

NHI Bill (2019) Summary



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Note to SAPPF Members: This is purely a summary of the NHI Bill. It does not critically analyse any of the aspects contained in the Bill. Members are encouraged to read the Bill in entirety. Numbering of the summary is in line with numbering of the Bill, for ease of reference.

NATIONAL HEALTH INSURANCE BILL

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 42598 of 26 July 2019)

BILL

To achieve universal access to quality health care services in the Republic in accordance with section 27 of the Constitution; 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; 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.

PREAMBLE

RECOGNISING—

- the socio-economic injustices, imbalances and inequities of the past;
- the need to heal the divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights; and
- the need to improve the quality of life of all citizens and to free the potential of each person;

BEARING IN MIND THAT—

- Article 12 of the United Nations Covenant on Economic, Social and Cultural Rights, 1966, provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- Article 16 of the African Charter on Human and People's Rights, 1981, provides for the right to enjoy the best attainable state of physical and mental health, and requires States Parties to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick;
- the rights to equality and human dignity are enshrined in the Constitution in sections 9 and 10, respectively;
- the right to bodily and psychological integrity is entrenched in section 12(2) of the Constitution;
- in terms of section 27(1)(a) of the Constitution everyone has the right to have access to health care services, including reproductive health care;
- in terms of section 27(2) of the Constitution the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of access to health care services;
- in terms of section 27(3) of the Constitution no one may be refused emergency medical treatment; and
- section 28(1)(c) of the Constitution provides that every child has the right to basic health care services;

AND IN ORDER TO—

- achieve the progressive realisation of the right of access to quality personal health care services;
- make progress towards achieving Universal Health Coverage;
- ensure financial protection from the costs of health care and provide access to quality health care services by pooling public revenue in order to actively and strategically purchase health care services based on the principles of universality and social solidarity;
- create a single framework throughout the Republic for the public funding and public purchasing of health care services, medicines, health goods and health related products, and to eliminate the fragmentation of health care funding in the Republic;
- promote sustainable, equitable, appropriate, efficient and effective public funding for the purchasing of health care services and the procurement of medicines, health goods and health related products from service providers within the context of the national health system; and
- ensure continuity and portability of financing and services throughout the Republic,

Selected Definitions

1. In this Act, unless the context indicates otherwise—

“accredited” means to be in possession of a valid certificate of accreditation from the Fund as issued in terms of section 39;

“Benefits Advisory Committee” means the Benefits Advisory Committee established in terms of section 25;

“central hospital” means a public hospital designated as such by the Minister as a national resource to provide health care services to all residents, irrespective of the province in which they are located, and that must serve as a centre of excellence for conducting research and training of health workers;

“certified”, in respect of a health establishment, means to be in possession of a valid certificate issued by the Office of Health Standards Compliance as provided for in the National Health Act;

“complementary cover” means 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;

“comprehensive health care services” means 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;

“Contracting Unit for Primary Health Care” means a Contracting Unit for Primary Health Care referred to in section 37;

“emergency medical services” means services provided by any private or public entity dedicated, staffed and equipped to offer pre-hospital acute medical treatment and transport of the ill or injured;

“Formulary” means the Formulary and its composition referred to in section 38(4);

“health care service” means—

(a) health care services, including reproductive health care and emergency medical treatment, contemplated in section 27 of the Constitution;

(b) basic nutrition and basic health care services contemplated in section 28(1)(c) of the Constitution;

(c) medical treatment contemplated in section 35(2)(e) of the Constitution; and

(d) where applicable, provincial, district and municipal health care services;

“health care service provider” means a natural or juristic person in the public or private sector providing health care services in terms of any law;

“health establishment” means a health establishment as defined in section 1 of the National Health Act;

“health goods”, in respect of the delivery of health care services, includes medical equipment, medical devices and supplies, health technology or health research intended for use or consumption by, application to, or for the promotion, preservation, diagnosis or improvement of, the health status of a human being;

“health related product” means any commodity other than orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance which is produced by human effort or some mechanical, chemical, electrical or other human engineering process for medicinal purposes or other preventive, curative, therapeutic or diagnostic purposes in connection with human health;

“hospital” means a health establishment which is classified as a hospital by the Minister in terms of section 35 of the National Health Act;

“mandatory prepayment” means compulsory payment for health services before they are needed in accordance with income levels;

“medicine” means medicine as defined in section 1 of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);

“Office of Health Standards Compliance” means the Office of Health Standards Compliance established by section 77 of the National Health Act;

“personal information” means personal information as defined in section 1 of the Promotion of Access to Information Act;

