



South African Human Rights Commission

SAHRC SUBMISSION ON THE NATIONAL HEALTH INSURANCE BILL [B 11-2019]

Presented to Portfolio Committee on Health

19 May 2021





Introduction

- In 2019, the SAHRC, in response to a public invitation by the portfolio committee on Health, submitted written comments on the National Health Insurance Bill (Bill-2019).
- The objective of the Bill is to achieve universal access to quality health care services in South Africa in accordance with section 27 of the Constitution.
- It is also to establish a National Health Insurance Fund and to set out its powers, functions and governance structures; to provide a framework for the strategic purchasing of health care services by the Fund on behalf of users.



Introduction (2)

- To create mechanisms for the equitable, effective and efficient utilisation of the resources of the Fund to meet the health needs of the population; to preclude or limit undesirable, unethical and unlawful practices in relation to the Fund and its users; and to provide for matters connected herewith.
- The SAHRC supports the principles of the NHI Bill - including the right to health access, social solidarity, equity, effectiveness, appropriateness, efficiency and affordability.
- If well administered the NHI has the potential to contribute to addressing inequality in the healthcare sector and thereby assist in the reduction of poverty in South Africa.



Commission's Mandate (1)

- The South African Human Rights Commission (SAHRC) is mandated by Section 184 (1) of the Constitution of the Republic of South Africa (Constitution) to:
 - (a) promote, respect for human rights and a culture of human rights;
 - (b) promote the protection, development and attainment of human rights; and
 - (c) monitor and assess the observance of human rights in the Republic.
- The powers and functions of the Commission are further elaborated upon in Section 13(1)(a)(i) of the South African Human Rights Commission Act, 40 of 2013.



Commission's Mandate (2)

(i) Make recommendations to organs of State at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and the law, as well as appropriate measures for the further observance of human rights;

- Further, Section 13(1)(b)(v) states that the Commission must:

(v) Must review government policies relating to human rights and may make recommendations.

Comments on the NHI Bill (1)

- While the SAHRC supports the principles of the NHI, it has some concerns to the existing NHI Bill as circulated for comment. The presentation will deal with some of those concerns.

Basic health care services:

- The Act has not defined what “basic health care services” is. This definition is important especially in light of the fact that reference is made to provision of “basic health care services”. The definition of “basic health care services” must be in line with the Constitution as well as accepted international standards.

Comments on the NHI Bill (2)

Population Coverage:

- The NHI Bill further limits access to healthcare by asylum seekers in South Africa. It is common cause that it takes a long time to finalise immigration matters of persons who are seeking asylum. Persons seeking asylum are therefore left in an indeterminate state especially as far as registration for services is concerned.
- The Commission has on numerous occasions raised concerns about the slow processing and finalising asylum seekers' applications, in some cases waiting periods taking several years.

Comments on the NHI Bill (3)

- The Commission notes that Section 4 of the NHI unfairly discriminates against asylum seekers and undocumented migrants and thereby unlawfully restricts their right to access health care in South Africa. Under Section 4 of the Bill, asylum seekers and undocumented migrants are only entitled to —
- “emergency medical services, treatment and screening for notifiable conditions of public health concern.”
- Migrants' socio-economic rights have been developed and given meaning by the courts.

Comments on the NHI Bill (4)

- In *Khosa v Minister of Social Development*; and in *Mahlaule v Minister of Social Development*, the Constitutional Court held that equality in respect of socio-economic rights is implicit in the use of the word 'everyone' in Section 27(1) of the Constitution in respect of those entitled to the rights set out therein.
- In *Lawyers for Human Rights and Another v Minister of Home Affairs*, the Constitutional Court held that when the South African Constitution limits rights to citizens, it clearly expresses that limitation. because the Constitution did not expressly reserve the rights mentioned above for citizens, all those living within South Africa's borders are entitled to them

Comments on the NHI Bill (5)

Powers and functions of Chairperson, Deputy Chairperson and Members of the Board:

- The success of the NHI will, depend on, among others good governance.
- Therefore, the powers and function of the Chairperson, Deputy Chairperson and members of the board are crucial and thus need to be clearly setout in order to avoid conflict and ensure an efficient Board and assist in the decision-making process.
- The Commission is also concerned about the Bill does not specify a minimum term of appointment for the appointment of the Board.

