

Inadequate governance arrangements could be the NHI's Achilles heel - Daily Maverick 9 September 2019

A lack of public participation and transparency, and the minister of health being given too much power – exploring some key concerns with NHI's proposed governance arrangements.

The preamble of the National Health Insurance (NHI) Bill states the purpose of the bill is to achieve universal access to quality healthcare services in South Africa. It proposes the establishment of a centralised NHI Fund that would be responsible for purchasing healthcare services. According to Chapter 10 of the bill, which deals with financial matters, most of the funding will come from tax revenue.

Just like Eskom, Prasa and the SABC, the NHI Fund will be a public entity as defined by the Public Finance Management Act (PFMA); it will however not be a state-owned entity.

According to the Bill, the fund will be an autonomous public entity listed under schedule 3A of the PFMA. Schedule 3A contains public entities that have the mandate to fulfil a specific economic or social government responsibility; it includes entities such as the Road Accident Fund and Legal Aid South Africa.

Considering all the unflattering and, frankly, dire reviews of state-owned enterprises (SOEs) such as Eskom and the SABC, it is not surprising that there has been much commentary and concern about the governance of the NHI Fund.

Speaking at a health conference on 27 August, Minister of Health Dr Zweli Mkhize said the NHI would be rolled out in a manner that does not pose the kinds of economic risks associated with Eskom. He said, "Strict accountability shall be enforced and a strong anti-corruption team will be in place to prevent the risk of corruption and act to uproot corruption using advanced technology to monitor transactions".

Transparency and accountability

Concerns about the governance of public entities are not only to safeguard against inefficient use of resources and corruption, it is also because good governance speaks to transparency and accountability. As the Constitutional Court noted in *United Democratic Movement v Speaker of the National Assembly and Others*, "It is through good governance that the improvement of the quality of life of all citizens and the optimisation of the potential of each will be achieved."

The former secretary-general of the United Nations Kofi Annan defined good governance as the creation of well-functioning, accountable institutions that citizens regard as legitimate, through which they participate in decisions that affect their lives, and by which they are empowered.

In 2019, the Dullah Omar Institute published research on governance issues at several SOEs with a focus on the regulatory framework for the appointment and dismissal of board members and executives. In a nutshell, the research identified three issues – extensive powers of the executive, lack of transparency, and lack of room for public participation.

Unfortunately, some of these issues find themselves in the bill in relation to the NHI Fund. Arguably, governance of the fund also falls short of Annan's definition of good governance.

Public participation and transparency

The NHI Fund board, made up of not more than 12 people, is appointed by the minister, and is accountable to the minister. The only references in the bill to "public participation" in the board appointment are through "public nomination" of candidates for the board in Section 13(2) and "public interviews" to be conducted in Section 13(3)(a). It is not clear whether by

“public nomination” the Bill anticipates that the names of the nominated candidates and their nominators will be made public, or if it simply means members of the public are invited to nominate candidates.

It is equally unclear what is meant by “public interviews”. Does this mean the public can make representations or that the public will be spectators, similar to the interviews by the Judicial Service Commission?

The bill provides for members of the public to form part of the ministerial advisory bodies. Of importance is the NHI’s Stakeholder Advisory Committee, established in terms of Section 27 of the bill, which is made up of a wide range of stakeholders. However, the bill offers no insight into the function of this body.

Powers of the minister

In terms of Section 13 of the bill, the minister will be vested with enormous power to appoint board members. Following the nomination process for board member appointments, the minister must appoint an ad hoc advisory body to conduct public interviews of the shortlisted candidates and forward its recommendations to the minister for approval.

There is no indication of who is responsible for preparing the shortlist and the bill is also silent on the criteria for selecting members of the ad hoc advisory body.

Why is this of concern? It is important that the appointment of board members and executives is done in a transparent manner that instils public confidence. For example, to inspire confidence in the new SARS commissioner, one of the recommendations made by the Nugent Commission of Inquiry into Tax Administration and Governance by SARS was that members selected for the interviewing panel “should be apolitical and not answerable to any constituency and should be persons of high standing who are able to inspire confidence across the tax-paying spectrum”. This level of detail is lacking in the NHI Bill.

The minister also plays significant roles in the appointment of the NHI Fund CEO and the ministerial advisory committees that will determine the benefits package and pricing. Although the board is involved in the appointment of the CEO, Section 15(4)(d) strangely states that the board must inform the minister of any advice it gives to the CEO.

In stark contrast, the role of Parliament in the appointment of both board members and the CEO is limited. The extent of its involvement is that the minister must notify it of the appointment of the CEO.

Section 8 states that the minister may remove a board member who is unable to continue to perform their functions of office. In terms of Section 9, the minister may dissolve the board *on good cause*. Both circumstances are for the determination of the minister and can be susceptible to political whims.

The extensive power of the minister is one of the issues warned against by the Dullah Omar Institute, because centralisation of power to the executive, coupled with lack of transparency, opens up room for political interference. The institute proposes that, for there to be accountability and transparency, there needs to be a degree of separation between the executive and the administration. Parliamentary oversight is also needed, not only to ensure effectiveness and evaluation of programmes, but also to allow public scrutiny through elected representatives.

The NHI Fund will receive substantial amounts of public funding and will be responsible for the healthcare services provided to millions of people in South Africa. It is vitally important that appropriate, efficient and effective governance structures are created to support it. It will serve us well to draw lessons from some of the already existing public entities, because the sustainability of the NHI will rest squarely on good governance of the fund. **MC**

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