“pooling of funds” means the aggregation of financial resources for the purpose of spreading the risk across the population so that individual users can access health services without financial risk;

“prescribed” means prescribed by regulation made under section 55;

“primary health care” means addressing the main health problems in the community through providing promotive, preventive, curative and rehabilitative services and—

(a) is the first level of contact of individuals, the family and community with the national health system, bringing health care as close as possible to where people live and work, and constitutes the first element of a continuing health care process; and

(b) in the public health sector, is the clinic, and in the private health sector, is the general practitioner, primary care nursing professional, primary care dental professional and primary allied health professional, through multi-disciplinary practices;

“provider payment” means the payment to providers in a way that creates appropriate incentives for efficiency in the provision of quality and accessible health care services using a uniform reimbursement strategy;

“referral” means the transfer of a user to an appropriate health establishment in terms of section 44(2) of the National Health Act;

“social solidarity” means providing financial risk pooling to enable cross-subsidisation between the young and the old, the rich and the poor and the healthy and the sick;

“strategic purchasing” means the active purchasing of health care services by the pooling of funds and the purchasing of comprehensive health care services from accredited and contracted providers on behalf of the population;

“user” means a person registered as a user in terms of section 5.

Chapter 1

PURPOSE AND APPLICATION OF ACT

Purpose of Act

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;

(b) ensuring the sustainability of funding for health care services

(c) providing for equity and efficiency in funding by pooling of funds and strategic purchasing of health care services, from accredited and contracted health care service providers.

3. (1) This Act applies to all health establishments, excluding military health services and establishments.

(2) This Act does not apply to members of—

(a) the National Defence Force; and

(b) the State Security Agency.

(3) 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.

(4) The Act does not in any way amend, change or affect the funding and functions of any organs of state in respect of health care services until legislation contemplated in sections 77 and 214, read with section 227, of the Constitution

(5) The Competition Act, 1998 (Act No. 89 of 1998), is not applicable to any transactions concluded in terms of this Act.

Chapter 2

ACCESS TO HEALTH CARE SERVICES

Population coverage

4. (1) The Fund, in consultation with the Minister, must purchase health care services, determined by the Benefits Advisory Committee, on behalf of—

- (a) South African citizens;
- (b) permanent residents;
- (c) refugees;
- (d) inmates as provided for in section 12 of the Correctional Services Act, 1998; and
- (e) certain categories or individual foreigners determined by the Minister of Home Affairs

(2) An asylum seeker or illegal foreigner is only entitled to—

- (a) emergency medical services; and
- (b) services for notifiable conditions of public health concern.

(3) All children, including children of asylum seekers or illegal migrants, are entitled to basic health care services

(4) 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

(5) A foreigner visiting the Republic for any purpose—

- (a) must have travel insurance to receive health care services

Registration as users

5. (1) A person who is eligible to receive health care services in accordance with section 4 must register as a user with the Fund at an accredited health care service provider or health establishment.

(5) When applying for registration as a user, the person concerned must provide his or her biometrics and such other information as may be prescribed, including fingerprints, photographs, proof of habitual place of residence.

(7) Unaccredited health establishments whose particulars are published by the Minister in the *Gazette* must, on behalf of the Fund, maintain a register of all users containing such details as may be prescribed.

Rights of users

6. Without derogating from any other right or entitlement granted under this Act or under any other law, a user of health care services purchased by the Fund is entitled, within the State's available and appropriated resources—

- (a) to receive necessary quality health care services free at the point of care
- (b) to information relating to the Fund and health care service benefits available to users;
- (c) to access any information or records relating to his or her health kept by the Fund,
- (d) not to be refused access to health care services on unreasonable grounds;
- (e) not to be unfairly discriminated against
- (f) to access health care services within a reasonable time period;
- (g) to be treated with a professional standard of care;
- (h) to make reasonable decisions about his or her health care;
- (i) to submit a complaint in accordance with section 42

- (j)* to request written reasons for decisions of the Fund;
- (k)* to lodge an appeal against a decision of the Fund in accordance with section 43;
- (l)* to institute proceedings for the judicial review of any decision of the Appeal Tribunal;
- (m)* to the protection of his or her rights to privacy and confidentiality,
- (n)* to have access to information on the funding of health care services in the Republic; and
- (o)* to purchase health care services that are not covered by the Fund through a complementary voluntary medical insurance scheme

Health care services coverage

7. (1) Subject to the provisions of this Act, the Fund, in consultation with the Minister, must purchase health care services, determined by the Benefits Advisory Committee, for the benefit of users.

