

2012-10-22 08:20 LEG ANC SEC TO MPL

0406080296 >>

+27 214241576

P 1/2

**EASTERN CAPE PROVINCIAL LEGISLATURE****OFFICE OF THE CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON
HEALTH**

TEL: (040) 608 0081
FAX (040) 634 4722
ineish@mbu@ecleg.gov.za
22 November 2012

PHYSICAL ADDRESS
PARLIAMENTARY BLDG
INDEPENDENCE AVENUE
BISHO, SOUTH AFRICA

POSTAL ADDRESS
P/Bog X0051
BISHO, SOUTH AFRICA
5605

NEGOTIATING MANDATE**To:**

The Chairperson:
Select Committee on Health

Name of Bill:

National Health Amendment Bill

Number of Bill:

[B24B-2011]

Date of Deliberation

22 October 2012

1. Vote of the Legislature

The province votes in favour of the Bill and mandates the Eastern Cape delegate to the NCOP to negotiate in favour of the Bill within the following parameters.

- 1.1 There is a need for the Office of the Ombudsperson to be represented in all spheres of government in order to ensure that it is accessible.
- 1.2 The term of office of the Ombudsperson is too long; it should be reduced to five years.
- 1.3 The composition of the Board should be amended to include representation of provinces:
- 1.4 The appointment of the Chief Executive Officer (CEO) must be made by the Board in consultation with the Minister and the performance agreement must be entered into between the CEO and the board

2012-10-22 08:20 LEG ANC SEC TO MPL

0406080296 >>

+27 214241576

P 2/2


represented by its chairperson- this is to ensure uniformity with other pieces of Legislation and the authority of the board over the officials of the office.

- 1.5 The board should be the accounting authority and not the CEO as envisaged by the Bill; this is in line with section 49(2) of the *Public Finance Management Act No 1, 1999*.



HON M DIMAZA (MPL)

CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON HEALTH
EASTERN CAPE PROVINCIAL LEGISLATURE



DATE



NEGOTIATING MANDATE

TO: The Chairperson of the Select Committee on Social Services

Hon R N Riseni

NAME OF BILL: National Health Amendment Bill.

Section 76)

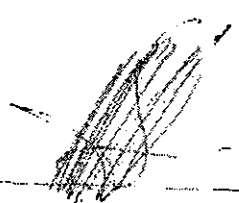
NUMBER OF BIL : [B24B-2011]

DATE OF DELIBERATION: 19 October 2012

VOTE OF THE LEGISLATURE:

The Gauteng Provincial Legislature supports the principle and the detail of the bill with the attached amendments and therefore votes in favour of-

- National Health Amendment Bill


HON. M F BOPAPE

Chairperson of Health Committee

GAUTENG PROVINCIAL LEGISLATURE

Date: 19/10/2012



GAUTENG LEGISLATURE

HEALTH COMMITTEE

NEGOTIATING MANDATE ON NATIONAL HEALTH AMENDMENT BILL [B24B-2011]

19th October 2012

1. INTRODUCTION

The Chairperson of the Health Portfolio Committee, Hon. Molebatsi Bopape, tables the Committee's Negotiating Mandate on the National Health Amendment Bill [B24B-2011] a section 76 as follows:

2. PROCESS FOLLOWED

- 2.1 The Deputy Speaker, Hon Uhuru Moiloa formally referred the National Health Amendment Bill [B24B-2011] Section 76, to the Portfolio Committee on Health in terms of Rule 252 (1) (a) read with 254 (1) and 255 (1) for consideration and report on Thursday, 16 August 2012.
- 2.2 On Friday, 14th September 2012, the Permanent Delegate of the National Council of Provinces (NCOP), Honourable Pinky Ncube together with the officials from the National Department of Health briefed the Committee on the intentions of the Bill.
- 2.3 On Thursday, 20th September 2012, the Portfolio Committee held a Public Hearing on the National Health Amendment Bill [B24B-2011]. In the same meeting the Legal Unit of the Gauteng Provincial Legislature also presented the legal opinion.
- 2.4 On Friday, 19th October 2012, the Honourable MEC Hope Papo, together with the officials from the Department of Health made a presentation in the same meeting. The Portfolio Committee on Health considered the oral and written submissions made in the Public Hearings; the Committee adopted and deliberated the Negotiating Mandate on National Health Amendment Bill [B24B-2011].

3. PRINCIPLES AND DETAILS OF THE BILL

This Bill seeks to amend the National Health Act, 2003, so as to provide for the establishment of the Office of Health Standards Compliance and, for that purpose, to insert, substitute or delete certain definitions; to delete, revise and insert certain provisions; and provide for matters connected therewith.

4. OBJECTIVES OF THE BILL

The objects of the Bill, are set out in Clause 1-10 of the Bill, and they are as follows:

- To advise the Minister on the development and implementation of enforceable standards for quality and safety for the entire health system
- To ensure compliance with the prescribed standards and
- To deal with complaints relating to the entire health system and provide for matters connected the with.

5. CLAUSE BY CLAUSE ANALYSIS OF THE BILL

CLAUSE 1: Amendment of section 1 Act

This clause seeks to amend section 1 of the Act by inserting, substituting or deleting certain definitions consequences to the establishment of the Office..

CLAUSE 2: Amendment of section 21 of the Act

This clause seeks to amend paragraph (f) of section 21 (2) of the Act in order to assign port health services to the national sphere of government in line with the UN International Health Regulations and the International Health Regulations Act, 1974 (Act No. 28 of 1974).

