHI are still uncertain. It may become clearer when the Minister promulgates regulations in terms of the Act and when policies in terms thereof are established

10.2. Of utmost importance is that the Bill and the MSAB must align the role of medical schemes going forward – in our view, the Fund and medical schemes should not be viewed as competing entities, but rather different mechanisms for providing funding to patients. Accordingly, the Bill and the MSAB must ensure that there are provisions which strengthen the synergies which could be exploited in order to optimise all funding available to patients.

In our view, the role of medical schemes must be clarified and strengthened where possible so that medical schemes are empowered to assist the NHI where

possible administratively, but also taking over some of the risk and burden which would lie with the NHI in respect of members of medical schemes. This would ensure that the funds to be deployed in the procurement of healthcare services are not unnecessarily exploited through duplication of administrative functions.

103. Bonitas is indebted to the Minister for providing it with the opportunity to make submissions on the Bill and is hopeful that the Minister will find value in its suggestions.

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**BONITAS MEDICAL FUND**