REPUBLIC OF SOUTH AFRICA

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)
(The English text is the official text of the Bill)

(MINISTER OF HEALTH)

[B 11—2019]

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GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
_____	Words underlined with a solid line indicate insertions in existing enactments.

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,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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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;

"ambulance services" means ambulance services as contemplated in Part A of Schedule 5 to the Constitution;

"Appeal Tribunal" means the Appeal Tribunal established by section 44;

"asylum seeker" has the meaning ascribed to it in section 1 of the Refugees Act;

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

"Board" means the Board of the Fund established by section 12;

"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;

"Chief Executive Officer" means the person appointed in terms of section 19;

"child" means a person under the age of 18 years as defined in section 28(3) of the Constitution;

"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;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

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

"Department" means the National Department of Health established in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"District Health Management Office" means a District Health Management Office referred to in section 36;

"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;

"financial year" means a financial year as defined in section 1 of the Public Finance Management Act;

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

"Fund" means the National Health Insurance Fund established by section 9;

"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;

"health research" means health research as defined in section 1 of the National Health Act;

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

"Immigration Act" means the Immigration Act, 2002 (Act No. 13 of 2002);

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

"medical scheme" means a medical scheme as defined in the Medical Schemes Act;

"Medical Schemes Act" means the Medical Schemes Act, 1998 (Act No. 131 of 1998);

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

"Minister" means the Cabinet member responsible for health;

"National Health Act" means the National Health Act, 2003 (Act No. 61 of 2003);

"national health system" has the meaning ascribed to it in section 1 of the National Health Act;

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

"permanent resident" means a person having permanent residence status in terms of the Immigration 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;

"procurement" has the meaning ascribed to it in section 217(1) of the Constitution;

"Promotion of Access to Information Act" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

"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;

"public entity" means a national public entity as reflected in Schedule 3 to the Public Finance Management Act;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

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

"refugee" has the meaning ascribed to it in section 1 of the Refugees Act;

"Refugees Act" means the Refugees Act, 1998 (Act No. 130 of 1998);

"Republic" means the Republic of South Africa;

"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;

"this Act" includes any regulation promulgated, directive or rule made or notice issued by the Minister in terms of this Act; and

"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 in order to ensure the equitable and fair distribution and use of health care services;

(b) ensuring the sustainability of funding for health care services within the Republic; and

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

Application of Act

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 and any other relevant legislation have been enacted or amended.

(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 (Act No. 111 of 1998); and

(e) certain categories or individual foreigners determined by the Minister of Home Affairs, after consultation with the Minister and the Minister of Finance, by notice in the *Gazette*.

(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 as provided for in section 28(1)*(c)* of the Constitution.

(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 as provided for in section 5, and must present proof of such registration to the health care service provider or health establishment in order to secure the health care service benefits to which he or she is entitled.

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

(a) must have travel insurance to receive health care services under their relevant travel insurance contract or policy; and

(b) who does not have travel insurance contract or policy referred to in paragraph *(a)*, has the right to health care services as contemplated in subsection (2).

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.

(2) *(a)* A person as contemplated in subsection (1), must register his or her child as a user with the Fund at an accredited health care service provider or health establishment.

(b) A child born to a user must be regarded as having been registered automatically at birth.

(3) A person between 12 and 18 years of age may apply for registration as a user if he or she is not registered as a user in terms of subsection (2).

(4) *(a)* A supervising adult as contemplated in section 137(3) of the Children's Act, 2005 (Act No. 38 of 2005), must register a child in the child-headed household concerned.

(b) If no adult has been designated in terms of section 137(2) of the Children's Act, 2005 (Act No. 38 of 2005), any employee of an accredited health care service provider or health establishment must assist the child to be so registered.

(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 and—

(a) an identity card as defined in the Identification Act, 1997 (Act No. 68 of 1997);

(b) an original birth certificate; or

(c) a refugee identity card issued in terms of the Refugees Act.

(6) The Minister, in consultation with the Minister of Home Affairs, may prescribe any further requirements for registration of foreign nationals contemplated in section 4(1)*(e)*.

(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.

(8) A user seeking health care services purchased for his or her benefit by the Fund from an accredited health care service provider or health establishment must present proof of registration to that health care service provider or health establishment when seeking those health care services.

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 from an accredited health care provider or health establishment upon proof of registration with the Fund;

(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, as provided for in the Promotion of Access to Information Act, in order to exercise or protect his or her rights;

(d) not to be refused access to health care services on unreasonable grounds;

(e) not to be unfairly discriminated against as provided for in the Constitution and the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);

(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 regarding—

(i) poor access to or quality of health care services; or

(ii) fraud or other abuses by a health care service provider, a health establishment, a supplier or the Fund;

(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, in accordance with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), in so far as he or she must grant written approval for the disclosure of personal information in the possession of or accessible to the Fund, unless the information—

(i) is shared among health care service providers for the lawful purpose of serving the interests of users; or

(ii) is utilised by the Fund for any other lawful purpose related or incidental to the functions of the Fund;

(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 registered in terms of the Medical Schemes Act, any other private health insurance scheme or out of pocket payments, as the case may be.

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 for the purposes of receiving those health care services;

(b) should a user be unable to access the health care service provider or health establishment with whom or at which the user is registered in terms of section 5, 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 contemplated in paragraph *(a)* or *(b)* 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 or health establishment that is capable of providing the necessary health care services in such manner and on such terms as may be prescribed;

(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 in accordance with referral pathways; 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 (Proclamation No. 103 of 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, including control over financial management, human resource management, minor infrastructure, technology, planning and full revenue retention delegated by the national government; and

(iv) central hospitals must establish cost centres responsible for managing business activities and determine the cost drivers at the level where the activities are directed and controlled.

(3) For the purpose of subsection (2)*(b)*, ''portability of health care services'', in respect of a user, means the ability of a user to access health care services by an accredited health care service provider or at an accredited health establishment other than by the health care services provider or at the health establishment with whom or at which that user is registered in terms of section 5.

(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 as determined by a health technology assessment; or

(c) the health care product or treatment is not included in the Formulary, except in circumstances where a complementary list has been approved by the Minister.

(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 from an accredited health care service provider or health establishment 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 in terms of the provisions of this Act;

(b) fails to comply with referral pathways prescribed by a health care service provider or health establishment;

(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 as outlined in section 2;

(b) pool the allocated resources in order to actively purchase and procure health care services, medicines, health goods and health related products from health care service providers, health establishments and suppliers that are certified and accredited in accordance with the provisions of this Act, the National Health Act and the Public Finance Management Act;

(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 on the health care needs of users;

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

(f) establish mechanisms and issue directives for the regular, appropriate and timeous payment of health care service providers, health establishments and suppliers;

(g) determine payment rates annually for health care service providers, health establishments and suppliers in the prescribed manner and in accordance with the provisions of this Act;

(h) take measures to ensure that the funding of health care services is appropriate and consistent with the concepts of primary, secondary, tertiary and quaternary levels of health care services;

(i) collate utilisation data and implement information management systems to assist in monitoring the quality and standard of health care services, medicines, health goods and health related products purchased by the Fund;

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

(k) ensure that health care service providers, health establishments and suppliers are paid in accordance with the quality and value of the service provided at every level of care;

(l) monitor the registration, license or accreditation status, as the case may be, of health care service providers, health establishments and suppliers;

(m) account to the Minister on the performance of its functions and the exercise of its powers;

(n) undertake internal audit and risk management;

(o) undertake research, monitoring and evaluation of the impact of the Fund on national health outcomes;

(p) liaise and exchange information with the Department, statutory professional councils, other government departments and organs of state as and when appropriate or necessary in order to achieve the purpose outlined in section 2;

(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;
(t) take any other action or steps which are incidental to the performance of the functions or the exercise of the powers of the Fund; and
(u) operate in accordance with the provisions of this Act and other applicable law at all times.