CLAUSE 3: Amendment of section 25 of Act

This clause seeks to amend section 25 of the Act in order to delete the reference to "port health services" under the provincial sphere of government pursuant to the amendment sought under clause 2.

CLAUSE 4: Amendment of section 47 of the Act

This clause seeks to amend section 47 (1) and (3) of the Act, respectively, in order to delete the reference to the National Health Council and to substitute it with Office in subsection (1) and, in subsection (3), to delete the reference to the Office of Standards Compliance and Inspectorate of Health Establishment, which is to be replace by the Office.

CLAUSE 4: Substitution of Chapter 10 of Act

This clause seeks to substitute Chapter 10 of the principle Act in order to provide the following:

- Establishment of Office;
- Objects of the Office;
- Functions of Office;
- Composition of Board;
- Chairperson and vice-chairperson of Board;
- Disqualification from membership of Board and vacation of office;
- Meetings of Board;
- Committee of Board;
- Appointment of Chief Executive Officer;
- Functions of Chief Executive Officer;
- Delegation of powers and assignment of duties by Chief Executive Officer;
- Accountability of and reporting of Chief Executive Officer;
- Appointment of health officers and inspectors;
- Appointment of Ombud;
- Functions of Ombud;
- Independence, impartiality and accountability of Ombud;
- Inspections;
- Non-compliance with prescribed norms and standards;
- Entry and search of premises or health establishment with a warrant by health officer or inspector;
- Identification prior to and resistance against entry by health officer or inspector;
- Entry and search of premises or health establishment without warrant by health officer or inspector;
- Constitutional right to privacy;
- Disposal of items seized by health officer or inspector;
- Miscellaneous provisions relating to health officers, inspectors and compliance procedures;
- Appeals against decisions of Office and Ombud; and
- Offences and penalties.

CLAUSE 5: Amendment of section 90 of Act

This clause seeks to amend section 90 (1) of principle Act in order to provide for –

- (a) Consultation by the Minister with the Office, in addition to the National Health Council, when the Minister makes regulations in terms of the Act; and
- (b) The Minister to prescribe fees to be paid to the Office for services rendered.

CLAUSE 6: Amendment of Arrangement of sections of Act

This clause seeks to amend the arrangement of sections of the Act consequent to the substitution of Chapter 10.

CLAUSE 7: Amendment of laws

This clause seeks to amend the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999), in order to insert the name of the Office in Part A of Schedule 3 to the PFMA, for the PFMA to apply to the Office.

CLAUSE 8: Short title and commencement

This clause seeks to provide for the names or title of the Act and for the date on which the Act will come into operation.

6. OVERVIEW OF THE PUBLIC HEARING AND SUBMISSIONS

As part of its functions and obligations, the Committee held a public hearing on the National Health Amendment Bill [B24B-2011] on Thursday, 20th September, 2012. The public hearing was attended by approximately three hundred (300) people. As a requirement of public hearing in processing the Bill, the Committee received during the meeting both verbal and written submissions from the various individuals and organisations hereunder listed:

- 6.1 South African medical Devices Industry Association (SAMEDI)
- 6.2 National Pathology group (NPG)
- 6.3 Various stakeholders who attended the public hearing

7. SUMMARY OF STAKEHOLDERS SUBMISSIONS MADE DURING THE PUBLIC HEARING

The following are the summary of submissions from different organizations:

7.1 National Pathology Group representing the pathology laboratories in South Africa

The National Pathology Group supports the measures introduced by the Minister of Health to ensure good, quality care, and his views that this is a necessary precondition for the introduction of the NHI. In its participation through the submissions made to the Portfolio Committee of Health on the envisaged Office of Health Standards Compliance, the group was encouraged by the remarks by the Director-General of Health at the Committee meeting as indicated in the minutes of the 29th May 2012 (annexed hereto): "She [the DG] also stated that it was not the intention of the Bill to regulate laboratories" and "[a]ll parties agreed that core standards should be published for public comment."

These sentiments, although apparently agreed to by the Portfolio Committee have not filtered through in the redrafting of the Bill. The members of the group are unfortunately already experiencing the effects of overlapping and conflicting regulatory frameworks when hospital inspections occur (using one of the current standards documents widely believed to be the forerunner of the standards to be enforced by the OHSC. The NPG therefore writes to explain this, in the hope that the (2) necessary changes could be effected to the wording of the Bill, in order to prevent further and future occurrences of this.

7.1.1 Laboratories and the OHSC regulatory ambit

In spite of the DG's assurances on 29 May 2012, Bill 24B-2011 does cover laboratories. It makes repeated reference to health establishments. The National Health Act defines health establishments, in section 1, as: "*health establishment*" means the whole or part of a public or private institution, facility, building or place, whether for profit or not, that is operated or designed to provide inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health services "The definition therefore clearly covers laboratories where diagnostic services are rendered, as well as private practices (which includes our members), as well as the NHLS.

Therefore, and that is what our members are currently experiencing, is that, in the words of clauses 79(1)(b) and 79(2)(b) during inspection and certification of health establishments the "request for information relating to prescribed norms and standards" are made in relation to laboratories. Laboratories are accredited by SANAS, at great cost and effort to ensure that the laboratories and the outputs thereof are of good quality and safe. Requests for information already verified by SANAS does not only duplicate resources and efforts, it also creates contradictory expectations and outcomes, as the performance required to ensure compliance may differ between SANAS and the OHSC. Currently, the inspections form part of hospital inspections, but would, under the definition of health establishments, also include the laboratories directly as separate institutions.

However, whether as part of hospital inspections or on its own, this matter will create great overlaps, conflicts and inefficiencies.