(2) Subject to subsection (4)—

(a) a user must receive the health care services that he or she is entitled to under this Act from a health care service provider or health establishment at which the user had registered.

(b) Such portability of health services as may be prescribed must be available to that user;

(c) should a health care service provider or health establishment not be able to provide the necessary health care services, the health care service provider or health establishment in question must transfer the user concerned to another appropriate health care service provider

(d) a user—

(i) must first access health care services at a primary health care level as the entry into the health system;

(ii) must adhere to the referral pathways prescribed for health care service providers or health establishments; and

(iii) is not entitled to health care services purchased by the Fund if he or she fails to adhere to the prescribed referral pathways;

(e) the Fund must enter into contracts with accredited health care service providers and health establishments at primary health care and hospital level based on the health needs of users

and

(f) in order to ensure the seamless provision of health care services at the hospital level—

(i) the Minister must, by regulation, designate central hospitals as national government components in accordance with section 7(5) of the Public Service Act, 1994

(ii) the administration, management, budgeting and governance of central hospitals must be made a competence of national government;

(iii) the management of central hospitals must be semi-autonomous with certain decision-making powers,

(iv) central hospitals must establish cost centres responsible for managing business activities

(4) Treatment must not be funded if a health care service provider demonstrates that—

(a) no medical necessity exists for the health care service in question;

(b) no cost-effective intervention exists for the health care service

(c) the health care product or treatment is not included in the Formulary,

(5) If the Fund refuses to fund a health care service, the Fund must—

(a) provide the user concerned with a notice of the refusal;

(b) provide the user with a reasonable opportunity to make representations in respect of such a refusal;

(c) consider the representations made in respect of paragraph *(b)*; and

(d) provide adequate reasons for the decision to refuse the health care service to the user.

(6) A user who is dissatisfied with the reasons for the decision contemplated in subsection (5)(d) may lodge an appeal in terms of section 43.

Cost coverage

8. (1) A user of the Fund is entitled to receive the health care services purchased on his or her behalf by the Fund free at the point of care.

(2) A person or user, as the case may be, must pay for health care services rendered directly, through a voluntary medical insurance scheme or through any other private insurance scheme, if that person or user—

(a) is not entitled to health care services purchased by the Fund

(b) fails to comply with referral pathways prescribed

(c) seeks services that are not deemed medically necessary by the Benefits Advisory Committee; or

(d) seeks treatment that is not included in the Formulary.

Chapter 3

NATIONAL HEALTH INSURANCE FUND

Establishment of Fund

9. The National Health Insurance Fund is hereby established as an autonomous public entity, as contained in Schedule 3A to the Public Finance Management Act.

Functions of Fund

10. (1) To achieve the purpose of this Act, the Fund must—

(a) take all reasonably necessary steps to achieve the objectives of the Fund and the attainment of universal health coverage

(b) pool the allocated resources in order to actively purchase and procure health care services, medicines, health goods and health related products

(c) purchase health care services on behalf of users as advised by the Benefits Advisory Committee;

(d) enter into contracts with accredited health care service providers based

(e) prioritise the timely reimbursement of health care services to achieve equity;

(f) establish mechanisms and issue directives for regular, appropriate and timeous payment

(g) determine payment rates annually

(h) take measures to ensure that the funding of health care services is appropriate

(i) collate utilisation data and implement information management systems

(j) develop and maintain a service and performance profile of all accredited and contracted health care service providers,

(k) ensure that health care service providers, health establishments and suppliers are paid in accordance with the quality and value

(l) monitor the registration, license or accreditation status, health care service providers

(o) undertake research, monitoring and evaluation of the impact of the Fund

(q) maintain a national database on the demographic and epidemiological profile of the population;

(r) protect the rights and interests of users of the Fund;

(s) enforce compliance with this Act;

Powers of Fund

11. (1) In order to achieve the purpose of the Act and to perform the functions outlined in section 10, the Fund may—