(2) The Fund must perform its functions in the most cost-effective and efficient manner possible and in accordance with the values and principles mentioned in section 195 of the Constitution and the provisions of the Public Finance Management Act.

(3) The Fund performs its functions in accordance with health policies approved by the Minister.

(4) The Fund must support the Minister in fulfilling his or her obligation to protect, promote, improve and maintain the health of the population as provided for in section 3 of the National Health 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, health establishments 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 of medicines, health goods and health related products on behalf of users;
  (ii) payment of health care service providers, health workers, health establishments and suppliers;
  (iii) facilitation of the efficient and equitable delivery of quality health care services to users;
  (iv) receiving and collate all required data from providers for the efficient running of the Fund;
  (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, in consultation with the Minister; and
  (viii) referral networks in respect of users, in consultation with the Minister;
(j) undertake or sponsor health research and appropriate programmes or projects designed to facilitate universal access to health care services;
(k) discourage and prevent corruption, fraud, unethical or unprofessional conduct or abuse of users or of the Fund;
(l) obtain from, or exchange information with, any other public entity or organ of state;
(m) conclude an agreement with any person for the performance of any particular act or particular work or the rendering of health care services in terms of this Act, and terminate such agreement, in accordance with the prescribed legal terms and conditions and the provisions of the Constitution;

(n) institute or defend legal proceedings and commence, conduct, defend or abandon legal proceedings as it deems fit in order to achieve its objects in accordance with this Act; and

(o) make recommendations to the Minister or advise him or her on any matter concerning the Fund, including the making of regulations in terms of this Act.

(2) The Fund may enter into a contract for the procurement and supply of specific health care services, medicines, health goods and health related products with an accredited health care service provider, health establishment or supplier, 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 or violating the provisions of this Act or any other applicable law.

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.

(2) Before the Board members contemplated in subsection (1) are appointed, the Minister must issue in the *Gazette* a call for the public nomination of candidates to serve on the Board.

(3) An *ad hoc* advisory panel appointed by the Minister must—

(a) conduct public interviews of shortlisted candidates; and

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

(4) The Minister must, within 30 days from the date of confirmation of the appointment of a Board member, give notice of the appointment in the *Gazette*.

(5) A Board member is appointed for a term not exceeding five years, which is renewable only once, and must—

(a) be a fit and proper person;

(b) have appropriate technical expertise, skills and knowledge or experience in health care service financing, health economics, public health planning, monitoring and evaluation, law, actuarial sciences, information technology and communication;

(c) be able to perform effectively and in the interests of the general public;

(d) not be employed by the State; and

(e) not have any personal or professional interest in the Fund or the health sector that would interfere with the performance in good faith of his or her duties as a Board member.

(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 if that person—

(a) is or becomes disqualified in terms of any law;

(b) fails to perform the functions of office in good faith, in the public interest and in accordance with applicable ethical and legal prescripts; or

(c) becomes unable to continue to perform the functions of office for any other reason.

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

(i) giving the Board a reasonable opportunity to make representations; and

(ii) affording the Board a hearing on any representations received.

(b) If the Minister dissolves the Board in terms of this subsection, the Minister—

(i) may appoint acting Board members for a maximum period of three months to do anything required by this Act, subject to any conditions that the Minister may require; and

(ii) must, as soon as is feasible, but not later than three months after the dissolution of the Board, replace the Board members in the same manner that they were appointed in terms of this section.

Chairperson and Deputy Chairperson

14. (1) The Minister must appoint a Chairperson from amongst the members of the Board as contemplated in section 13(1).

(2) The Board must appoint a Deputy Chairperson from amongst the members of the Board as contemplated in section 13(1).

(3) Whenever the Chairperson and Deputy Chairperson of the Board are absent or unable to fulfil the functions of the Chairperson, the members of the Board must designate any other member of the Board, to act as Chairperson of the Board during such absence or incapacity.

Functions and powers of 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.

(2) The entire Board as appointed in terms of sections 13 and 14 must meet at least four times per year, excluding any special meetings and sub-committee meetings that may be called from time to time as is necessary.

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

(a) the management and administration of the Fund, including operational, financial and administrative policies and practices;

(b) the development of comprehensive health care services to be funded by the Fund through the Benefits Advisory Committee;

(c) the pricing of health care services to be purchased by the Fund through the Health Care Benefits Pricing Committee of the Board;

(d) the improvement of efficiency and performance of the Fund in terms of strategic purchasing and provision of health care services;

(e) terms and conditions of employment of Fund employees;

(f) collective bargaining;

(g) the budget of the Fund;

(h) the implementation of this Act and other relevant legislation; and

(i) overseeing the transition from when this legislation is enacted until the Fund is fully implemented.

(4) For the purposes of subsection (1), the Board—

(a) may examine and comment on any policies, investigate, evaluate and advise on any practices and decisions of the Fund or the Chief Executive Officer under this Act;

(b) is entitled to all relevant information concerning the administration of the Fund;

(c) may require—

(i) the Chief Executive Officer to submit a report concerning a matter on which the Board must give advice; or

(ii) any Fund employee to appear before it and give explanations concerning such a matter; and

(d) must inform the Minister of any advice it gives to the Chief Executive Officer.

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.

(2) A member of the Board may not—

(a) be a government employee or an employee of the Fund;

(b) attend, participate in, vote or influence the proceedings during a meeting of the Board or of a committee thereof if, in relation to the matter before the

Board or committee, that member has an interest, including a financial interest, that precludes him or her from acting in a fair, unbiased and proper manner; or

(c) make private use of, or profit from, any confidential information obtained as a result of performing his or her functions as a member of the Board.

(3) For purposes of subsection (2)*(b)*, a financial interest means a direct material interest of a monetary nature, or to which a monetary value may be attributed.

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 of Finance and in line with the provisions of the Public Finance Management Act.

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*.

(4) A person appointed as Chief Executive Officer holds office—

(a) for an agreed term not exceeding five years, which is renewable only once; and

(b) subject to the directives and determinations of the Board in consultation with the Minister.

(5) The Board may recommend to the Minister the removal of the Chief Executive Officer if that person—

(a) is or becomes disqualified in terms of the law;

(b) fails to perform the functions of his or her office in good faith, in the public interest and in accordance with applicable ethical and legal prescripts; or

(c) becomes unable to continue to perform the functions of his or her office for any other reason.

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.

(2) Subject to the direction of the Board, the responsibilities of the Chief Executive Officer include the—

(a) formation and development of an efficient Fund administration;

(b) organisation and control of the staff of the Fund;

(c) maintenance of discipline within the Fund;

(d) effective deployment and utilisation of staff to achieve maximum operational results; and

(e) establishment of an Investigating Unit within the national office of the Fund for the purposes of—

(i) investigating complaints of fraud, corruption, other criminal activity,

unethical business practices and abuse relating to any matter affecting the Fund or users of the Fund; and

(ii) liaising with the District Health Management Office concerning any matter contemplated in subparagraph (i).