The NPG hereby proposes that clause 79(1)(b) be amended as follows to allow for the recognition of SANAS accreditation:

"The Office must –

(1) (b) inspect and certify health establishments as compliant or non-compliant with prescribed norms and standards or, where appropriate and necessary, withdraw such certification, and, should a health establishment have been certified as compliant with quality and safety norms and standards by a recognized regulatory authority in accordance with such recognized standards, the Office must accept any such certification as proof of such compliance; ..."

7.1.2 Health Professions Council and regulation of medical practitioners.

Pathology practices can only be owned by and run by, pathologists, duly registered as such by the Health Professions Council of SA (HPCSA). The HPCSA has also created an office of an Ombud, as is the case in Bill 24B – 2011.

In addressing one of the concerns raised during the comment period earlier this year, the Minister of Health is reported as saying in Parliament on 14 August 2012 that there will not be any overlaps, as the one body will deal with professional matters and the other on complaints on how patients are treated. Unfortunately, the manner in which patients are treated are also professional conduct matters and a clearer jurisdictional delineation would also be required in this regard. Currently the referral of matters of a professional nature would be

discretionary, and would lead to increased professional indemnity insurance premiums for professionals, as they would have to now also cover investigations and findings of this OHSC Ombud.

NPG proposes the following amendment to clause 81A ensure that the above conflict is avoided:

(6) The Ombud may, when considering or investigating a complaint in terms of this section, require the assistance of or refer the complaint to any other authority established in terms of legislation or any other appropriate and suitable body or entity to investigate similar complaints, or, in the case of complaints about professional conduct of healthcare professionals registered at a statutory body, refer such complaint to such body to deal with in accordance with the applicable professional standards.

7.2 South African Medical Devices Industry Association – SAMED

7.2.1 SAMED Submission on National Health Amendment Bill 1.

Established in 1985, the South African Medical Devices Industry Association - SAMED - is recognized as a valuable participant in the healthcare industry. The Association which promote represents and safeguards the interests of the South African medical devices and In-Vitro Diagnostics industry focuses on healthcare matters relevant to its members' interests.

7.2.2 SAMED supports all initiatives aimed at securing better health outcomes through the implementation of quality initiatives, such as the Office of Health Standards Compliance.

7.2.3 SAMED's main concern on the Amendment Bill B24-2011 ("the Amendment Bill") relates to the standards to be set on medical device manufacturers and importers through a regulatory framework still to be enacted in terms of amendments to the Medicines and Related Substances Act No 101 of 1965 and the Amendment Act No 72 of 2008, thereto. As these standards are to be set according to a different legal framework, but as medical devices are used in health establishments under the norms and standards to be enforced by the OHSC, there is a considerable risk of inadvertent overlaps or duplication.

7.2.4 Internationally, medical device manufactures and local responsible parties are responsible for the "safety and performance" of medical devices. In addition, the manufacturer / importer are responsible to ensure that the users of the medical device is sufficiently informed and/or trained to use the device successfully. Thereafter the responsibility shifts to the health establishment and healthcare professionals to ensure appropriate use, proper maintenance, and proper processes of supply chain management, etc.

In both systems quality management and quality assurance (as is mentioned in the proposed amendment in the form of section 79(f) in the Bill) appear, but the standards employed in each, and the responsibilities and implications are very different. Care should therefore be taken to ensure that general statements such as those containing general phrases that could have different meanings in different contexts are clarified in the law, so as to prevent application to the wrong situations.

- 7.2.5 Furthermore, the "harmonization" of possible conflicting provisions, such as those under the Health Professions Act for the professional users of devices, and standards applied by the OHSC should be better delineated, in the interest of effective enforcement, by section 79.
- 7.2.6 The independence of the OHSC is not guaranteed in the Bill. The OHSC seems to be strongly linked to the office of the Honourable Minister of Health, both on reporting to Parliament and in the work of the Ombud, who would have to make recommendations to be implemented by the CEO or the Minister. The fact that the Minister will prescribe standards without any mechanisms for public or expert input is of concern.
- 7.2.7 Judging the OHSC according to the Core Standards for Health Facilities, a document released in 2011, the OHSC will be setting norms and standards relating to patient safety and the so-called "support services" which includes various aspects implying or directly referring to medical devices / equipment / technology. It has to be very clear where the duties of manufactures end, and that of health establishments, begin. The standards that are current possibly in a grey area include, for example-
- "Sub-domain 2.4.3" that there are safety protocols in place for surgery.
 - "Sub-domain 2.5" that all patient safety incidents are managed and adverse events routinely analysed.
 - "Sub-domain 3.1.3" that stock levels of medical supplies are managed appropriately.
 - "Sub-domain 3.2" that laboratory and X-Ray services are available and provide accurate results / quality reports;
 - "Sub-domain 3.4 – Health technology" that medical equipment is safe and effective. The safety of medical equipment is a regulatory requirement that will be governed by means of medical device regulations. However, the safe use of devices would be a function of training or instructions provided by the manufacturer, but also a duty on the user and facility to ensure correct use. Par. 3.4.2 does refer to training in correct use, but does not delineate responsibility in this regard. Par 3.4.3 is again within the domain of the health establishment, i.e. to ensure maintenance. However, in certain instances the duty to ensure the supply of spare parts, or repairs, may lie with the manufacturer/responsible agent.
 - Sub-domain 3.4 – Sterilisation" that decontamination and sterilization services are available and effective. In practice currently many manufacturers undertake this task in order to ensure that its equipment are not implicated in adverse events, or as a result of lack of facilities or trained staff in facilities. This duty should, rightly so, rest with the health establishment.
- 7.2.8 In light of the above, SAMED proposes that all standards be published in draft format prior to its finalisation, so that the practicalities in relation to compliance and responsibility, as well as conflicts with existing obligations, could be addressed timeously.
- 7.2.9 SAMED also proposes that the OHSC publishes the standards, and not the Honourable Minister of Health, who might be regarded as not being independent insofar as his/her oversight over, and responsibility for- all health establishments, is concerned. The OHSC cannot certify entities based on standards set by the ultimate head of such entities.