- (a) employ personnel and must comply with all applicable labour laws;
- (b) purchase or otherwise acquire goods, equipment, land, buildings, and any other kind of movable and immovable property;
- (c) sell, lease, mortgage, encumber, dispose of, exchange, cultivate, develop, build upon or improve, or in any other manner manage, its property;
- (d) in the prescribed manner and subject to national legislation, invest any money not immediately required for the conduct of its business and realise, alter or reinvest such investments or otherwise manage such funds or investments;
- (e) draw, draft, accept, endorse, discount, sign and issue promissory notes, bills and other negotiable or transferable instruments, excluding share certificates;
- (f) insure itself against any loss, damage, risk or liability which it may suffer or incur;
- (g) improve access to, and the funding, purchasing and procurement of, health care services, medicines, health goods and health related products that are of a reasonable quality;
- (h) investigate complaints against the Fund, health care service providers, or suppliers;
- (i) identify, develop, promote and facilitate the implementation of best practices in respect of—
 - (i) the purchase of health care services and procurement
 - (ii) payment of health care service providers
 - (iii) facilitation of the efficient and equitable delivery of quality health care services to users;
 - (iv) receiving and collate all required data from providers
 - (v) managing risks that the Fund is likely to encounter;
 - (vi) fraud prevention within the Fund and within the national health system;
 - (vii) the design of the health care service benefits to be purchased by the Fund,
 - (viii) referral networks in respect of users,
- (j) undertake or sponsor health research
- (k) discourage and prevent corruption, fraud, unethical or unprofessional conduct or abuse of users or of the Fund;
- (n) institute or defend legal proceedings and commence, conduct, defend or abandon legal proceedings

(2) The Fund may enter into a contract for the procurement and supply of specific health care services, and must—

- (a) purchase such services of sufficient quantity and quality to meet the needs of users;
- (b) take all reasonable measures to ensure that there may be no interruption to supply for the duration of the contract;
- (c) conduct its business in a manner that is consistent with the best interests of users;
- (d) not conduct itself in a manner that contravenes this Act; and
- (e) negotiate the lowest possible price for goods and health care services without compromising the interests of users

Chapter 4

BOARD OF FUND

Establishment of Board

12. A Board that is accountable to the Minister is hereby established to govern the Fund in accordance with the provisions of the Public Finance Management Act.

Constitution and composition of Board

13. (1) The Board consists of not more than 11 persons appointed by the Minister who are not employed by the Fund and one member who represents the Minister.

(6) The Chief Executive Officer is an *ex officio* member of the Board, but may not vote at its meetings.

(7) A Board member may resign by written notice to the Minister.

(8) The Minister may remove a Board member

(9) (a) Subject to paragraph (b), the Minister may dissolve the Board on good cause shown

Chairperson and Deputy Chairperson

14. (1) The Minister must appoint a Chairperson from amongst the members of the Board

(2) The Board must appoint a Deputy Chairperson from amongst the members of the Board

15. (1) The Board must fulfil the functions of an accounting authority as required by the Public Finance Management Act and is accountable to the Minister.

(3) The Board must advise the Minister on any matter

Conduct and disclosure of interests

16. (1) A member of the Board may not engage in any paid employment that may conflict with the proper performance of his or her functions.

Procedures

17. The Board must determine its own procedures in consultation with the Minister.

Remuneration and reimbursement

18. The Fund may remunerate a Board member and compensate him or her for expenses as determined by the Minister in consultation with the Minister

Chapter 5

CHIEF EXECUTIVE OFFICER

Appointment

19. (1) A Chief Executive Officer must be appointed on the basis of his or her experience and technical competence as the administrative head of the Fund in accordance with a transparent and competitive process.

(2) The Board must—

(a) conduct interviews of shortlisted candidates; and

(b) forward their recommendations to the Minister for approval by Cabinet.

(3) The Minister must, within 30 days from the date of appointment of the Chief Executive Officer, notify Parliament of the final appointment and give notice of the appointment in the *Gazette*.

Responsibilities

20. (1) The Chief Executive Officer as administrative head of the Fund—

- (a) is directly accountable to the Board;
- (b) is responsible for the functions specifically designated by the Board;
- (c) takes all decisions as contemplated in terms of subsection (6); and
- (d) must report to the Board on a quarterly basis and to Parliament on an annual basis.

Relationship of Chief Executive Officer with Minister, Director-General and Office of Health Standards Compliance

21. (1) The Chief Executive Officer of the Fund must meet with the Minister, Director-General of Health and the Chief Executive Officer of the Office of Health Standards Compliance at least four times per year.

Staff at executive management level

22. The Chief Executive Officer may not appoint or dismiss members of staff at executive management level without the prior written approval of the Board.

Chapter 6

COMMITTEES ESTABLISHED BY BOARD

Committees of Board

23. (1) The Board may establish a committee and, subject to such conditions as it may impose, delegate or assign any of its powers or duties to a committee so established.

Technical committees

24. (1) (a) The Board may establish such number of technical committees as may be necessary to achieve the purpose of this Act.

Chapter 7

ADVISORY COMMITTEES ESTABLISHED BY MINISTER

Benefits Advisory Committee

25. (1) The Minister must, after consultation with the Board and by notice in the *Gazette*, establish a committee to be known as the Benefits Advisory Committee as one of the advisory committees of the Fund.