(3) Subject to the direction of the Board, the Chief Executive Officer must establish the following units in order to ensure the efficient and effective functioning of the Fund:

(a) Planning;
(b) Benefits Design;
(c) Provider Payment Mechanisms and Rates;
(d) Accreditation;
(e) Purchasing and Contracting;
(f) Provider Payment;
(g) Procurement;
(h) Performance Monitoring; and
(i) Risk and Fraud Prevention Investigation.

(4) Subject to the direction of the Board, the Chief Executive Officer is responsible for—

(a) all income and expenditure of the Fund;
(b) all revenue received from the National Treasury established by section 5 of the Public Finance Management Act or obtained from any other source, as the case may be;
(c) all assets and the discharge of all liabilities of the Fund; and
(d) the proper and diligent implementation of financial matters of the Fund as provided for in the Public Finance Management Act.

(5) The Chief Executive Officer must submit to the Board an annual report of the activities of the Fund during a financial year as outlined in section 51, which must include—

(a) details of the financial performance of the Fund, as audited by the Auditor-General, including evidence of the proper and diligent implementation of the Public Finance Management Act;
(b) details of performance of the Fund in relation to ensuring access to quality health care services in line with the health care needs of the population;
(c) the number of accredited and approved health care providers; and
(d) the health status of the population based on such requirements as may be prescribed.

(6) The Chief Executive Officer must perform the functions of his or her office with diligence and as required by this Act and all other relevant law.

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 in order to exchange information necessary for him or her to carry out his or her responsibilities.

(2) Notwithstanding subsection (1) the Chief Executive Officer remains accountable to the Board.

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.

(2) Each committee established in terms of subsection (1) must have at least one Board member appointed in term of section 13(1) as a member of that committee.

(3) Committees of the Board as established in subsection (1) must meet at least four times per year in order to report to the meeting of the full Board and may convene special meetings to discuss urgent matters when necessary.

(4) The Board may dissolve or reconstitute a committee on good cause shown.

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.

(b) The provisions of section 29 apply to paragraph *(a)* with the changes required by the context.

(2) A committee established in terms of subsection (1)*(a)* must perform its functions impartially and without fear, favour or prejudice.

(3) A person appointed as a member of such a committee must—

(a) be a fit and proper person;

(b) have appropriate expertise or experience; and

(c) have the ability to perform effectively as a member of that committee.

(4) A member of such a committee must not—

(a) act in any way that is inconsistent with subsection (2) or expose himself or herself to any situation in which the risk of a conflict between his or her official responsibilities and private interests may arise; or

(b) use his or her position, or any information entrusted to him or her, for self-enrichment or to improperly benefit any other person.

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.

(3) A person appointed in terms of subsection (2)—

(a) serves for a term of not more than five years and may be reappointed for one more term only; and

(b) ceases to be a member of the Committee when he or she is no longer a member of the institution that nominated him or her or when he or she resigns.

(4) A vacancy in the Benefits Advisory Committee must be filled by the appointment of a person for the unexpired portion of the term of office of the member in whose place the person is appointed, and in the same manner in which the member was appointed in terms of subsection (2).

(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.

(6) The Minister must appoint the chairperson from amongst the members of the Committee.

(7) The Minister must, by notice in the *Gazette,* publish the guidelines contemplated in subsection (5)*(b)* and may prescribe additional functions to the Benefits Advisory Committee.

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.

(4) The Minister must appoint the chairperson from amongst the members of the Committee.

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.

Vacation of office

30. A member of a committee established in terms of this Act ceases to be a member if—

(a) that person resigns from that committee;

(b) the Minister terminates that person's membership for adequate reason; or

(c) the term for which the member was appointed has expired and the membership has not been renewed.

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.

(2) The Minister must clearly delineate in appropriate legislation the respective roles and responsibilities of the Fund and the national and provincial Departments, taking into consideration the Constitution, this Act and the National Health Act, in order to prevent duplication of services and the wasting of resources and to ensure the equitable provision and financing of health services.

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.

(2) Subject to the transitional provisions provided for in section 57, the Minister may introduce in Parliament proposed amendments to the National Health Act for the purpose of centralising the funding of health care services as required by this Act, and in such cases the Minister may—

(a) delegate to provinces as management agents, for the purposes of provision of health care services, and in those cases the Fund must contract with sections within the province such as provincial tertiary, regional and emergency medical services;

(b) designate provincial tertiary and regional hospitals or groups of hospitals as autonomous legal entities accountable to the Minister through regulation; and

(c) establish District Health Management Offices as government components to manage personal and non-personal health care services.

(3) Without derogating from the Constitution or any other law, the functions of a provincial Department must be amended to comply with the purpose and provisions of this Act, subject to the provisions of section 57.

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.

(2) Subject to the provisions of the National Archives and Record Services of South Africa, 1996 (Act No. 43 of 1996), the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), and the Promotion of Access to Information Act, data must be accurate and accessible to the Department and the Fund, or to any other stakeholder legally entitled to such information.

(3) Health workers, health care service providers and persons in charge of health establishments must comply with the provisions in the National Health Act relating to access to health records and the protection of health records.

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, and must assist the Fund to—

(a) identify health care service needs in terms of the demographic and epidemiological profile of a particular sub-district;

(b) identify accredited public and private health care service providers at primary care facilities;

(c) manage contracts entered into with accredited health care service providers, health establishments and suppliers in the relevant sub-district in the prescribed manner and subject to the prescribed conditions;

(d) monitor the disbursement of funds to health care service providers, health establishments and suppliers within the sub-district;

(e) access information on the disease profile in a particular sub-district that would inform the design of the health care service benefits for that sub-district;

(f) improve access to health care services in a particular sub-district at appropriate levels of care at health care facilities and in the community;

(g) ensure that the user referral system is functional, including the transportation of users between the different levels of care and between accredited public and private health care service providers and health establishments, if necessary;

(h) facilitate the integration of public and private health care services within the sub-district; and

(i) resolve complaints from users in the sub-district in relation to the delivery of health care services.

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, including but not limited to medicines, medical devices and equipment.

(3) The Office of Health Products Procurement must—

(a) determine the selection of health related products to be procured;

(b) develop a national health products list;

(c) coordinate the supply chain management process and price negotiations for health related products contained in the list mentioned in paragraph *(b)*;

(d) facilitate the cost effective, equitable and appropriate public procurement of health related products on behalf of users;

(e) support the processes of ordering and distribution of health related products nationally, and at the district level with the assistance of the District Health Management Office;

(f) support the District Health Management Office in concluding and managing contracts with suppliers and vendors;

(g) establish mechanisms to monitor and evaluate the risks inherent in the public procurement process;

(h) facilitate the procurement of high cost devices and equipment; and

(i) advise the Board on any matter pertinent to the 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, comprised of the Essential Medicine List and Essential Equipment List as well as a list of health related products used in the delivery of health care services as approved by the Minister in consultation with the National Health Council and the Fund.