Comments on the NHI Bill (6)

Conditions of service of board members:

- The Commission is also of the view that the remuneration and conditions of service of Board members should be clearly stipulated.
- If clearly stated this may help to protect the Board from undue external interference and thereby help to guarantee the Board's independence.
- The remuneration of the Board should be determined by the Independent Commission for the Remuneration of Public Office-Bearers in line with the Remuneration of Public Office Bearers Act, 20 of 1998 so as to guarantee its independence.



Comments on the NHI (7)

Stakeholder Advisory Committee:

- Inclusion of Chapter 9 institutions, such as the Commission in this Committee.

Appeal Tribunal:

- Independence of the Appeal Tribunal from the Board.

Comments on the NHI (8)

Concentration of power in the Minister of Health:

- The Commission is concerned with both the appointment process of the Board and its reporting lines. The proposed governance structure places concentrated power on the Minister and does not adequately ensure the independence of the Board, which is essential given its extensive powers, including strategic purchasing and the buying and selling of property.

Comments on the NHI (9)

Registration of users:

- The Commission is concerned about the requirements of birth certificates or Identity Documents.
- There are many South Africans who do not possess any form of positive identification. This requirement may limit their access to health care as they will not be permitted to register as users. Furthermore, this section also fails to take into account the plight of stateless persons living in South Africa who do not possess any form of identification.

Comments on the NHI (10)

- The Commission recommends that the State considers other forms to identify individuals positively. Alternative means of identification and proof of residence, such as affidavits, will further constitute “less restrictive means” in limiting the right of access to health care services, while simultaneously constituting “reasonable measures” in progressively realising the right in terms of section 27(2) of the Constitution.

Comments on the NHI (11)

Relationship between the Minister and Chief Executive Officer:

- The Commission notes, with concern, that Section 21 of the NHI establishes a relationship between the chief executive officer (CEO) and the Minister even though the CEO is accountable to the Board.
- The Commission is concerned about the separation between political and operational spheres as the lack of separation may weaken the role of the Board.
- This relationship requires additional clarification.

Comments on the NHI (12)

Operation of the Fund:

- The Commission notes that the NHI provides for a single purchaser of health care services based on population needs.
- The Commission welcomes this approach as it allows the Fund to ensure that it purchases services at lower prices and because it allows the Fund to control health care spending and diverts health care resources to the needs of the population.
- This, in turn, allows for greater efficiency in health care expenditure and limits fruitless and wasteful expenditure.

Comments on the NHI (13)

- However, the following need to be clarified:
 - The role of Contracting Units for Primary Healthcare.
 - District Health Management Offices and their reporting lines.
 - The difference between District Health Management Offices and contracting units.
 - The accreditation and funding of ward-based outreach teams (WBOTs)
- It is unclear what a benefits package for users will consist of and transparency and access to information on this is essential to understand the extent of cover users can expect.

Comments on the NHI (15)

Information Platform of Fund:

- The Commission notes that Section 40(4) of the NHI requires health care providers to keep patient information such as information relating to patient health. The Commission is of the view that the NHI does not adequately address current challenges with patient record keeping and is not clear on how patient records and biometric information will be secured to ensure confidentiality.

General Comments on the NHI (1)

- An accessible, effective, efficient, appropriate and adaptable healthcare system that provides quality healthcare services to its users has the potential to significantly reduce poverty and inequality in the country and reduce the wastage of invaluable resources and capacity, which is desperately needed in the public sector.
- The NHI aims to address the socio-economic injustices, imbalances and inequities of the past.
- It is important to note that those socio-economic injustices and severe inequalities remain.

General Comments on the NHI (2)

- The current public healthcare is beset with systemic issues, which were further highlighted during the COVID pandemic.
- The NHI will not automatically solve these issues.
- Much up-scaling of resources and capacity is required prior.
- In addition, strong leadership and governance, multiple checks and balances and transparency is needed.
- A clearer more streamlined NHI and Fund is required to the one proposed.
- There should be no retrogressive measures applied to other socioeconomic rights to fund the NHI.



Thank You

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