(2) The membership of the Benefits Advisory Committee, appointed by the Minister, must consist of persons with technical expertise in medicine, public health, health economics, epidemiology, and the rights of patients, and one member must represent the Minister.

(5) The Benefits Advisory Committee must determine and review—

(a) the health care service benefits and types of services to be reimbursed at each level of care at primary health care facilities and at district, regional and tertiary hospitals;

(b) detailed and cost-effective treatment guidelines that take into account the emergence of new technologies; and

(c) in consultation with the Minister and the Board, the health service benefits provided by the Fund.

Health Care Benefits Pricing Committee

26. (1) The Minister must, after consultation with the Board and by notice in the *Gazette*, establish a Health Care Benefits Pricing Committee as one of the advisory committees of the Fund, consisting of not less than 16 and not more than 24 members.

(2) The Health Care Benefits Pricing Committee consists of persons with expertise in actuarial science, medicines, epidemiology, health management, health economics, health financing, labour and rights of patients, and one member must represent the Minister.

(3) The Committee must recommend the prices of health service benefits to the Fund.

Stakeholder Advisory Committee

27. The Minister must, after consultation with the Board and by notice in the *Gazette*, appoint a Stakeholder Advisory Committee comprised of representatives from the statutory health professions councils, health public entities, organised labour, civil society organisations, associations of health professionals and providers as well as patient advocacy groups in such a manner as may be prescribed.

Disclosure of interests

28. A member of a committee established by the Minister in terms of this Act who has a personal or financial interest in any matter on which such committee gives advice, must disclose that interest when that matter is discussed and be recused during the discussion.

Procedures and remuneration

29. When establishing a committee under this Chapter, the Minister must determine by notice in the *Gazette*—

- (a) its composition, functions and working procedures;
- (b) in consultation with the Minister of Finance, the terms, conditions, remuneration and allowances applicable to its members; and
- (c) any incidental matter relating to the committee.

Chapter 8

GENERAL PROVISIONS APPLICABLE TO OPERATION OF FUND

Role of Minister

31. (1) Without derogating from any responsibilities and powers conferred on him or her by the Constitution, the National Health Act, this Act or any other applicable law, the Minister is responsible for—

- (a) governance and stewardship of the national health system; and
- (b) governance and stewardship of the Fund in terms of the provisions of this Act.

Role of Department

32. (1) The functions of the Department are outlined in the National Health Act and the Constitution, and include—

- (a) issuing and promoting guidelines for norms and standards related to health matters;
- (b) implementing human resources planning, development, production and management;
- (c) co-ordinating health care services rendered by the Department with the health care services rendered by provinces, districts and municipalities, as well as providing such additional health services as may be necessary to establish an integrated and comprehensive national health system;
- (d) planning the development of public and private hospitals, other health establishments and health agencies as contemplated in section 36 of the National Health Act; and
- (e) integrating the annual health plans of the Department and the provincial and district health departments and submitting the integrated health plans to the National Health Council.

Role of medical schemes

33. Once National Health Insurance has been fully implemented as determined by the Minister through regulations in the *Gazette*, medical schemes may only offer complementary cover to services not reimbursable by the Fund.

National Health Information System

34. (1) The Fund must contribute to the development and maintenance of the national health information system as contemplated in section 74 of the National Health Act through the information Platform established in terms of section 40.

Purchasing of health care services

35. (1) The Fund must actively and strategically purchase health care services on behalf of users in accordance with need.

(2) The Fund must transfer funds directly to accredited and contracted central, provincial, regional, specialised and district hospitals based on a global budget or Diagnosis Related Groups.

(3) Funds for primary health care services must be transferred to Contracting Units for Primary Health Care at the sub-district level as outlined in section 37.

(4) (a) Emergency medical services provided by accredited and contracted public and private health care service providers must be reimbursed on a capped case-based fee basis with adjustments made for case severity, where necessary.

(b) Public ambulance services must be reimbursed through the provincial equitable allocation.

Role of District Health Management Office

36. A District Health Management Office established as a national government component in terms of section 31A of the National Health Act must manage, facilitate, support and coordinate the provision of primary health care services for personal health care services and non-personal health services at district level in compliance with national policy guidelines and relevant law.

Contracting Unit for Primary Health Care

37. (1) A Contracting Unit for Primary Health Care established in terms of section 31B of the National Health Act—

(a) manages the provision of primary health care services, such as prevention, promotion, curative, rehabilitative ambulatory, home-based care and community care in a demarcated geographical area; and

(b) is the preferred organisational unit with which the Fund contracts for the provision of primary health care services within a specified geographical area.