(5) The Office of Health Products Procurement must support the review of the Formulary annually, or more regularly if required, to take into account changes in the burden of disease, product availability, price changes and disease management for approval by the Minister.

(6) An accredited health care service provider and health establishment must procure according to the Formulary, and suppliers listed in the Formulary must deliver directly to the accredited and contracted health service provider and health establishment.

(7) The provisions of this section are subject to public procurement laws and policies of the Republic that give effect to the provisions of section 217 of the Constitution, including the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), and the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

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 specified by the Minister in consultation with the Fund and published in the *Gazette* from time to time as required;

(ii) allocation of the appropriate number and mix of health care professionals, in accordance with guidelines, to deliver the 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;

(iii) adherence to treatment protocols and guidelines, including prescribing medicines and procuring health products from the Formulary;

(iv) adherence to health care referral pathways;

(v) 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

(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.

(5) In order to be accredited and reimbursed by the Fund, a health care service provider or health establishment must submit information to the Fund for recording on the Health Patient Registration System, including—

(a) national identity number or permit and visa details issued by the Department of Home Affairs, as the case may be;
(b) diagnosis and procedure codes using the prescribed coding systems;
(c) details of treatment administered including medicines dispensed and equipment used;
(d) diagnostic tests ordered;
(e) length of stay of an inpatient in a hospital facility;
(f) facility to which a user is referred if relevant;
(g) reasons for non-provision or rationing of treatment, if any; and
(h) any other information deemed necessary by the Minister in consultation with the Fund for the monitoring and evaluation of national health outcomes.

(6) The performance of an accredited health care service provider or health establishment must be monitored and evaluated in accordance with this Act and appropriate sanctions must be applied where there is deviation from contractual obligations as per the law.

(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 to users who are entitled to such 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;
(h) intentionally or negligently breaches any substantive terms of a legally binding contract concluded with the Fund;
(i) fails or is unable to perform as required by the terms of a legally binding contract concluded with the Fund;
(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.

(9) If the Fund withdraws the accreditation of a health care service provider or health establishment, or refuses to renew the accreditation of a health care service provider or health establishment, the Fund must—

(a) provide a health care service provider or health establishment with notice of the decision;
(b) provide a health care service provider or health establishment with a reasonable opportunity to make representations in respect of such a decision;
(c) consider the representations made in respect of paragraph *(b)*; and

(d) provide adequate reason for the decision to withdraw or refuse the renewal of accreditation to a health care service provider or health establishment, as the case may be.

(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.

(11) The Fund may issue directives relating to the listing and publication of accredited health care service providers and health establishments.

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, taking into consideration the provisions of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

(3) The information in subsection (2) may be used by the Fund to—

(a) monitor health care service utilisation and expenditure patterns relative to plans and budgets;

(b) plan and budget for the purchasing of quality personal health care services based on need;

(c) monitor adherence to standard treatment guidelines, including prescribing from the Formulary;

(d) monitor the appropriateness and effectiveness of referral networks prescribed by health care service providers and health establishments;

(e) provide an overall assessment of the performance of health care service providers, health establishments and suppliers; and

(f) determine the payment mechanisms and rates for personal health care services.

(4) Information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment is confidential and no third party may disclose information contemplated in subsection (2), unless—

(a) the user consents to such disclosure in writing;

(b) the information is shared among health care service providers for the lawful purpose of serving the interests of users;

(c) the information is required by an accredited health care service provider, health establishment, supplier or researchers for the lawful purpose of improving health care practices and policy, but not for commercial purposes;

(d) the information is utilised by the Fund for any other lawful purpose related to the efficient and effective functioning of the Fund;

(e) a court order or any law requires such disclosure; or

(f) failure to disclosure the information represents a serious threat to public health.

(5) The information architecture must include a fraud and risk management mechanism.

(6) In order to fulfil the requirements for dissemination of information and the keeping of records, the information platform must facilitate—

(a) the implementation of the objects and the effective management of the Fund; and

(b) portability and continuity of health care services available to users subject to the provisions of this Act.

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.

(2) The Fund must ensure that health care service providers, health establishments and suppliers are properly accredited before they are reimbursed.

(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—

(a) provide that payments may be made on condition that there has been compliance with quality standards of care or the achievement of specified levels of performance;

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

(c) provide that the whole or any part of a payment is subject to the conditions outlined in a contract and that payments must only be effected by the Fund if the conditions have been met.

(5) For the purposes of subsection (4), ''health worker'' and ''health care provider'' have the meanings ascribed to them in section 1 of the National Health Act.

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.

(3) The complainant must be informed in writing of the outcome of the investigation launched in terms of subsection (2), and any decision taken by the Fund, within a reasonable period of time.

(4) If the Fund has made a decision in terms of subsection (3), the Fund must—

(a) provide the health care service provider with a notice of the decision to provide the health care service provider with a reasonable opportunity to make representations in respect of such a decision;

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

(c) provide adequate reason for the decision to withdraw or refuse the renewal of accreditation to the health care service provider, as the case may be.

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:

(a) One member appointed on account of his or her knowledge of the law, who must also be the chairperson of the Board;

(b) two members appointed on account of their medical knowledge; and

(c) two members appointed on account of their financial knowledge.

(2) A member of the Appeal Tribunal appointed by the Minister in subsection (1) must serve as a member for a period of three years, which term is renewable only once.

(3) A member ceases to be a member if—

(a) he or she resigns from the Appeal Tribunal;

(b) the Minister terminates his or her membership on good cause; or

(c) the term for which the member was appointed has expired and has not been renewed or after a second term may not be renewed.

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.

Secretariat

46. The Chief Executive Officer of the Board must designate a staff member of the Fund to act as secretary of the Appeal Tribunal and the Fund must keep the minutes and all records of a decision of the Board for a period of at least three years after the decision has been recorded.

Procedure and remuneration

47. (1) The Minister, in consultation with the Minister of Finance and the Fund, must determine the terms, conditions, remuneration and allowances applicable to the members of the Appeal Tribunal.
(2) A member of the Appeal Tribunal must recuse himself or herself if it transpires that he or she has any direct or indirect personal interest in the outcome of the appeal and must be replaced for the duration of the hearing by another person with similar knowledge appointed by the Minister.
(3) The Appeal Tribunal must determine the outcome of the appeal within 180 days after the lodgement of the appeal and inform the appellant of the decision in writing, and the Secretariat appointed in section 46 must keep record of all proceedings and outcomes.
(4) Nothing in this section precludes an aggrieved party from seeking suitable redress in a court of law that has jurisdiction to hear such a matter.

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, subject to section 57; and

(b) calculated in accordance with the estimates of income and expenditure as contemplated in section 53 of the Public Finance Management Act.

(3) Once appropriated, the revenue allocated to the Fund must be paid through a Budget Vote to the Fund as determined by agreement between the Fund and the Minister and subject to the provisions of the Constitution and the Public Finance Management Act.

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.

(2) Subject to the provisions of the Public Finance Management Act, the report must include—

(a) the audited financial statements of the Fund;
(b) a report of activities undertaken in terms of its functions set out in this Act;
(c) a statement of the progress achieved during the preceding financial year towards realisation of the purpose of this Act; and
(d) any other information that the Minister, by notice in the *Gazette*, determines.

