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National Health Insurance Bill and the possible implications for private healthcare

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A second iteration of the National Health Insurance Bill [B11B-2019] has been published. This follows a public commentary period before the Parliamentary Portfolio Committee on Health.

An overall assessment of the Bill, as published, indicates that not much has changed from the previous version of the Bill initially published. Whilst the Bill gives much attention to the construction of a National Health Insurance Scheme, aspects of the Bill also implicate the role that the private healthcare sector will (or will not) play in the context of the proposed National Health Insurance Scheme ("the Scheme").

Medical Schemes

Clause 33 of the Bill provides that "once the 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." The term "complementary cover" is defined in clause 1 of the Bill as "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".

Fundamentally, medical schemes are side-lined in the context of the National Health Insurance Scheme. Depending on how the benefits available under the proposed Scheme are designed, medical schemes will be obliged to alter their benefit options in order to take the benefits provided by the Scheme into account. There is no indication in the Bill of what precisely a "personal health care service" is or what meaning is to be attributed to that phrase. The term "health care service" is, however, defined in the Bill to include such services as emergency care, reproductive health care, basic nutrition "and basic health care services contemplated in section 28(1)(c) of the Constitution". However, there are also definitions in the Bill for "basic health care services", "complementary health care services", "primary health care" and "emergency medical care" – all of which largely operate to cloud and blur a proper understanding of what is intended to be provided by the Scheme.

If one is to assume that personal health care services is a derivative of health care services, then medical schemes will be disqualified from offering or providing benefits that align with "health care service" as contemplated in the Bill. Such a scenario will have material implications for the obligations currently imposed on medical schemes to provide cover for a range of prescribed minimum benefits such as emergency care.

The design of benefits to be offered under the Scheme remains unknown. Therefore, it is not readily apparent what medical schemes will or will not be able to offer as a range of benefits to their beneficiaries. Such circumstances impact upon the design and applicability of prescribed minimum benefits as currently set out in the Medical Schemes Act No. 131 of 1998 as well as the outcome of the existing process of reviewing the prescribed minimum benefits being undertaken by the Council for Medical Schemes – a process that has been protracted and extended so as, what now appears to be, a potential alignment with the formulation of benefits to be provided by a National Health Insurance Scheme.

Should the process indeed be one where medical schemes are effectively barred from offering certain basic benefits, such circumstances may have the consequence of compromising certain basic health care options provided by medical schemes to the point of making such options unavailable to beneficiaries. In turn, and whilst there is no obligation in the Bill for anyone to register as a user of the National Health Insurance Fund, albeit that everyone will be obliged to contribute to the Fund, indirectly, where one is unable to access basic health care

funding from a medical scheme, one will be forced to join the Fund in order to access such benefits. Therefore, where there is no choice, financially, to obtain benefits other than by registering as a user of the Fund, membership of the Fund becomes inevitable if not compulsory.

Health care service providers

A health care service provider, for purposes of the National Health Insurance Scheme, is defined in clause 1 of the Bill as "a natural or juristic person in the public or private sector providing health care services in terms of any law". The definition is therefore very broad in its scope and application and will include general practitioners and large hospitals in both the public and private sectors.

In order for a health care service provider to provide services to users of the Scheme, he or she or it will have to be accredited to provide such services. The accreditation of health care service providers is provided for in clause 39 of the Bill. The accreditation is provided by the Fund in terms of clause 39(5) of the Bill. However, in order to be accredited, a health care service provider is required to produce certain information as set out in clause 39(2) of the Bill. Such information includes a range of matters including proof of registration by a recognised statutory council and "must meet the needs of users and ensure service provider compliance with prescribed specific performance criteria, accompanied by a budget impact analysis, including the –

- provision of the minimum required range of personal health care services specified by the Minister in consultation with the Fund and published in the *Gazette* from time to time as required;
- allocation of the appropriate number and mix of professionals, in accordance with guidelines to deliver health care services specified by the Minister in consultation with the National Health Council and the Fund, and published in the *Gazette* from time to time as required;
- adherence to treatment protocols and guidelines, including prescribing medicines and procuring health products from the Formulary;
- adherence to heath care referral pathways;
- submission of information to the national health information system to ensure portability and continuity of health care services in the Republic and performance monitoring and evaluation; and
- adherence to the national pricing regimen for services delivered."

Accreditation is valid for a period of five years after which the accreditation must be renewed – in terms of clause 39(7) of the Bill. In certain circumstances, set out in clause 39(8), accreditation may be withdrawn by the Fund.

Accordingly, health care services provider will be required to demonstrate both their ability to adhere to the prescripts of the Scheme and the need for their services as contemplated in clause 39(4) of the Bill.

In light of the nature of the benefits to be offered by the Scheme, it is unlikely that a health care services provider will be in a position to refuse to become accredited by the Fund unless he or she or it is willing to provide services to patients on the basis that patients will pay out-of-pocket.

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Proposed timing

The transitional provisions of clause 57 of the Bill make provision for two phases, the first of which runs from 2023 to 2026 and the second from 2026 to 2028. In the first phase the Minister of Health is required to establish various interim committees and bodies "to advise him or her on the implementation of the National Health Insurance" and the initiation of various legislative reforms to a raft of legislation. Phase 2 will "include the establishment and operationalisation of the Fund as a purchaser of health care services through a system of mandatory prepayment."

The Bill represents a paradigm shift in the delivery of health care services to South Africans particularly those in the currently insulated private health care sector. Ultimately, the Bill intends to reorganise the existing healthcare sector in the country by endeavouring to amalgamate the private and public sectors into one concern – an uneasy alliance that may not be in a position, logistically and practically, to discharge the State's constitutional obligation to progressively realise access to healthcare for those for whom it is intended.



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