(2) A Contracting Unit for Primary Health Care must be comprised of a district hospital, clinics or community health centres and ward-based outreach teams and private providers organised in horizontal networks within a specified geographical sub-district area,

Office of Health Products Procurement

38. (1) The Board, in consultation with the Minister, must establish an Office of Health Products Procurement which sets parameters for the public procurement of health related products.

(2) The Office of Health Products Procurement must be located within the Fund and is responsible for the centralised facilitation and coordination of functions related to the public procurement of health related products

(4) The Office of Health Products Procurement must support the Benefits Advisory Committee in the development and maintenance of the Formulary,

(5) The Office of Health Products Procurement must support the review of the Formulary annually, or more regularly if required,

(6) An accredited health care service provider and health establishment must procure according to the Formulary,

Accreditation of service providers

39. (1) Health care service providers and health establishments accredited by the Fund in terms of this section must deliver health care services at the appropriate level of care to users who are in need and entitled to health care service benefits that have been purchased by the Fund on their behalf.

(2) In order to be accredited by the Fund, a health care service provider or health establishment, as the case may be, must—

(a) be in possession of and produce proof of certification by the Office of Health Standards Compliance and proof of registration by a recognised statutory health professional council, as the case may be; and

(b) meet the needs of users and ensure service provider compliance with prescribed specific performance criteria, including the—

- (i) provision of the minimum required range of personal health care services
- (ii) allocation of the appropriate number and mix of health care professionals,
- (iii) adherence to treatment protocols and guidelines,
- (iv) adherence to health care referral pathways;
- (v) submission of information to the national health information system
- (vi) adherence to the national pricing regimen for services delivered.

(3) The Fund must conclude a legally binding contract with a health establishment certified by the Office of Health Standards Compliance and with any other prescribed health care service provider that satisfies the requirements listed in subsection (2) to provide—

- (a) primary health care services through Contracting Units for Primary Health Care;
- (b) emergency medical services; and
- (c) hospital services.

(4) The contract between the Fund and an accredited health care service provider or health establishment must contain a clear statement of performance expectation and need in respect of the management of patients, the volume and quality of services delivered and access to services.

(6) The performance of an accredited health care service provider or health establishment must be monitored and evaluated in accordance with this Act

(7) The Fund must renew the accreditation of service providers every five years on the basis of compliance with the accreditation criteria as reflected in subsection (2).

(8) The Fund may withdraw or refuse to renew the accreditation of a health care service provider or health establishment if it is proven that the health care service provider or health establishment, as the case may be—

- (a) has failed or is unable to deliver the required comprehensive health care service benefits
- (b) is no longer in possession of, or is unable to produce proof of, certification by the Office of Health Standards Compliance and of proof of registration by the relevant statutory health professions council, as the case may be;
- (c) has failed or is unable to ensure the allocation of the appropriate number and mix of health care professionals to deliver the health care services specified in the *Gazette*;
- (d) has failed or is unable to adhere to treatment protocols and guidelines, including prescribing medicines and procuring health products from the Formulary;
- (e) has failed or is unable to comply with health care referral pathways;
- (f) for any reason whatsoever, does not submit to the Fund the information contemplated in section 34(3) timeously;
- (g) fails to adhere to the national pricing regimen for services delivered;
- (j) delivers services of a quality not acceptable to the Fund; or

(k) infringes any code of health related ethics or relevant law applicable in the Republic.

(10) A health care service provider or health establishment who is dissatisfied with the reasons for the decision provided in terms of subsection (8)(d) may lodge an appeal in terms of section 43.

Information platform of Fund

40. (1) The Fund must establish an information platform to enable it to make informed decisions on population health needs assessment, financing, purchasing, patient registration, service provider contracting and reimbursement, utilisation patterns, performance management, setting the parameters for the procurement of health goods, and fraud and risk management.

(2) Health care service providers and health establishments must submit such information as may be prescribed to the Fund,

Payment of health care service providers

41. (1) The Fund, in consultation with the Minister, must determine the nature of provider payment mechanisms and adopt additional mechanisms.

(3) (a) An accredited primary health care service provider must be contracted and remunerated by a Contracting Unit for Primary Health Care.

(b) In the case of specialist and hospital services, payments must be all-inclusive and based on the performance of the health care service provider, health establishment or supplier of health goods, as the case may be.

(c) Emergency medical services must be reimbursed on a capped case-based fee basis with adjustments made for case severity, where necessary.

