



NORTH WEST PROVINCIAL LEGISLATURE

NEGOTIATING MANDATE

To : **Hon E. Njadu**
Chairperson of the Select Committee on Health and Social Services

Name of Bill : **National Health Insurance Bill**

Number of Bill : **B 11B- 2019**

Date of Deliberation : **24 October 2023**

Vote of the Legislature: **The North West Provincial Legislature vote in favour of the National Health Insurance Bill [B 11B -2019] with proposed amendments**

Hon. Gavin Edwards

26 October 2023

Date

Chairperson of Portfolio Committee on Health and Social Development

PROPOSED AMENDMENTS

1. Clause 2 of Chapter 1 of the Bill provides that NHI¹Fund will serve as the single purchaser and single payer of health care services, this provision may possible infringe on section 22 of the Constitution² in that the NHI Fund may monopolise the health care insurance industry. The Bill makes the existence of medical aids to a great extent superfluous considering the current unemployment rate will continue to rise as existing medical aid companies and service providers will probably have to retrench at least some if not all of their personnel. Furthermore, this will impact negatively on current health care workers, inclusive of medical doctors, nurses and other health personnel. It is therefore proposed that consideration be made as far as this clause is concerned or rather be deleted.
2. Clause 4 provides that “a person seeking health care services from an accredited health care service provider or health establishment, must be registered as a user of the Fund as provided for in clause 5, and must present proof of such registration to the health care service provider or health care services or health establishment in order to secure the health care services benefit to which he or she is entitled”.
3. Clause 5 (1) states that “a person who is eligible to receive health care services in accordance with section 4 must register the user with the Fund at an accredited health care service provider or health establishment”. In the same breath clause 5(8) goes further to state that a user seeking health care services must present proof of registration to that health care services. The same requirement can be found in clause 6(a). It is submitted that these provisions (clause 4 and 5 respectively) will have further likely effect of preventing access to health care services have not registered with the NHI Fund.
4. Refugees are in terms of clause 4 (1) entitled to the same health care services as South African citizens. Its s not clear if the cost implication and additional burden on the fiscus when drafting the clause, in that an asylum seeker or illegal foreigner would in all likelihood not to contribute significantly or at all towards the NHI Fund, which again places the burden on the State and the South African tax payer. An asylum seeker is entitled to various constitutional rights and protection, including those rights set out in section 27 of the Constitution³. There is no current prohibition exist in the

¹ National Health Insurance

² Constitution of the Republic of South Africa

³ supra

current National Health Act ⁴, however in terms of the Bill an asylum seeker will no longer enjoy access to primary health care services should be Bill be therefore pass and limits the rights of asylum seekers to access to health care. This will have the effect that the State will be impairing existing rights. It will also have effect of violating the non-refoulment principle if asylum seekers are seekers are forced to leave because of failure to access to access health care. The same applies to children as per clause 4(3) of the Bill.

5. The bill objective is good however there is no clarification of how registration process of clients qualifying to benefit from the NHI⁵, considering that South Africa porous borders possess a serious risk meanwhile the budget might be depleted by undocumented illegal nationals. It is therefore proposed that the country foreign policy be reviewed and enforced to accommodate those threads. Further that the Border Management Authorities efforts be emphasized and monitored thoroughly.
6. Clause 6(m)(i) and (ii) – Relaxation of data privacy – The proposed relaxation of the POPI Act ⁶standards of data protection are excessive and unnecessary, and fail to meet the standard for limitation of rights in section 36 of the Constitution. It is proposed “unless the information – (i) is shared among health care service providers for the lawful purpose of servicing the interests of users; or (ii) is utilised by the Fund for another lawful purpose related to or incidental to the Fund.” The Bill propose existing (relax) existing data privacy laws to suit the NHI Fund. There is no legitimate reason for this as the Protection of Personal Information Act caters for this adequately. It seems that the amendments are derived from International Instruments ⁷.
7. Clause 7 which provides for “health care services coverage”. The prescribed referral pathways are in conflict with the Patient’s Rights Charter ⁸, which makes provision for the right of patients to choose their own healthcare provider or health facility. “Referral pathway rules would prevent people from continuing relationship with their doctor of choice and were prejudicial to pregnant women who prefer to engage their regular gynaecologist or obstetrician. The proposed referral pathways place continuity, quality and efficiency of care at risk, especially for patient with complex conditions or longstanding chronic conditions, this may pose unnecessary waiting periods and will result in access delayed, might be access denied.