(3) In addition to the matters which must be included in the annual report and financial statements as determined by section 55 of the Public Finance Management Act, the annual report must be prepared in accordance with generally accepted accounting practice and contain a statement showing—

(a) the total number of users who received health care benefits in terms of this Act;
(b) the total monetary value of health care benefits provided in respect of each category of benefits and level of care as determined by the Minister;
(c) all loans, overdrafts, advances and financial commitments of the Fund;
(d) the particulars of all donations and bequests received by the Fund;
(e) an actuarial valuation report;
(f) particulars of the use of all immovable and movable property acquired by the Fund;
(g) any amount written off by the Fund; and
(h) any other matter determined by the Minister.

(4) The Minister must without delay—

(a) table a copy of the report in the National Assembly; and
(b) submit a copy of the report to the National Council of Provinces.

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, health care service providers or suppliers as provided for in the National Health Act;

(b) payment mechanisms to be employed by the Fund in order to procure health care services from accredited and contracted health care service providers, health establishments or suppliers;

(c) the budget of the Fund, including the processes to be followed in drawing up the budget, in compliance with the provisions of the Public Finance Management Act;

(d) information to be provided to the Fund for the development and maintenance of the national health information system by users, health establishments, health care service providers or suppliers and the format in which such information must be provided;

(e) clinical information and diagnostic and procedure codes to be submitted and used by health care service providers, health establishments or suppliers for reimbursement and reporting purposes to the Fund;

(f) participation by the fund in the national health information system contemplated in section 74 of the National Health Act, including the Health Patient Registration System referred to in section 39;

(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;

(l) the relationship between the Fund and the Department of Correctional Services in order to clarify the mechanisms for purchasing, within available

resources, quality needed personal health care services for inmates as is required by the Correctional Services Act, 1998 (Act No. 111 of 1998);

(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 in order to give effect to the provisions of Chapter 8;

(q) appeals against decisions of the Fund in order to give effect to the provisions of Chapter 8;

(r) the manner in which health care service providers, health establishments and suppliers must report to the Fund in respect of health care services purchased by the Fund and the content of such reports;

(s) the monitoring and evaluation of the performance of the Fund;

(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;

(y) the proceedings of the meetings of committees appointed in terms of this Act and a code of conduct for members of those committees;

(z) the proceedings and other related matters of the Appeal Tribunal;

*(z*A*)* any matter that may or must be prescribed in terms of this Act; and

*(z*B*)* any ancillary or incidental administrative or procedural matter that may be necessary for the proper implementation or administration of this Act.

(2) The Minister must, not less than three months before any regulation is made under subsection (1), cause a copy of the proposed regulation to be published in the *Gazette* together with a notice declaring his or her intention to make that regulation and inviting interested persons to furnish him or her with their comments thereon or any representations they may wish to make in regard thereto.

(3) The provisions of subsection (2) do not apply in respect of—

(a) any regulation made by the Minister which, after the provisions of that subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by him or her in pursuance of a notice issued thereunder; or

(b) any regulation which the Minister, after consultation with the Board, deems in the public interest to publish without delay.

(4) Regulations must be tabled in the National Assembly and the National Council of Provinces for a period of one month before being finalised.

Directives

56. (1) The Fund may issue directives which must be complied with in the implementation and administration of this Act, and any directives so issued must be published in the *Gazette*.

(2) Any directive issued under this section may be amended or withdrawn in like manner.

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.

(3) In Phase 1 the Minister may establish the following interim committees to advise him or her on the implementation of the National Health Insurance:
(a) The National Tertiary Health Services Committee which must be responsible for developing the framework governing the tertiary services platform in South Africa.
(b) The National Governing Body on Training and Development which must, amongst others—
(i) be responsible for advising the Minister on the vision for health workforce matters, for recommending policy related to health sciences, student education and training, including a human resource for health development plan;
(ii) be responsible for the determination of the number and placement of (including but not limited to) all categories of interns, community service and registrars;
(iii) oversee and monitor the implementation of the policy and evaluate its impact; and
(iv) coordinate and align strategy, policy and financing of health sciences education.
(c) The Ministerial Advisory Committee on Health Care Benefits for National Health Insurance, which must be a precursor to the Benefits Advisory Committee and which must advise the Minister on a process of priority-setting to inform the decision-making processes of the Fund to determine the benefits to be covered.
(d) The Ministerial Advisory Committee on Health Technology Assessment for National Health Insurance, which must be established to advise the Minister on Health Technology Assessment and which must serve as a precursor to the Health Technology Assessment agency that must regularly review the range of health interventions and technology by using the best available evidence on cost-effectiveness, allocative, productive and technical efficiency and Health Technology Assessment.

(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; and

(h) the initiation of legislative reforms in order to enable the introduction of National Health Insurance, including changes to the—

(i) Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);

(ii) Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973);

(iii) Health Professions Act, 1974 (Act No. 56 of 1974);

(iv) Dental Technicians Act, 1979 (Act No. 19 of 1979);

(v) Allied Health Professions Act, 1982 (Act No. 63 of 1982);

(vi) Medical Schemes Act, 1998 (Act No. 131 of 1998);

(vii) Mental Health Care Act, 2002 (Act No. 17 of 2002);

(viii) National Health Act;

(ix) Nursing Act, 2005 (Act No. 33 of 2005);

(x) Traditional Health Practitioners Act, 2007 (Act No. 22 of 2007); and

(xi) other relevant Acts.

(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.

Repeal or amendment of laws

58. (1) Subject to this section and section 57 dealing with transitional arrangements, the laws mentioned in the second column of the Schedule are hereby repealed or amended to the extent set out in the third column of the Schedule.

(2) The repeal or amendment of any law by this Act does not affect—

(a) the previous operation of such law or anything done or permitted under such law;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under such law; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed in terms of such law.

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.

SCHEDULE

REPEAL AND AMENDMENT OF LEGISLATION AFFECTED BY ACT

(Section 58)

No. and year of Act	**Short Title**	**Extent of repeal or amendment**
Act No. 101 of 1965	Medicines and Related Substances Control Act, 1965	1. The amendment of section 22G— *(a)* by the substitution for subsection (1) of the following subsection: ''(1) The Minister shall in consultation with the Office of Health Products Procurement established in section 38 of the National Health Insurance Act, 2019, appoint, for a period not exceeding five years, such persons as he or she may deem fit to be members of a committee to be known as the pricing committee.'' ; and *(b)* by the substitution in subsection (3) for paragraph *(a)* of the following paragraph: ''*(a)* The transparent pricing system contemplated in subsection (2)*(a)* shall include a single exit price which shall be published as prescribed by the Office of Health Products Procurement contemplated in subsection (1), and such price shall be the only price at which manufacturers shall sell medicines and Scheduled substances to **[any person other than the State]** the National Health Insurance Fund established by section 9 of the National Health Insurance Act, 2019, or any other person.''.
Act No. 78 of 1973	Occupational Diseases in Mines and Works Act, 1973	1. The amendment of section 36 by the substitution for subsection (1) of the following subsection: ''(1) The cost of any medical examination under this Act, and the cost incurred to keep a person under observation in accordance with any provision of this Act, shall be purchased and paid for by the National Health Insurance Fund established by section 9 of the National Health Insurance Act, 2019**[—** ***(a)* in the case of a person who works at a mine or works, or whom the owner of a mine or works intends to employ, be borne by the owner of the mine or works; and** ***(b)* in the case of any other person, be paid by the Director-General from moneys appropriated by Parliament for that purpose]**.''. 2. The deletion of sections 36A and 36B.