(4) Without limiting the powers of the Minister to make regulations in terms of section 55, the Minister may make regulations to—

(b) determine mechanisms for the payment of an individual health worker and health care provider;

Chapter 9

COMPLAINTS AND APPEALS

Complaints

42. (1) An affected natural or juristic person, namely a user, health care service provider, health establishment or supplier, may furnish a complaint with the Fund in terms of the procedures determined by the Fund in consultation with the Minister, and the Fund must deal with such complaints in a timeous manner and in terms of the law.

(2) The Investigating Unit established by the Chief Executive Officer in terms of section 20(2)(e) must launch an investigation to establish the facts of the incident reported and must make recommendations to the Chief Executive Officer as to the way in which the matter may be resolved within 30 days of receipt of the complaint.

Lodging of appeals

43. A natural or juristic person, namely a user, health care service provider, health establishment or supplier aggrieved by a decision of the Fund delivered in terms of section 42 may, within a period of 60 days after receipt of written notification of the decision, appeal against such decision to the Appeal Tribunal.

Appeal Tribunal

44. (1) An Appeal Tribunal is hereby established, consisting of five persons appointed by the Minister

Powers of Appeal Tribunal

45. (1) The Appeal Tribunal has the same power as a High Court to—

(a) summon witnesses;

(b) administer an oath or affirmation;

(c) examine witnesses; and

(d) call for the discovery of documents and objects.

(2) The Appeal Tribunal may after hearing the appeal—

- (a) confirm, set aside or vary the relevant decision of the Fund; or
- (b) order that the decision of the Fund be effected.

Chapter 10

FINANCIAL MATTERS

Sources of funding

48. The revenue sources for the Fund consist of—

- (a) money to which the Fund is entitled in terms of section 49;
- (b) any fines imposed in terms of this Act other than by a court of law;
- (c) any interest or return on investment made by the Fund;
- (d) any money paid erroneously to the Fund which, in the opinion of the Minister, cannot be refunded;
- (e) any bequest or donation received by the Fund; and
- (f) any other money to which the Fund may become legally entitled.

Chief source of income

49. (1) The Fund is entitled to money appropriated annually by Parliament in order to achieve the purpose of the Act.

(2) The money referred to in subsection (1) must be—

- (a) appropriated from money collected and in accordance with social solidarity in respect of—
 - (i) general tax revenue, including the shifting funds from the provincial equitable share and conditional grants into the Fund;
 - (ii) reallocation of funding for medical scheme tax credits paid to various medical schemes towards the funding of National Health Insurance;
 - (iii) payroll tax (employer and employee); and
 - (iv) surcharge on personal income tax, introduced through a money Bill by the Minister of Finance and earmarked for use by the Fund,

Auditing

50. The Auditor-General must audit the accounts and financial records of the Fund annually as outlined in the Public Audit Act, 2004 (Act No. 25 of 2004).

Annual reports

51. (1) As the accounting authority of the Fund, the Board must submit to the Minister and Parliament a report on the activities of the Fund during a financial year as determined by the Public Finance Management Act.

Chapter 11

MISCELLANEOUS

Assignment of duties and delegation of powers

52. Subject to the Public Finance Management Act—

- (a) the Minister may assign any duty and delegate any power imposed or conferred upon him or her by this Act, except the power to make regulations, to any person in the employ of the Fund; and
- (b) the Chief Executive Officer of the Fund may assign any duty and delegate any power imposed or conferred upon him or her by this Act to any employee of the Fund.

Protection of confidential information

53. Nothing in this Act affects the provisions in any other legislation or law prohibiting or regulating disclosure of personal or other sensitive information accessible to or in possession of the Fund.

Offences and penalties

54. (1) Any person who—

- (a) knowingly submits false information to the Fund or its agents;
- (b) makes a false representation with the intention of obtaining health care service benefits from the Fund to which he or she is not entitled;
- (c) utilises money paid from the Fund for a purpose other than that in respect of which it is paid;
- (d) obtains money or other gratification from the Fund under false pretences; or
- (e) sells or otherwise discloses information owned by the Fund to a third party without the prior knowledge and written consent of the Fund,

is guilty of an offence and liable on conviction in a court of law to a fine not exceeding R100 000.00 or imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(2) Any natural or juristic person who fails to furnish the Fund or an agent of the Fund with information required by this Act or any directive issued under this Act within the prescribed or specified period or any extension thereof, irrespective of any criminal proceedings instituted under this Act, must pay a prescribed fine for every day which the failure continues, unless the Fund, on good cause shown, waives the fine or any part thereof.

(3) Any penalty imposed under subsection (2) is a debt due to the Fund.