⁴ Act 63 of 2003

⁵Ibid

⁶ Protection of Personal Information Act 4 of 2013

⁷ General Data Protection Regulation

⁸ National Department of Health South Africa.. The Patient Rights Charter

8. Clause 33 – the phrase “fully implemented “is not defined and no parameters are provided to guide the exercise of the ministerial discretion. Proposal is that clause 33 be replaced to read as follows :- “ Once NHI⁹ has been fully implemented as determined by the Minister in consultation with the Benefits Advisory Committee and the Stakeholder Advisory Committee , the Minister shall publish notice of such determination in the Gazette , and may make regulations regarding the role of medical schemes consistent with the objective of the progressive realisation of access to sustainable , quality healthcare services by users of the fund”.
9. Additionally, the word “fully implemented” is further proposed to consider that the Minister must have a prescribed comprehensive package of health care services with associated treatment protocols and referral pathways based on targeted utilisation levels for the populations that the NHI Fund will reimburse. The Minister, after consultation with the Office of Health Standards Compliance, by notice in the Gazette has published the requisite quality of care standard that must be adhered to in the course of rendering a service specified in prescribed comprehensive package of health service. Moreover, the Minister by notice in the Gazette certifies that, after consultation with the Minister of Public Administration satisfaction that the Fund has the requisite operational infrastructure to carry out its functions of the Fund and that adequate accredited providers in the public and private sectors have been contracted to ensure that the population has reasonable access the prescribed comprehensive package of health service. Also, that the NT¹⁰ has issued a notice in the Government Gazette certifying that sustainable framework is in place for the Fund to finance the prescribed comprehensive package of health services.
10. Clause 40 (4)(b) permits the sharing of information about “users” for the lawful purpose of serving the interests of users”, but the information is not limited to health data, the “lawful purpose” is vague and overboard and provisions is disproportionate, creating conflict with POPI Act, in particular section 32(a) and (b) of the Act. Therefore, is it proposed that clause 40 (4)(b) as follows “Information concerning a user, including information relating to his/her health status, treatment or stay in a health care establishment is confidential and n party may disclose information contemplated except as permitted by POPIA.¹¹

⁹ Ibid

¹⁰ National Treasury

¹¹ supra

11. Clause 45 – An Appeal to the Appeal Tribunal against a Fund decision must be lodged within 60 days, but the Appeal Tribunal has no power to condone late referral, meaning that a material proportion of appeals will either be time -barred or need to be heard in the High Court. This reduces the right to access health care services, and is inconsistent with the right to administrative justice. It is recommended that add section 45 (3) to read “The Appeal Tribunal may condone late filing of an appeal on good cause shown”.
12. Clause 57 (2)(b) provides that “phase 2 must be for a period of 3 years from 2026 to 2028” which suggest that “fully implemented” actually means 31 December 2028 regardless of the extent of implementation.

The Bill proposal to eventually allow medical schemes only to fund services that are not offered by the NHI Fund, nevertheless there is no indication of what the NHI’s offering will be, or will become over time , so it is not clear what the limitations on medical schemes will be or when will they take effect .The Minister has full discretion to decide that offering also to make a determination when will that happen, that makes the exercise of that power vague. Will that implies that citizens will not be able to insure themselves after paying the NHI contributions against the risk of the NHI Fund refusing or failing to provide services it has undertaken to cover. Therefore, the proposed modification of this clause will give a framework to the Minister’s power, also as to requirement to consult relevant structures. It will further empower the Minister to find a reasonable and sustainable mix of health care funding options suitable to the circumstances that apply at the time of decision making.

15. The Bill is not addressing the current situation as far as the Continuous Professional Development. All members registered with HPCSA¹² are required to stay compliant with their prescribed CPD¹³ points per 12 months to 24 months period that either gets paid by the practitioner or the practice they work for. Will it still be the responsibility of the individual practitioner or will the government make funds available for all practitioners to stay compliant with their CPD points.

16. Clause 57 (2)(a)(v) includes “prepare for the establishment of the Fund” as a first priority, whereas 57(4) includes among the first phase objectives “establishment of the Fund and the “purchasing of hospital services funded by the fund, yet clause 57(5) includes the establishment of the Fund as a second phase priority.

¹² Health Profession Council of South Africa

¹³ Continuous Professional Development

The following amendments are necessary “clause 57(1)(a) must be implemented over phases “

Clause 57(2) “The initial two phases contemplated which must include

- (i) Continuing with the concentrated implementation of health system strengthening initiatives, including alignment of human resources with that which will be required users of the Fund
- (ii) The development of National Insurance legislation and amendments to other legislation
- (iii) Initiative which aimed at establishing institution that will be the foundation for a fully functional Fund
- (iv) establishment of systems that ensure the purchasing of personal healthcare services for vulnerable groups such as children, women, people with disability and elderly

clause 57 (4) requires that amendments to various statutes be “initiated” during the first phase, but clause 58(1) provides that those same statutes are “hereby” amended or repealed. This suggest either that the public participation process already undertaken by the NA¹⁴ was the public’s last opportunity to engage on the detailed specific amendments to other pieces of legislation, or it, means that any proposed future engagement will be meaningless as the relevant statutes are already amended. This arrangement of clauses conflicts with clause 31(2) and 32(2).

Proposal is that the subsequent phase must include: - clause 57 (4)(a) realignment of Central hospitals so that they are funded, governed and managed nationally as national semi-autonomous entities

(c) the establishment of the Fund, including the establishment of the necessary governance and administrative structures such as the Board, its statutory committees, the Fund office, District Health Management Offices and Contracting Units for Primary Health Care

(d) the development of a Health Patient Registration System referred to in clause 5 and the integration of the digital platform required to support portable health care and strategic purchasing of services.

(e) the process for the accreditation of public health care service providers which will require that health establishments are inspected and certified by the HSC¹⁵,to ensure that health

¹⁴ National Assembly

¹⁵Health Standards Compliance

professionals are licensed by their respective statutory bodies and health care service providers comply with criteria for accreditation by the fund.



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