

South African Government Continues to Gamble With Our Lives Through the NHI Bill

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INTRODUCTION

On Wednesday, 15 May 2024, President Cyril Ramaphosa publicly signed into law the National Health Insurance (NHI) Bill. This legislation aims to transform South Africa's healthcare system to achieve universal coverage for health services, addressing critical socio-economic imbalances and inequities of the past. President Ramaphosa described the NHI as an "important instrument to tackle poverty."

While the Bill promises universal healthcare for all, it has faced significant criticism from various political parties, stakeholders, and the public. Several healthcare associations have deemed the NHI unworkable.

BACKGROUND

The NHI is envisioned as a state fund through which the government will purchase healthcare services for South Africans from both public and private providers. According to an explainer on the parliamentary website, "South Africans will no longer be required to contribute directly to a medical health scheme to get quality health care."

Since the NHI Green Paper was published in 2011, it has received over 25,000 comments from stakeholders and the public. However, no amendments have been made to the Bill since 2011, and it was signed by the President in its original form.

THE LAW / LEGAL PRINCIPLES

The right to health is integral to the pursuit of an appropriate quality of life, a human right essential for everyone's bodily and mental well-being. The Constitution guarantees the right to access healthcare services under Section 27(1)(a), which includes reproductive health care.

This section is crucial for safeguarding, promoting, and advancing human rights, holding the State accountable for any failure to act reasonably in achieving the realization of this right. Section 27(1)(b) mandates the

State to "take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of the right."

In the *Soobramoney* case¹, the Constitutional Court noted that "the scarcity of resources available to the State constrained the enjoyment of this right, given South Africa's socio-historical context. Similarly, in the *Grootboom* case², the Court defined what constitutes "reasonable measures," stating that measures failing to address the needs of society's most vulnerable groups were unreasonable. Furthermore, implementation plans that did not meet the "reasonable" standard would not fulfil the State's obligations under Section 7(2) of the Constitution".

THE NHI PROCESS

The NHI Act was enacted by Parliament in June 2023 after being approved by the Portfolio Committee on Health in May 2023. It was subsequently forwarded to the National Council of Provinces (NCOP) for approval. The NCOP approved the Bill on 6 December 2023, and it was sent to the President for ratification, without significant changes despite concerns regarding its operational, constitutional, and financial sustainability.

President Cyril Ramaphosa signed the Bill into law on 15 May 2024, and it was gazetted as the NHI Act on 16 May 2024. However, specific timeframes for implementation have not yet been established.

PURPOSE AND GOALS OF THE NHI

The current public health system has struggled to meet the standards required for NHI accreditation, primarily due to a lack of health professionals, inadequate infrastructure, financial constraints, and outdated equipment.

The NHI aims to reduce healthcare costs for all South African citizens, functioning as universal health insurance funded by general taxes, contributions from individuals earning above a certain threshold, and monthly contributions from employees of the fund.

While the exact contribution amounts are unclear, “reports suggest that VAT could rise to 21.5%, income tax could increase by up to 30%, or there could be a payroll tax of approximately R1565 per month.”

The Government guarantees free medical care access to all South Africans when needed. The NHI fund aims to pool resources to provide affordable, high-quality care. Personal health services will be accessible to all South Africans regardless of socioeconomic background.

The NHI prohibits individuals from using commercial health insurance to cover treatments funded by the NHI, a controversial point among stakeholders, medical experts, and private citizens. Restricting medical programs could be detrimental to the NHI, making it challenging to provide the desired healthcare. This restriction may also undermine business and investor confidence, and increase the public financing burden on taxpayers.

FINANCING THE NHI SYSTEM

The NHI Act does not specify the anticipated costs of the fully implemented NHI. However, the parliamentary website identifies three main funding sources: general taxes, contributions from individuals earning above a set amount, and monthly employee contributions to the fund.

Significant additional funding will be needed for substantial public health delivery modifications that aim to contract private providers while enhancing quality and access. The National Treasury is expected to release a costing sheet soon, likely based on gradually delivering NHI benefits.

While the NHI Act suggests that payroll taxes and a personal income tax surcharge may be considered as funding sources, the National Treasury will decide on these levies. The Health Minister indicated at the Act’s introduction that no tax adjustments are planned for the remaining three years of the current Medium Term Expenditure Framework.

THE WRITERS OPINION

The importance of health care cannot be overstated; however, it is crucial to recognize the challenges that nationalized healthcare has posed even in first-world countries, where similar systems have often failed to meet expectations. Given South Africa’s status as a developing nation, one must critically assess the feasibility of implementing such a system here.

The current healthcare situation in South Africa is indeed marked by significant inequalities. While the goal of achieving universal healthcare is commendable, the implementation of a nationalized health policy is

fraught with risks and is unlikely to be the panacea that the Government portrays it to be. The introduction of this policy could exacerbate existing issues rather than resolve them.

There are numerous systemic issues that South Africa must address before embarking on such an ambitious project. Funding this initiative through taxpayer money poses a significant challenge, especially considering the already substantial tax burden on citizens. Furthermore, given the history of corruption and inefficiencies in service delivery by the government, there is a legitimate concern that this initiative could lead to further complications and failures.

Another critical concern is the potential impact on the healthcare workforce. The implementation of a nationalized system could lead to increased unemployment among healthcare practitioners, many of whom may choose to leave the country in search of more lucrative opportunities elsewhere.

The government’s current inability to provide adequate healthcare for the existing population, as promised in the Constitution, raises serious doubts about its capacity to extend these services to all citizens and immigrants under a nationalized system.

While the concept of universal healthcare is laudable and represents a significant step towards mitigating healthcare inequalities, it must be approached with caution. The ideal of accessible, quality healthcare for all, regardless of socio-economic background, is a noble goal. However, South Africa’s reputation for progressive legislation that is rarely enforced must be considered. The gap between legislative promises and the lived reality of most South Africans remains wide.

LEGAL CHALLENGES ALREADY BOUGHT AGAINST THE NHI

The NHI Act has faced several legal challenges since its enactment. One major issue raised is the constitutionality of the Act, particularly the potential infringement on the right to access private health services as protected under Section 27 of the South African Constitution. Additionally, the feasibility of implementing the NHI has been questioned, with concerns over the government’s capacity to manage such a comprehensive system, including the adequacy of infrastructure and the ability to maintain service standards.

Furthermore, the proposed funding mechanisms, such as potential increases in VAT, income tax, and payroll taxes, have been legally contested due to fears of placing an undue financial burden on taxpayers and doubts about the long-term sustainability of these measures.

These challenges stem from concerns about the financial and structural complexities of implementing the NHI, the risk of corruption, and the impact on existing medical schemes and patient rights. The legal landscape surrounding the NHI Act is evolving as various groups seek to address these issues through the courts (DFA)(Medical Brief).

CONCLUSION

While the NHI Act has significant flaws, improvements to South Africa's healthcare system are necessary for everyone. The integrated Universal Health Coverage "UHC" model offers the government an opportunity to expand healthcare access cost-effectively and efficiently.

In conclusion, as a nation, we remain optimistic that the result will be reasonable and feasible, given our existing financial constraints and macroeconomic environment, building on the strengths of the current public and private healthcare systems, rather than the doomed system it currently looks to be.

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¹See *Soobramoney v Minister of Health, Kwa-Zulu Natal, 1997 (12) BCLR 1696 (CC)*.

²*Government of the Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169 (CC)*.