Regulations

55. (1) Without derogating from the powers conferred on the Minister by the Constitution and the National Health Act or any other applicable law, the Minister may, after consultation with the Fund and the National Health Council contemplated in section 22 of the National Health Act, make regulations regarding—

- (a) the legal relationship between the Fund and the various categories of health establishments,
- (b) payment mechanisms to be employed by the Fund in order to procure health care services
- (c) the budget of the Fund,
- (d) information to be provided to the Fund for the development and maintenance of the national health information system
- (e) clinical information and diagnostic and procedure codes to be submitted and used
- (f) participation by the fund in the national health information system
- (g) the registration of users of the Fund in terms of section 5;
- (h) the accreditation of health care service providers, health establishments or suppliers;
- (i) the functions and powers of a District Health Management Office;
- (j) the functions and powers of a Contracting Unit for Primary Health Care Services;
- (k) the relationship between the Fund and the Office of Health Standards Compliance;
- (m) the relationship between public and private health establishments, and the optional contracting in of private health care service providers;
- (n) the relationship between the Fund and medical schemes registered in terms of the Medical Schemes Act and other private health insurance schemes;
- (o) the development and maintenance of the Formulary;
- (p) investigations to be conducted by the Fund or complaints against the Fund
- (q) appeals against decisions of the Fund in order to give effect to the provisions of Chapter 8;
- (t) all fees payable by or to the Fund;

- (u) subject to the Public Finance Management Act, the nature and level of reserves to be kept within the Fund;
- (v) subject to the Public Finance Management Act, the manner in which money within the Fund must be invested;
- (w) all practices and procedures to be followed by a health care service provider, health establishment or supplier in relation to the Fund;
- (x) the scope and nature of prescribed health care services and programmes and the manner in, and extent to which, they must be funded;

Transitional arrangements

57. (1) (a) Despite anything to the contrary in this Act, this Act must be implemented over two phases.

(b) National Health Insurance must be gradually phased in using a progressive and programmatic approach based on financial resource availability.

(2) The two phases contemplated in subsection (1)(a) are as follows:

(a) Phase 1, for a period of five years from 2017 to 2022 which must—

- (i) continue with the implementation of health system strengthening initiatives, including alignment of human resources with that which may be required by users of the Fund;
- (ii) include the development of National Health Insurance legislation and amendments to other legislation;
- (iii) include the undertaking of initiatives which are aimed at establishing institutions that must be the foundation for a fully functional Fund; and
- (iv) include the purchasing of personal health care services for vulnerable groups such as children, women, people with disabilities and the elderly;

and

(b) Phase 2 must be for a period of four years from 2022 to 2026 and must include—

- (i) the continuation of health system strengthening initiatives on an on-going basis;
- (ii) the mobilisation of additional resources where necessary; and
- (iii) the selective contracting of health care services from private providers.

(4) Objectives that must be achieved in Phase 1 include—

(a) the migration of central hospitals that are funded, governed and managed nationally as semi-autonomous entities;

(b) the structuring of the Contracting Unit for Primary Health Care at district level in a cooperative management arrangement with the district hospital linked to a number of primary health care facilities;

(c) the establishment of the Fund, including the establishment of governance structures;

(d) the development of a Health Patient Registration System contemplated in section 5;

(e) the process for the accreditation of health care service providers, which must require that health establishments are inspected and certified by the Office of Health Standards Compliance, health professionals are licensed by their respective statutory bodies and health care service providers comply with criteria for accreditation;

(f) the purchasing of health care service benefits, which include personal health services such as primary health care services, maternity and child health care services including school health services, health care services for the aged, people with disabilities and rural communities from contracted public and private providers including general practitioners, audiologists, oral health practitioners, optometrists, speech therapists and other designated providers at a primary health care level focusing on disease prevention, health promotion, provision of primary health care services and addressing critical backlogs;

(g) the purchasing of hospital services and other clinical support services, which must be—

- (i) funded by the Fund;
 - (ii) an expansion of the personal health services purchased; and
 - (iii) from higher levels of care from public hospitals (central, tertiary, regional and district hospitals) including emergency medical services and pathology services provided by National Health Laboratory Services;
- (5) Objectives that must be achieved in Phase 2 include the establishment and operationalisation of the Fund as a purchaser of health care services through a system of mandatory prepayment.

Short title and commencement

59. (1) This Act is called the National Health Insurance Act, 2019, and takes effect on a date fixed by the President by proclamation in the *Government Gazette*.

(2) Subject to section 57, different dates may be fixed in respect of the coming into effect of different provisions of this Act.