7.3 Democratic Alliance (DA) at the Gauteng Legislature

- 7.3.1 The composition of the Board. We are concerned that there is inadequate expertise on the board. If the board is only 7 strong then the 5 healthcare professionals swamp the board and the other experts are reduced to 2.

In any event we are concerned that there is no fee expert on the board to advise the minister. Health economists are not experts in fee setting. We suggest a board of 13 including a fee expert.

- 7.3.1 We are concerned that the Minister appoints persons to the positions. We feel people should be nominated and elected by all health care establishments.
- 7.3.2 Under removal from the board we should include removal from the board by anyone who becomes insolvent as he or she would have proved they lack the acumen to serve on a board.
- 7.3.3 79f (7) conflicts with 79d(2). We prefer 79d(2)
- 7.3.4 Regarding the ombud we are concerned that he or she would be toothless. He/she must report to the CEO who could totally disregard the ombud's recommendations.
- 7.3.5 We are concerned about the hi quantum of fine to be imposed and the 10 year jail term under 89.
- 7.3.6 The position of traditional healers is unclear. Are their premises declared as health establishments? This must be made clear.
- 7.3.7 Under Memorandum on the objects of the NHAB – Background 1.2a and c relate to standards for quality and safety and complaints relating to the 'entire' health system. What then is the purpose of the current statutory councils such as Nursing Council, HPCSA, Allied Health Professions Council?

7.4 Other Comments from the stakeholders at the Public Hearing

- 7.4.1 The Traditional Healers organisation, this group strongly expressed their views that the Health Amendment Bill [B24B-2011] does not recognise them under the definition of the health practitioners.
- 7.4.2 The group further raised a view in relation to patients that are continuously asked to participate in quality assurance exercises at their local clinics and hospitals but no feedback is given back to these communities.
- 7.4.3 The public also emphasised that the lack of sufficient health professional staff and proper infrastructures contributes to clinics and hospitals not complying with the set standards.
- 7.4.4 More visible educational campaigns to be conducted at the communities about the core standards so that the communities are aware about their rights.
- 7.4.5 The community is also pleading that the Health Officers and Inspectors should be visible and pro-active and should not only react when there are issues of non-compliance by health institutions on the compliance to set standards.

8. VIEWS OF THE GAUTENG DEPARTMENT OF HEALTH

The Gauteng Department of Health welcomes the National Health Amendment [B24B-2011] Bill and pledges commitment and compliance to the prescripts as contained in the Bill and accepts it as an enabling system towards effective service delivery, strengthening Primary Health Care and a clean audit in 2014.

9. FINANCIAL IMPLICATIONS

The committee notes that the National Treasury has allocated the following amounts for the new Office as well as for ongoing National Department of Health functions:

The total budget for 2011/12 Financial Year (FY) is R28 million, for 2012/13 FY an amount of R48 million and lastly R40 million for the 2013/14 FY has been allocated.

10. SOCIAL IMPACT ASSESSMENT OF THE BILL

The committee is of the view that the new amendment of the Act will have a positive impact on the health and socio economic development of the country. The implementation will also improve the concerted action of policymakers and communities that promote the standard of living and the productivity of people. It will also strengthen accountability by health care providers in undertaking systematic activities to prevent or cure health problems and promote good health in people.

11. COMMITTEE RECOMMENDATIONS

The Portfolio Committee on Health raised issues which were dealt with clause by clause which need the attention of the drafters. The bill seeks to amend the National Health Act, 2003 (Act No.63 of 2003) by the insertion of the whole Chapter 10 to the Act, that empowers the Minister to establish an independent entity, namely the Office of Health Standards Compliance. The amendment of the Bill is welcomed by the committee since it brings a new dimension in the monitoring and evaluation of the health services, enforcing compliance to the set health standards.

11.1 The committee recommends that "Traditional Health practitioners" be inserted under the definitions.

11.2 Although the committee welcomes and supports the establishment of the Ombud Office that is intended to ensure compliance with the Act, it is equally concerned that turnaround times for responses between the structures are not stipulated. It (committee) therefore recommends that specific timelines in relation to feedback on investigated cases should be included in the Act.

11.3 The Bill proposes a R10 million fine for health care institutions that will not comply with the Act which the committee views as unrealistic and impractical proposal. According to the committee the hefty proposed fine of R10 million does not consider the fact that public health institution are already under immense financial pressure currently operating on deficit budget. In light of the above, the committee therefore

recommends that a demerit system be used instead, rather than imposing the R10 million fine that will further worsen the financial conditions of the health care institution even further.

- 11.4 The committee also proposes that (clause 4) be specific on the *establishment of the board* as it is currently silent of the amended Bill.
- 11.5 The committee recommends that when the Minister prescribes norms and standards for health establishment, the word "may" be substituted with "must", so that the Minister must be the only one prescribing the norms, as opposed to any legislative body or any person within the Health system. The committee strongly feels that these powers and functions must reside with the Minister.
- 11.6 The committee recommends that there should be an inclusion in the Act that a fit and proper and suitable qualified expert in accounting be appointed by the Minister after consultation with the Board to determine the tariffs.
- 11.7 The committee further recommends that it is imperative that the health establishment reinforces public campaigns of Patients Charter and Batho Pele principle and to have collaboration with other health institutions as to improve the confidence level of the health care users towards the public health system.
- 11.8 The committee proposes that the Act should strongly address the attitudes of health care workers for the Bill to function to its optimum.

12. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE

The Health Portfolio Committee supports the principle and details on the National Health Amendment Bill [B24B2011] taking into consideration the recommendations proposed above which seek to ensure compliance with the constitution and other applicable laws.

IPHALAMENDE LAKWAZULU-NATALI



KWAZULU-NATAL PROVINSIALE PARLEMENT

KWAZULU-NATAL PROVINCIAL PARLIAMENT

4

NEGOTIATING MANDATE

TO: HON. RN RASMEI
CHAIRPERSON: SELECT COMMITTEE ON SOCIAL SERVICES

NAME OF BILL: NATIONAL HEALTH AMENDMENT BILL

NUMBER OF BILL: B24B-2011

DATE OF DELIBERATION: FRIDAY, 5 OCTOBER 2012

BACKGROUND

The Committee met for a briefing by the Director-General of the Department of Health on the National Health Amendment Bill [B24B-2011] on 11 September 2012. The Committee then agreed to hold three public hearings in Pietermaritzburg on 25 September, Newcastle on 26 September 2012 and Dundee on 27 September 2012. The main reason why these venues were identified was due to the fact that they had been identified as the pilot sites for the implementation of the National Health Insurance. The Committee also allowed for written submissions to be forwarded to the Committee by 02 October 2012 in order to meet the Negotiated Mandate deadline on 09 October 2012. The Committee received written submissions from Hospital Association South Africa, PathCare and the South African Medical Device Industry Association. On 05 October 2012, the Committee deliberated on the Bill clause by clause and considered all the submissions that were forwarded to the Committee for its consideration.

VOTE OF THE LEGISLATURE:

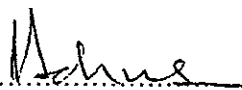
The Portfolio Committee on Health met today, Friday, the 5th of October 2012 to consider the National Health Amendment Bill [B24B-2011].

The following amendments were proposed and considered on the Bill:

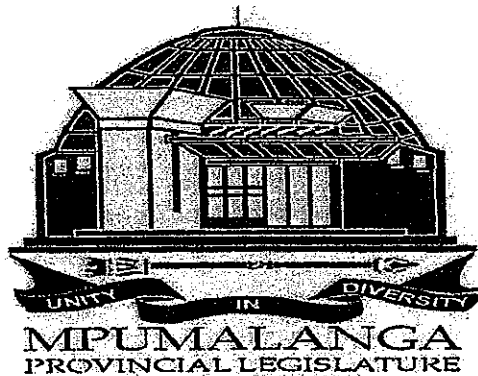
1. In clause 1(c) delete the definition of "environmental health practitioner" sub-clauses (b) and (c).
2. In clause 4 which amends section 47 of the principal Act there is inconsistency of the use of the term "norms and standards" and the term "quality requirements and standards". The Committee proposes that the term "norms and standards" should be used throughout the Bill and the principal Act to ensure consistency and avoid confusion.

3. Amend clause 79B(1)(a) to insert "nursing profession" as one of the expertise for the five members of the Board.
4. Amend clause 79(1) to ensure consultation and checks and balances prior to standards being prescribing by inserting the following:
"(f) publish information relating to envisaged prescribed norms and standards to affected stakeholders for comment, and after publication as final, through the media and, where appropriate, to specific communities;
5. Amend clause 79I to include the actioning of the recommendations in the report of the Ombud as provided in clause 81A(9) and (10).
6. The Committee agreed with clause 81(1), however, the Democratic Alliance registered its objection consistent with the one raised by its national counterparts and proposed that the appointment of Ombud must be made by parliament instead of the Minister after consultation with the Board in order to ensure the independence of Ombud.

The Committee agreed to mandate the KwaZulu-Natal delegation to the National Council of Provinces to support the Bill provided that the above comments and proposed amendments are considered and consolidated in the Bill.


.....
HON L JOHNSON
CHAIRPERSON OF HEALTH
PORTFOLIO COMMITTEE

05.10.2012
.....
DATE



Chairperson

Portfolio on Health and Social Development

Enquiries: Hon AF Mahalela/ Adv B Mdluli

Email: AFMahalela@mpuleg.gov.za

Tel. No.: 013 766 1074/1038

NEGOTIATING MANDATE

To: The Chairperson: Select Committee on Social Services
National Council of Provinces

Name of the Bill: National Health Amendment Bill

Number of the Bill: [B 24B—2011]

Date of Deliberation: 19 October 2012

Mandate of the Legislature: The Portfolio Committee on Health and Social Development, after considering the National Health Amendment Bill, 2011 ("the Bill"), confers on the permanent delegate representing the Mpumalanga Provincial Legislature in the NCOP, the mandate to negotiate in favour of the Bill taking into consideration the views of members of the Committee as contained in the attached report and the proposed amendments.

The following comments and amendments were emphasised by the Committee:

❖ Clause 3 : Amendment of section 21 of Act 61 of 2003

It is proposed that a clause be inserted, where the Minister may delegate powers to provinces port health services so that provinces for purposes of enhancing measures that are aimed at dealing with infection control at

provincial level. The decentralisation would also be in line with the principles of cooperative governance.