No. and year of Act	Short Title	Extent of repeal or amendment
Act No. 56 of 1974	Health Professions Act, 1974	1. The amendment of section 53— *(a)* by the substitution for subsections (1) and (2) of the following subsections, respectively: "(1) Every person registered under this Act (in this section referred to as the practitioner) shall, unless the circumstances render it impossible for him or her to do so, before rendering any **[professional]** services which are not covered by the National Health Insurance Fund established by section 9 of the National Health Insurance Act, 2019, inform the person to whom the services are to be rendered or any person responsible for the maintenance of such person, of the fee which he or she intends to charge for such services— *(a)* when so requested by the person concerned; or *(b)* when such fee exceeds that usually charged for such services, and shall in a case to which paragraph *(b)* relates, also inform the person concerned of the usual fee. (2) Any practitioner who in respect of any **[professional]** services rendered by him or her which are not covered by the National Health Insurance Fund established by section 9 of the National Health Insurance Act, 2019, claims payment from any person (in this section referred to as the patient) shall, subject to the provisions of section 32 of the Medical Schemes Act, 1998 (Act No. 131 of 1998), furnish the patient with a detailed account within a reasonable period."; and *(b)* by the substitution in subsection (3) for paragraph *(a)* of the following paragraph: "*(a)* The patient may, within three months after receipt of the account referred to in subsection (2), apply in writing to the professional board to determine the amount which in the opinion of the professional board should have been charged in respect of the services to which the account relates and which are not covered by the National Health Insurance Fund established by section 9 of the National Health Insurance Act, 2019, and the professional

No. and year of Act	Short Title	Extent of repeal or amendment
		board shall, as soon as possible after receipt of the application, determine the said amount and notify the practitioner and the patient in writing of the amount so determined: Provided that before the professional board determines the said amount, it shall afford the practitioner concerned an opportunity to submit to it in writing his or her case in support of the amount charged.''.
Act No. 63 of 1982	Allied Health Professions Act, 1982	1. The amendment of section 38A by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words: ''Every practitioner shall, unless the circumstances render it impossible for him to do so, and before rendering any professional services, inform the person to whom the services are to be rendered or any person responsible for the maintenance of such person, of the fee which he intends to charge for such services that are not covered by the National Health Insurance Act, 2019—''.
Act No. 130 of 1993	Compensation for Occupational Injuries and Diseases Act, 1993	1. The amendment of section 1— *(a)* by the substitution for the definition of ''compensation'' of the following definition: '' **'compensation'** means compensation in terms of this Act **[and, where applicable, medical aid or payment of the cost of such medical aid;]**''; and *(b)* by the deletion of the definition of ''medical aid''. 2. The amendment of section 16 by the substitution in subsection (1) for paragraph *(a)* of the following paragraph: ''*(a)* the payment of compensation, **[the cost of medical aid]** or other pecuniary benefits to or on behalf of or in respect of employees in terms of this Act where no other person is liable for such payment;''. . 3. The amendment of section 22 by the deletion in subsection (3) of paragraph *(a)*. 4. The amendment of section 42— *(a)* by the deletion of subsection (2); and *(b)* by the substitution for subsection (4) of the following subsection: ''(4) An employee shall be entitled **[at his own expense]** to have a medical practitioner or

No. and year of Act	Short Title	Extent of repeal or amendment
		chiropractor of his choice present at an examination by a designated medical practitioner.''. . 5. The repeal of sections 73 and 75.
Act No. 56 of 1996	Road Accident Fund Act, 1996	1. The amendment of section 17— *(a)* by the substitution for subsection (4B) of the following subsection: ''(4B) *(a)* The liability of the Fund or an agent regarding any tariff contemplated in subsections (4)*(a)*, (5) and (6) shall be based on **[the tariffs]** the reimbursement strategy for health care services **[provided by public health establishments]** contemplated in the **[National Health Act, 2003 (Act No. 61 of 2003), and shall be prescribed after]** National Health Insurance Act, 2019, in consultation with the Minister of Health. *(b)* The tariff for emergency medical treatment provided by a health care provider **[contemplated in the National Health Act, 2003—** **[(i) shall be negotiated between the Fund and such health care providers; and** **(ii) shall be reasonable taking into account factors such as the cost of such treatment and the ability of the Fund to pay.** ***(c)* In the absence of a tariff for emergency medical treatment the tariffs contemplated in paragraph *(a)* shall apply]** shall be determined, under the National Health Insurance Act, 2019.''; and *(b)* by the deletion of subsections (5) and (6).
Act No. 89 of 1998	Competition Act, 1998	1. The amendment of section 3— *(a)* by the substitution in subsection (1) for paragraph *(b)* of the following paragraph: ''*(b)* a collective agreement, as defined in section 213 of the Labour Relations Act, 1995; **[and]**''; and *(b)* by the insertion in subsection (1) after paragraph *(b)* of the following paragraph: ''*(b*A*)* the operations of the National Health Insurance Fund established by section 9 of the National

No. and year of Act	Short Title	Extent of repeal or amendment
		Health Insurance Act, 2019, as single public purchaser and single payer of health care services;".
Act No. 111 of 1998	Correctional Services Act, 1998	1. The amendment of section 12— *(a)* by the substitution for subsection (1) of the following subsection: "(1) The Department must provide, within its available resources provided by the National Health Insurance Fund established by section 9 of the National Health Insurance Act, 2019, adequate health care services, based on the principles of universal access to primary health care, in order to allow every inmate to lead a healthy life."; and *(b)* by the substitution for subsection (3) of the following subsection: "(3) Every inmate may be visited and examined by a medical practitioner of his or her choice and, subject to the permission of the Head of the Correctional Centre, may be treated by such practitioner**[, in which event the inmate is personally liable for the costs of any such consultation, examination, service or treatment]**.".
Act No. 131 of 1998	Medical Schemes Act, 1998	1. The amendment of section 1— *(a)* by the substitution for the definition of "business of a medical scheme" of the following definition: " **'business of a medical scheme'** means the business of undertaking, in return for a premium or contribution, the liability associated with one or more of the following activities: *(a)* Providing for the obtaining of any relevant health care service that is not covered by the provisions of the National Health Insurance Act, 2019; *(b)* granting assistance in defraying expenditure incurred in connection with the rendering of any relevant health care service that is not covered by the provisions of the National Health Insurance Act, 2019; or *(c)* rendering a relevant health care service that is not covered by the provisions of the National Health Insurance Act, 2019, either by the medical scheme itself, or by any

