

National Health Insurance: What benefit; for whom, where and how?

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As has widely been reported in the media, the National Health Insurance Bill[1] or the Bill has been passed by Parliament. However, such a process has left a number of crucial questions about the scope, ambit and application of the Bill largely unanswered. One of those questions is what benefits a proposed National Health Insurance Scheme is going to provide, i.e. what do I as a potential user of the Scheme receive for my "mandatory prepayment"[2]?

The benefits of the Scheme are not described in the Bill. The Bill employs relatively vague language to describe the health services with which the Bill is concerned. Clause 4(1) of Bill states that the Fund will purchase health care services "determined by the Benefits Advisory Committee". Accordingly, that determination must be made with reference to a definition of "health care service" in clause 1 of the Bill. That definition is, in turn, constituted by a number of elements:

- un-usefully sub-clause (a) of the definition simply refers to "health care services". However, sub-clause (a) also refers particularly to both reproductive health and emergency medical treatment;
- basic nutrition and "basic health care services" for children;
- medical treatment for those incarcerated; and
- "where applicable", provincial, district and municipal health care services.

The term "basic health care service" is also provided with a dedicated definition in clause 1 of the Bill. However, the definition leaves one with very little in terms of clarity of what precisely one is entitled to from the Scheme from a practical perspective:

...services provided by health care service providers which are essential for maintaining good health and preventing serious health problems including preventative services, primary health care, emergency medical services, diagnostic services, treatment services and rehabilitation services.

The definition of a basic health care service is left so broad as to be meaningless. One is left with the question of whether or not the Benefits Advisory Committee is legally competent to determine the content of "basic health care services" in so far as clause 4(1) of the Bill only refers to a "health care service" that such a Committee must determine and, although the term "basic health care service" is used in the definition of "health care service", that term is circumscribed by the reference to section 28(1)(c) of the Constitution.[3] The same may be said of the dedicated definition of "comprehensive health care services" in clause 1 of the Bill. That definition is equally unhelpful in understanding the scope and breadth of the health services to be provided:

...health care services that are managed so as to ensure a continuation 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 needs of users.

The range of comprehensive health care services are to be developed by the Board of the Fund pursuant to the provisions of clause 15(3)(b) of the Bill.

There is also a definition of "emergency medical services" in clause 1 of the Bill, which provides that such a term means "services provided by any private or public entity dedicated, staffed and equipped to offer medical treatment and transport of the ill or injured".

In order, potentially, to understand the application of the various definitions referred to above, one would turn, primarily, to the powers of the Benefits Advisory Committee in order to understand what it is precisely that the Committee will be determining as a basket of benefits for users. Clause 25(5) of the Bill sets out the powers and mandate of the Benefits Advisory Committee in the following terms:

The Benefits Advisory Committee must determine and review –

- *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;*
- *detailed and cost-effective treatment guidelines that take into account the emergence of new technologies;*
- *in consultation with the Minister [of Health] and the Board, the health services benefits provided by the Fund.*

Nowhere in clause 25(5) is there a reference to the various definitions of services provided for in clause 1 other than for a health care service. Therefore, one is left with a distinct sense of dis-ease with what the mandate of the Benefits Advisory Committee is going to be when formulating the benefits that the Scheme is to reimburse or not, as the case may be. There appears to be two streams of benefits contemplated by the Bill: those determined by the Committee in terms of clause 25(5), and with reference to the definition of "health care service" and the broader term used in sub-clause 25(5)(c) of "health services benefits", and other types of health services based on the particular definitions of those categories in clause 1 of the Bill.

The reason for the concern about the lack of clarity of the benefits to be provided by the Scheme is a constitutionally based concern. The Bill is intended to progress the State's obligation to provide access to healthcare services in terms of section 27 of the Constitution. However, one is unable to determine how that obligation is being fulfilled if one is unable to discern what it is the State is doing to fulfil it or how that will be achieved. Simply publishing a Bill and styling it as a national health insurance endeavour does not cut the constitutional mustard.

All of that having been stated, there are certain clues that are available as to the Scheme's intended benefit design in the Schedule to the Bill, which deals with proposed and consequent amendments to other pieces of existing legislation. Such pieces of legislation include the Medical Schemes Act.^[4] In terms of the proposed amendments to the Medical Schemes Act, there are certain amendments to the definition of "relevant health service", being the services that medical schemes are statutorily entitled to provide. Two amendments stand out:

- the deletion from the definition of "relevant health service" of sub-section (g), which currently allows medical schemes to provide for cover for "the giving of advice in relation to, or treatment of, any condition arising out of a pregnancy or the termination thereof". Therefore, only the Fund will be entitled to reimburse for such benefits. Curiously, there is no deletion of the term "midwifery" in sub-clause (f) of the definition of "relevant health service", which leaves one questioning why the services of midwives, directly associated with pregnancy procedures, are left as potential medical scheme benefits;
- the proposal that certain services, subject to the provisions of the Bill, may be provided by medical schemes, which are described as services that "may include complementary and top up and ambulance service [*sic*], and supply of accommodation in a private institution established or registered in terms of any law as a hospital, maternity home, nursing home or similar institution where nursing is practised, or any other institution where surgical or other medical activities are performed and such accommodation is necessitated by any physical or mental defect, illness or deficiency". It is not clear what the reference to "top up" means in respect of the restriction imposed by clause 33 of the Bill on medical schemes only to provide for services not otherwise reimbursable by the Fund.

The otherwise tortured consequent amendments to the Medical Schemes Act do not do much to advance an understanding of the benefits to be provided by the Fund. Whilst it appears, at first glance, that the Fund takes for itself certain aspects of pregnancy and abortion, the definition of a "relevant health service" still contains references to certain maternity benefits. An ironically Solomonic approach to splitting the baby.

Efforts to cobble together a benefits package with reference to the provisions of the Bill are largely futile. The language employed by the Bill is too vague to provide any clarity or certainty and amendments proposed, primarily, to the Medical Schemes Act are frustratingly unclear. Such vagaries do not bode well for the Constitutional health of the Bill or, more importantly, a proper assessment of whether or not the State will, indeed, be in a position, meaningfully or at all, to progressively advance access to healthcare as it is constitutionally mandated to do and, according to the preamble to the Bill, it is intending to do.

Footnotes

- [1] [B11B-2019]
- [2] A concept that is defined in clause 1 of the Bill as "a compulsory payment for health services before they are needed in accordance with income levels".
- [3] Constitution of the Republic of South Africa, 1996
- [4] No. 131 of 1998, as amended



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