❖ **Clause 4: Amendment of section 47 of Act**

It is imperative that the Minister consults with the Office and the National Health Council (NHC) in view of the fact that MECs represent provinces and are accountable to provinces.

It is therefore recommended that section 47 be amended as follows:

"(1) All health establishments must comply with the quality requirements and standards prescribed by the Minister after consultation with the National Health Council and the Office."

❖ **Clause 5: Substitution of Chapter 10 of Act 61 of 2003**

❖ **Clause 79(1):** It is recommended that a clause dealing with public education on the norms and standards be inserted after clause 79(1)(h) as follows:

- (i) provide public education on the norms and standards; and
- (j) advise the Minister on any matter referred to it by the Minister.

❖ **Clause 79(3)** is misplaced and it is recommended that it be moved to clause 6 dealing with the making of regulations by the Minister. (See clause 6(c)(ii) below for more information).

❖ **Clause 79B(1)**, must be amended by the deletion of 12 and substituting it 15, as follows: The Board consists of no less than 7 members and no more than ~~[12]~~ 15 members appointed by the Minister. Clause 79B(1)(g) the number of representatives from organised labour should be increased to two (2). It is also recommended that one (1) member from organised local government should be represented in the board.

- ❖ Clause 79C: It is recommended that clause 79C(6) be amended by inserting the following:

(6) If the number of members of the Board is reduced to such an extent that a quorum cannot be obtained, the Minister may appoint any suitably qualified persons on a temporary basis to serve on the Board for a period not exceeding 90 days **[until new members are appointed in terms of this section]**.

- ❖ Clause 79F(7): It is recommended that clause 79F(7) be amended by correcting a typing error as follows:

(7) In the absence of the chairperson or vice chairperson and the person acting as the chairperson from a particular meeting of the Board, the members present at that meeting may elect one of their **[number]** members to preside at that meeting.

- ❖ Clause 79H(3) (a) and (b): It is recommended that the clause be amended as follows:

(3)(a) The appointment of a person as the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and **[the Minister after consultation with]** the Board.

(3)(b) The Minister, **[after]** must in consultation with the Board, and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.

- ❖ Clause 80(1): It is recommended that this clause be amended as follows:

The Minister, relevant member of the Executive Council or **[mayor]** municipal manager of a **[municipal council]** municipality may appoint any person in the employ of the national department, **[or province]** provincial department or municipality, as the case may be, as a health officer.

With regard to the mayor aspect, in terms of the Local Government Municipal Systems Act, section 57 employees are appointed by the Council and all other employees are appointed by the Municipal Manager, hence the above-mentioned proposition was made to substitute "mayor" with "municipal manager".

- ❖ Clause 81A(11): It is recommended that this clause be amended by inserting the following: Where the Chief Executive Officer fails to act in accordance with the findings and recommendations of the Ombud, the Ombud may request the intervention of the Board and the Minister.
- ❖ Clause 81B(1): It is recommended that in keeping with the spirit that the Ombud must be independent and impartial, it is recommended that the budget for the Ombud should be part of the budget of the Office, but should be ring-fenced.
- ❖ Clause 81B(4): It is recommended that this clause be amended by the correction of a drafting error, as follows:
The Ombud must, within one month after the end of the financial year, prepare a report for the Minister on the affairs and functions of the Ombud during the financial year in question, and submit such report to the Chief Executive Officer for inclusion in the report referred to in section [79D1] 79K (1).
- ❖ Clause 82A(4)(e): It is recommended that this clause be amended by deleting R10 million and inserting the following:
(4) If a person in charge of a health establishment to whom a compliance notice has been issued, fails to comply with the notice, the Office may as appropriate and taking into account the nature, extent, gravity and severity of the contravention—
(e) impose upon that person or health establishment a fine not exceeding [10 million rand] an amount determined by the Minister from time to time, by notice in the Gazette.

❖ **Clause 6: Amendment of section 90 of Act 61 of 2003**

As mentioned in clause 4 above, it is important that the Minister consults with both the National Health Council and the Office when making regulations. It is therefore recommended that clause 6(a) be amended by the deleting and substituting words as follows:

"The Minister, after consultation with the National Health Council [or] and the Office, as the case may be, may make regulations regarding—";

As per the proposal dealing with clause 4 above that clause 79(3) be moved to clause 6, it is recommended that clause 79(3) be inserted after clause 6(c)(i) as follows:

(c) the norms and standards for—

(i) the national health systems;

ii) different types of health establishments; or

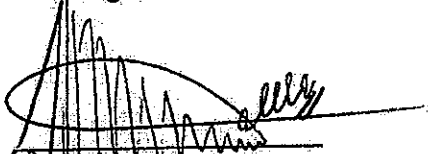
iii) specified types of protective clothing and the use, cleaning and disposal of such clothing;"

❖ **Clause 8: Amendment of laws**

It is recommended that clause 8 be amended as follows:

With effect from the coming into operation of the provisions relating to the Office of Health Standards Compliance, the Public Finance Management Act, 1999 (Act No. 1 of 1999), is hereby amended by the insertion in Part A of Schedule 3 after the expression **["Nelson Mandela Museum, Umtata"]** "Northern Flagship Institution" of the expression "Office of Health Standards Compliance".

Kind regards,



HON AF MAHLALELA

**ACTING CHAIRPERSON: PORTFOLIO COMMITTEE
ON HEALTH AND SOCIAL DEVELOPMENT**

22/10/2012
DATE



Northern Cape
Provincial Legislature

NEGOTIATING MANDATE FOR THE NATIONAL HEALTH AMENDMENT BILL [B24B -2011]

(Section 76 Bills)

1. INTRODUCTION

The Chairperson of the Portfolio Committee on Health and Social Development, Hon AJ Beukes, tables the Committee's Negotiating mandate on the **National Health Amendment Bill, [B24B - 2011]** as adopted by the Portfolio Committee on 22 October 2012.