No. and year of Act	Short Title	Extent of repeal or amendment
		supplier or group of suppliers of a relevant health service or by any person, in association with or in terms of an agreement with a medical scheme;''; and *(b)* by the substitution for the definition of ''relevant health service'' of the following definition: '' **'relevant health service'** means any health care treatment **[of any person by a person registered in terms of any law]** that is not covered by the provisions of the National Health Insurance Act, 2019, which treatment is complementary to health care services funded by the State and has as its object— *(a)* the physical or mental examination of that person; *(b)* the diagnosis, treatment or prevention of any physical or mental defect, illness or deficiency; *(c)* the giving of advice in relation to any such defect, illness or deficiency; **[*(d)* the giving of advice in relation to, or treatment of, any condition arising out of a pregnancy, including the termination thereof;]** *(e)* the prescribing or supplying of any medicine, appliance or apparatus in relation to any such defect, illness or deficiency **[or a pregnancy, including the termination thereof]**; or *(f)* nursing or midwifery, and **[includes an]** subject to the provisions of the National Health Insurance Act, 2019, may include complementary and top up and ambulance service, and the supply of accommodation in **[an]** 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 **[or by a pregnancy]**;''. 2. The amendment of section 2— *(a)* by the substitution for subsection (1) of the following subsection: ''(1) If any conflict, relating to the matters dealt with in this Act,

No. and year of Act	Short Title	Extent of repeal or amendment
		arises between this Act and the provisions of any other law save the Constitution and the Public Finance Management Act, the National Health Insurance Act, 2019, or any Act expressly amending this Act, the provisions of this Act shall prevail.''; and *(b)* by the deletion of subsection (2). 3. The amendment of section 24 by the substitution for subsection (1) of the following subsection: ''(1) The Registrar shall, if he or she is satisfied that a person who carries on the business of a medical scheme which has lodged an application in terms of section 22, complies or will be able to comply with the provisions of this Act, as well as with the provisions of the National Health Insurance Act, 2019, register the medical scheme, with the concurrence of the Council, and impose such terms and conditions as he or she deems necessary.''. 4. The amendment of section 33 by the substitution for subsection (1) of the following subsection: ''(1) A medical scheme shall apply to the Registrar for the approval of any benefit option **[if such a medical scheme provides members with more than one benefit option]** that constitutes complementary or top up cover and that does not overlap with the personal health care service benefits purchased by the National Health Insurance Fund on behalf of users as provided for in the National Health Insurance Act, 2019.''.
Act No. 61 of 2003	National Health Act, 2003	1. The amendment of section 1 by the substitution for paragraph *(c)* of the definition of ''health agency'' of the following paragraph: ''*(c)* who procures health care personnel or health services for the benefit of a user excluding the National Health Insurance Fund established by section 9 of the National Health Insurance Act, 2019, and its functionaries;''. 2. The amendment of section 21— *(a)* by the insertion in subsection (2)*(b)* after subparagraph (vi) of the following subparagraph: ''(viA) develop and manage the national health information system;'';

No. and year of Act	Short Title	Extent of repeal or amendment
		(b) by the substitution in subsection (2) for paragraph *(c)* of the following paragraph: "*(c)* promote adherence to norms and standards for the training of human resources for the health sector for purposes of rendering health services;"; *(c)* by the substitution in subsection (2) for paragraph *(k)* of the following paragraph: "*(k)* facilitate and promote the provision of health services for the management, prevention and control of communicable and non-communicable diseases; **[and]**;"; *(d)* by the substitution in subsection (2) for paragraph *(l)* of the following paragraphs: "*(l)* co-ordinate the health services rendered by the national department with **[the health services]** those rendered **[by]** through provinces and District Health Management Office, and **[provide]** such additional health services as may be necessary to establish a comprehensive national health system; *(m)* plan the development of public and private hospitals, other health establishments and health agencies; *(n)* control and manage the cost and financing of public health establishments and public health agencies; *(o)* develop a national policy framework for the procurement and use of health technology; *(p)* develop guidelines for the management of health districts; *(q)* assist the District Health Management Office in controlling the quality of all health services and facilities; and *(r)* together with the District Health Management Office promote community participation in the planning, provision and evaluation of health services in a health district."; and

No. and year of Act	Short Title	Extent of repeal or amendment
		(e) by the substitution for subsection (5) of the following subsection: "(5) The Director-General must integrate the health plans of the national department **[and]**, provincial departments and districts annually and submit the integrated health plans to the National Health Council.". 3. The amendment of section 25— *(a)* by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words: "The head of a provincial department must, in accordance with national health policy and **[the]** relevant provincial health policy **[in respect of or]** perform such health functions within the relevant province as may be prescribed—"; *(b)* by the deletion in subsection (2) of paragraph *(b)*; *(c)* by the deletion in subsection (2) of paragraph *(f)*; *(d)* by the deletion in subsection (2) of paragraphs *(h)* to *(l)*; *(e)* by the substitution in subsection (2) for paragraph *(n)* of the following paragraph: "*(n)* **[control]** assist the District Health Management Office in controlling the quality of all health services and facilities;"; *(f)* by the deletion in subsection (2) of paragraph *(s)*; and *(g)* by the deletion of subsection (3). 4. The amendment of section 27— *(a)* by the deletion in subsection (1)*(a)* of subparagraphs (i) and (ii); *(b)* by the deletion in subsection (1)*(a)* of subparagraphs (iv), (v) and (vi); *(c)* by the deletion in subsection (1)*(a)* of subparagraph (viii); and *(d)* by the deletion in subsection (1) of paragraphs *(c)* and *(d)*. 5. The amendment of section 31— *(a)* by the substitution in subsection (2)*(a)* for subparagraph (iv) of the following subparagraph: "(iv) not more than five other persons, appointed by the relevant member of the Executive Council after consultation with the municipal council of the

No. and year of Act	Short Title	Extent of repeal or amendment
		metropolitan or district municipality or District Health Management Office, as the case may be."; *(b)* by the substitution in subsection (3) for paragraph *(b)* of the following paragraph: "*(b)* ensure co-ordination of planning, budgeting, provisioning and monitoring of all health services that affect residents of the health district for which the council was established;**[and]**"; *(c)* by the insertion in subsection (3) after paragraph *(b)* of the following paragraph: "*(b*A*)* promote community participation in the planning, provision and evaluation of health care services."; *(d)* by the substitution in subsection (5) for paragraph *(b)* of the following paragraph: "*(b)* the approval, after consultation with the relevant district health council, by the relevant member of the Executive Council and the municipal council of the metropolitan or district municipality, as the case may be, of the detailed **[budget and]** performance targets for health services in the health district to which both the provincial and municipal spheres of government must contribute; and"; and *(e)* by the substitution in subsection (5)*(c)* for subparagraph (i) of the following subparagraph: "(i) deadlock-breaking mechanisms for cases where agreement between the relevant member of the **[Executive Council]** District Health Council and the municipal council on the **[budget or]** performance targets contemplated in paragraph *(b)* cannot be reached within a period specified in the legislation; and".

