

Controversial 'NHI change' for South Africa faces legal challenge –

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Trade union Solidarity has issued a court application against the director-general of Health, the health minister, and the president to have sections 36 to 40 of the National Health Act declared unconstitutional.

These sections provide for the introduction of a 'certificate of need', which requires healthcare practitioners to apply to the state for approval regarding where they may practise.

In terms of the regulations, all healthcare practitioners must apply for a certificate that will enable them to practice. Following this, healthcare practitioners will then be prescribed where and how they may practice, the trade union said.

Solidarity argues that these prescriptive regulations infringe on both the rights of practitioners and patients and are therefore unconstitutional. Furthermore, it will severely restrict the provision of healthcare services. It said that the government is trying to pave the way for the eventual implementation of the proposed National Health Insurance (NHI) through these regulations.

The state already requires – through the NHI bill – that state departments and local authorities must approve the practitioner and their activities, and requires that healthcare practitioners specify who they will serve and accommodate within their practice.

“Although the provisions contained in sections 36 to 40 of the National Health Act have not yet been implemented, proposed regulations have already been published that precede the implementation of the sections. The proposed regulations are clearly unconstitutional on various grounds as set out and discussed in Solidarity’s application.

“Instead of addressing the need for healthcare and broadening access to health care, the scheme is merely a license to be issued to practitioners if they meet the Director-General’s set requirements. This will be to the detriment of all South African citizens,” said Henru Krüger, head of the health guild at Solidarity.

Legal argument

Solidarity is arguing that the provisions are irrational and without any logical link to the alleged objectives.

“The proposed licensing requirements seriously infringe upon the rights of healthcare professionals to practice their profession according to their own discretion. Our healthcare staff are also citizens, and they also have rights like any other citizen who practises a profession of choice,” the trade union said.

Solidarity is applying for sections 36 to 40 to be removed from the National Health Act because if these articles should come into effect, it may also amount to, among other things, the expropriation of health personnel’s property, at the expense of both the practitioners and those who currently make use of their services.

“It is inconceivable that the government, which currently does not have the funds to place and train about 1,500 graduate doctors, is now turning to the facilities and staff of the private sector to expropriate it,” Krüger said.

Solidarity said its application also enjoys the support of various practitioners in various fields of the health profession, as well as voluntary associations that are active in the profession and representative of all specialities, which support the application as co-applicants to the main application.

“The objective of the state is clearly to pave the way for the NHI and to compensate for the bankruptcy of the state coffers. The government wants to move to a system in which healthcare practitioners become servants of the state and in which the state centrally controls the delivery of healthcare. We cannot allow this. We are ready to fight it in court,” Krüger said.