2. PROCESS FOLLOWED

2.1 The Speaker of the Northern Cape Provincial Legislature, on receipt, referred the **National Health Amendment Bill, [B24B- 2011]** to the Portfolio Committee on Health and Social Development, on 17 August 2012.

2.2 The Portfolio Committee received a briefing on the Bill on 13 September 2010, from the Northern Cape's Permanent Delegate to the NCOP, Hon Faber, and the National Department of Health.

2.3 The Portfolio Committee resolved at the meeting of 13 September 2012, to hold public hearings on the referred Bill in the Francis Baard, Siyanda, John Taulo Gaetsewe, Namakwa and Pixley Ka Seme District, to solicit the views of communities and stakeholders with regard to the **National Health Amendment Bill, [B24B - 2011]**.

Public Hearings was held in Francis Baard, Siyanda, John Taulo Gaetsewe and Namakwa, and Pixley Ka Seme Districts during October 2012, as per Committee resolution and both written and oral submissions were called for. The public engaged with the Members of the Provincial Legislature and the Representatives from the Department of Health in respect of the Bill.

2.4 On 22 October 2012, the Portfolio Committee on Health and Social Development deliberated and considered the **National Health Amendment Bill, [B24B - 2011]**.

3. THE COMMITTEE SOUGHT TO SEEK CLARITY WITH REGARD TO:

- a. The Independence and non political interference as outlined in clause 79B when the Board is established.
- b. The inclusion of a clause in terms of establishing the Board.
- c. The application of the board to the registrar to be listed as an entity and should be part of the bill as we believe that this act should not amend the Public Finance Management Act.
- d. The bill is not clear on how the establishment of the Office of the Health Standardised Compliance would reach out to different areas in different Provinces.
- e. The Bill does mention the processes of engagement when an establishment should be closed down, and this should be included.
- f. No clarification on the responsibility of payment for penalties should an establishment be closed down.

4. TECHNICAL INPUTS ON THE BILL

- a. The Bill is not clear as to where exactly these offices of the Inspectors would be established where complaints can be referred to.
- b. There is no clarity in the Bill regarding the consultation of the Nursing Board and the role they would play in terms of Composition of the Board as outlined in clause 79B of the Bill.
- c. The Bill does not clearly outline the role of the existing board vis-a-vis the role of the National Board Committee
- d. The monitoring, evaluation and maintenance of these standards are not assured in the Bill.
- e. The nomination of Board Members should ensure that all stakeholders are catered for.
- f. The bill should also apply to all pharmaceutical outlets as well and not focus on health facilities only.
- g. Clause 79 should also include the powers and functions of the MEC and the provincial representatives.
- h. In clause 82 the bill does not clearly state how the public would be made aware of the norms and standards that should be applied by public and private health facilities.
- i. The term of office of the Ombud should be coupled with the term of office of the Minister.
- j. A clause that deals with the accessibility of the Provincial Ombud or representative should be included.
- k. The Labour Relations Act should be consulted to confirm that clause 81(5) of the bill is consistent with it.
- l. The non inclusion of medical centres at correctional services is a concern.

5. LEGAL TECHNICAL INPUT

A concern has been raised with regard to clause 8 of the Bill as it appears to usurp the power of the Minister of Treasury as envisaged in section 47 of the Public Finance Management Act.

6. GENERAL COMMENTS MADE BY THE PUBLIC

The public also made input with regard to the attitude, shortage of the nursing staff, the unavailability of medication as well as the long waiting period of patients, and cleanliness, which confirms that the public is in support of the establishment of the Office of the Health Standard Compliance.

7. WRITTEN INPUTS ON THE BILL

- No written submissions were received.

8. KEY DETERMINING PRINCIPLES

The public hearings held by the Portfolio Committee were successful.

NB: The majority of the people who attended the public hearings did not oppose the Bill.

9. PORTFOLIO COMMITTEE POSITION ON THE BILL

After due deliberation and taking note of the Public's input, the Portfolio Committee on Health and Social Development supports the Bill.

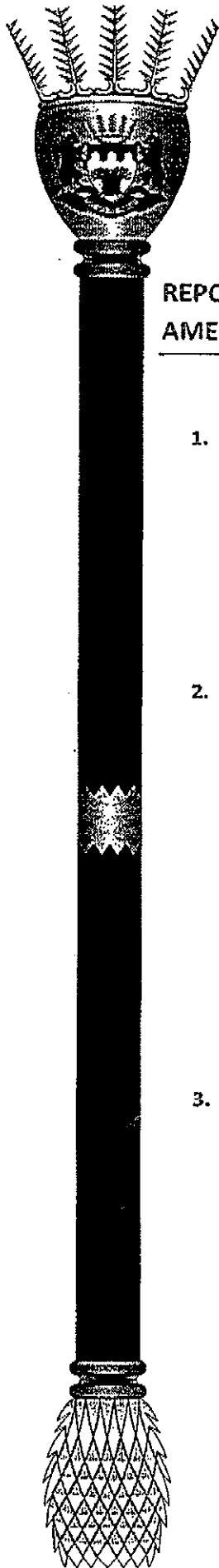
10. COMMITTEE ADOPTION OF THE BILL

The Committee adopted this Negotiating Mandate duly signed by the Chairperson of the Committee.

The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to support the Bill, taking note of the comments and recommendations raised by the Committee as well as inputs from the public.



HON AJ BEUKES
Chairperson: PC on Health
And Social Development



Limpopo Legislature

OFFICE OF THE SECRETARY

Physical Address:

Lebowakgomo
Government Complex

Postal Address:

Private Bag X9309
Polokwane
0700

REPORT OF THE PORTFOLIO COMMITTEE ON THE NATIONAL HEALTH AMENDMENT BILL [B24B-2011]

1. INTRODUCTION

The National Health Amendment Bill [B24B-2011] was referred to the Limpopo Provincial Legislature by the National Council of Provinces (NCOP). Subsequently, the Bill was referred to the Portfolio Committee on Health and Social Development for consideration and to confer a negotiating mandate to the NCOP Delegate.

2. BACKGROUND OF THE BILL

The National Health Amendment Bill [B24B-2011] seeks to amend the National Health Act, 2003 (Act No. 61 of 2003), to empower the Minister to establish an independent entity, namely the Office of Health Standards Compliance.

The role of the Office of Health Standard Compliance will be to:-

- (a) advise the Minister of the development and implementation of enforceable norms and standards for quality and safety for the entire health system;
- (b) ensure compliance with the prescribed norms and standards; and
- (c) deal with complaints relating to the entire health system.

3. PUBLIC HEARING ON THE BILL

A Public Hearing was conducted in Polokwane and all provincial districts were represented at the hearing. The attendees of the public hearing made the following inputs and concerns to the Bill per clause, this report shall only reflect inputs and concerns relevant to the Bill.

The representatives of all Provincial Districts agreed with the amendments of the following clauses without any objections or additions:

- Amendments of section 1 of Act 61 of 2003;
- Amendments of section 21 of Act 61 of 2003;
- Amendments of section 25 of Act 61 of 2003;
- Amendments of section 47 of Act 61 of 2003

Limpopo Legislature

OFFICE OF THE SECRETARY

Physical Address:

Lebowakgomo
Government Complex

Postal Address:

Private Bag X9309
Polokwane
0700

NEGOTIATING MANDATE

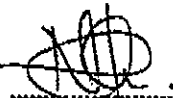
To : The Chairperson: SC on Social Services

Name of Bill : National Health Amendment Bill

Number of the Bill : [B24B- 2011]

Bill Number : 10011117007

Vote of the Legislature : Provincial NCOP Permanent Delegates to negotiate on the Bill, taking into consideration the inputs mentioned in the Report.



HON. N.P. MHLARI
COMMITTEE CHAIRPERSON

19/10/2012

DATE

Inputs and comments were made in relation to the newly inserted chapter 10 of the Bill:

Section 79(1)(g) recommend quality assurance, occupational and safety environment and management systems for the national health system to the Minister for approval;

Section 79(3) The Minister may prescribe different norms and standards for different types of health establishments in consultation with regulatory authorities;

Section 79(c)(4) The Members of the board hold office for a [period]term of at least three, as the Minister may determine at the time of appointment, but are eligible for re-appointment for one additional term;

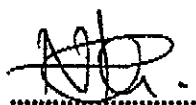
Section 80(1) The Minister, relevant member of the executive council or mayor of the municipal council may [appoint] designate any person in the employ of national department, province or municipality, as the case may be, as a health officer;

The composition of board in **Section 79B (1)** the board consists of no less than 7 members and no more than 12 members appointed by the Minister, however **Section 79(b)(2)** The Chief Executive Officer and the Chief Financial Officer of the Office are *ex officio* members of the Board, which may mean members of the Board would be 14.

Location of the Ombud in **Section 81(3)(b)** The Ombud is located within the Office, however the Bill is not specific where the Office would be exactly located, the general view of the hearing was that the Office and Ombud should be easily accessible by the public.

4. CONCLUSIONS

The Committee having considered the Bill, hereby confer a negotiating mandate to the NCOP delegate to negotiate in favour of the Bill with the aforementioned inputs.



HON. N. MHLARI

Chairperson of Portfolio Committee on Health and Social Development

NORTH WEST PROVINCIAL LEGISLATURE

Office of the Speaker

Legislature Building
Dr. James Moroka Ave
Private Bag X2018
Mmabatho, 2730

Tel: (018) 392 7001
Fax: (018) 392 7106

NEGOTIATING MANDATE

TO:

Hon R. N Rasmeni
Chairperson of Select Committee on Social
Services

Name of the Bill/Question:

NATIONAL HEALTH AMENDMENT BILL [B24B
2011]

Number of Bill:


[B24B - 2011]

Date of deliberation:

21 September 2012

Vote of Legislature

The portfolio on Health and Social Development,
Women, Children and People with Disabilities
Committee vote in favor of the Bill noting the
concerns as raised by, Inter alia, the Laboratory
Medicine Group and Pathcare.


Hon K. V. Kekesi
Chairperson: Health and Social Development,
Women, Children and People with Disabilities.


Date

**Wes-Kaapse Provinsiale Parlement
Western Cape Provincial Parliament
IPalamente yePhondo leNtshona Koloni**



NEGOTIATING MANDATE

To: Hon. R N Rasmeni
Chairperson: Select Committee on Social Services

Name of Bill: National Health Amendment Bill

Number of Bill: [B24 - 2011]

Date of deliberation: 21 September 2012

Vote of Legislature: The Standing Committee on Community Development
begs to report that it confers on the Western Cape's
Permanent Delegate in the NCOP the authority to
support the Bill

Amara Sx
Signature

21-09-2012.
Date

Hon. A J D Marais
Chairperson: Standing Committee on Community Development