No. and year of Act	Short Title	Extent of repeal or amendment
		6. The insertion of the following sections after section 31: "**Establishment of District Health Management Offices** **31A.** (1) District Health Management Offices are hereby established as national government components. (2) The Offices established in section (1) above must facilitate and coordinate the provision of primary health care services at district level in compliance with national policy guidelines and relevant law. (3) The District Health Management Office must— *(a)* prepare annual strategic medium-term health and human resources plans to provide for the exercise of the powers the performance of the duties and the provision of health care services in the district; *(b)* develop annual district health care plans that identify health care service needs in terms of the demographic and epidemiological profile of a particular district; *(c)* submit plans contemplated in subparagraph *(a)* and *(b)* to the Director-General within the time-frames and in accordance with the guidelines determined by the National Health Council; *(d)* manage provision of non-personal health services in the district; *(e)* interact with community representatives through district health councils; *(f)* coordinate and manage the functioning of primary health care within the district, including district specialist support teams, primary health care teams and agents, and school health services; *(g)* provide information on the disease profile in a particular district that would inform the design of the health care service benefits for that district; *(h)* improve access to health care services at health care facilities and in the community in a particular district; *(i)* ensure that the user referral system referred to in section 44 is functional, including the transportation of users between the different levels of care and between public and private facilities

No. and year of Act	Short Title	Extent of repeal or amendment
		accredited by the Fund established by section 9 of the National Health Insurance Act, 2019, if necessary; *(j)* facilitate the certification of public health care facilities and accreditation of health care service providers, health establishments and suppliers at district level, including municipal clinics; *(k)* facilitate the integration of public and private health care services such as emergency medical services but excluding public ambulance services; *(l)* receive and resolve complaints from users in the district in relation to the delivery of health care services; *(m)* liaise with and report on a monthly basis to the national office of the Fund established by section 9 of the National Health Insurance Act, 2019, concerning— (i) difficulties experienced by users relating to access to health care services; (ii) challenges experienced by the Office in respect of service providers; (iii) health needs of users that are not met; and (iv) any other matter required for the efficient functioning of health care services in the relevant district; *(n)* cooperate with the Investigating Units established in terms of section 20(2)*(e)* of the National Health Insurance Act, 2019, in order to facilitate the investigation of complaints in the district; *(o)* control the quality of all health services and facilities within a district to comply with the norms and standards of the Office of Health Standards Compliance; *(p)* develop, procure, use, maintain and protect health technology within the district; and *(q)* liaise with provincial and municipal health authorities on any matter relevant to users within the relevant district. (4) The Director-General must together with the District Health Management Office ensure that each health district and each health subdistrict is effectively and efficiently managed.

No. and year of Act	Short Title	Extent of repeal or amendment
		Establishment of Contracting Units for Primary Health Care **31B.** (1) The District Health Management Office must establish Contracting Units for Primary Health Care operating within a framework stipulated by the National Department of Health. (2) The Units established in terms of subsection (1) must be directly contracted by the Fund established by section 9 of the National Health Insurance Act, 2019, to ensure the provision of primary health care services, including prevention, promotion, curative, rehabilitative ambulatory, home-based care and community care. (3) The Fund must transfer funds to the Contracting Units for Primary Heath Care guided by district health resource allocation formulae or capitation formulae prescribed by the Fund established by section 9 of the National Health Insurance Act, 2019. (4) Each Unit must be responsible for the population in its designated sub-district as determined by regulation and must ensure that the required human resources are in place to provide primary health care services. (5) Contracting Units for Primary Health Care must identify certified and accredited public and private health care providers at primary care facilities that fulfil all requirements to receive funding for services within the relevant district. (6) To the extent that the Contracting Units for Primary Heath Care are not adequately capacitated, the District Health Management Office must perform these functions on its behalf until such time as the Units have been sufficiently capacitated to fulfil their purpose as provided for in this section.''. 7. The amendment of section 41— *(a)* by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words: ''The Minister, in respect of a central hospital, and the relevant member of the Executive Council and District Health Management Office, in respect of all other public health establishments within the province and district in question, may—'';

No. and year of Act	Short Title	Extent of repeal or amendment
		(b) by the deletion in subsection (1) of paragraphs *(c)* and *(d)*; and *(c)* by the deletion of subsections (2) and (3). 8. The amendment of section 90— *(a)* by substitution in subsection (1) for the words preceding paragraph *(a)* of the following words: "The Minister, after consultation with the National Health Council **[or the Office, as the case may be]**, may make regulations regarding—"; *(b)* by the substitution in subsection (1)*(b)* for subparagraph (i) of the following subparagraph: "(i) the fees to be paid to public health establishments for health services rendered in consultation with the Fund established by section 9 of the National Health Insurance Act, 2019;"; and *(c)* by the substitution in subsection (1) for paragraphs *(d)* and *(e)* of the following paragraphs, respectively: "*(d)* the development of an essential drugs list and medical and other assistive devices list together with the Office of Health Products Procurement; *(e)* human **[resource]** resources planning, development and management;".
Act No. 70 of 2008	Prevention of and Treatment for Substance Abuse Act, 2008	9. The substitution for section 7 of the following section: "**Support for services delivered by service providers** **7.** (1) The Minister may— *(a)* from funds **[appropriated by Parliament for that purpose]** received from the National Health Insurance Fund , provide financial assistance to service providers that provide services in relation to substance abuse; *(b)* for the purposes of paragraph *(a)* prioritise certain needs of and services for persons affected by substance abuse; **[*(c)* in the prescribed manner enter into contracts with service providers to ensure that the services contemplated in paragraph *(b)* are provided; and**

No. and year of Act	Short Title	Extent of repeal or amendment
		(2) The Minister must— ***(a)*** **prescribe conditions for the receiving of financial assistance referred to in subsection (1)*(a)*, including accounting and compliance measures;** ***(b)*** **prescribe remedies for failure to comply with the conditions contemplated in paragraph *(a)*;** ***(c)*** **establish and maintain a register of all assets bought by service providers with Government funds; and** ***(d)*** **prescribe conditions for the management and disposal of assets contemplated in paragraph *(c)*.** **(3) Service providers who procure any immovable property with the funds appropriated in terms of subsection (1) must ensure that the Registrar of Deeds makes the necessary entries in the title deed indicating the state ownership of such property.]**

MEMORANDUM ON THE OBJECTS OF THE NATIONAL HEALTH INSURANCE BILL, 2019

1. BACKGROUND

1. General

1.1 Cabinet approved the policy for the transformation of the South African health care system to achieve universal coverage for health services, which includes the creation of a National Health Insurance Fund as a strategy for moving towards Universal Health Coverage (UHC).

1.2 The aim of universal health coverage is to provide South Africans with—

(a) access to needed health care that is of sufficient quality to be effective; and

(b) financial protection from the costs of health care.

1.3 The National Health Insurance Bill, 2019 (''Bill''), seeks to provide for the universal access to health care services in the Republic in accordance with the National Health Insurance White Paper and the Constitution of South Africa, 1996 (''Constitution''). The Bill envisages the establishment of a National Health Insurance Fund (''Fund'') and sets out its powers, functions and governance structures. The Fund will purchase health care services for all users who are registered with the Fund. The Bill will also create mechanisms for the equitable, effective and efficient utilisation of the resources of the Fund to meet the health needs of users and preclude or limit undesirable, unethical and unlawful practices in relation to the Fund and its users.

1.4 The Preamble recognises the socio-economic imbalances and inequities of the past, the need to heal the divisions of the past, the need 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. The Preamble also takes cognisance of Article 12 of the United Nations Covenant on Economic, Social and Cultural Rights, 1966, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and of Article 16 of the African Charter on Human and People's Rights, 1981, which provides for the right to enjoy the best attainable state of physical and mental health. The Preamble also recognises the right to have access to health care services, including reproductive health care as provided in section 27(1)(*a*) of the Constitution as well as the obligation on the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of access to health care services as provided in section 27(2) of the Constitution.

2. ADDRESSING BARRIERS TO ACCESS

2.1 Structural challenges in the health system

2.1.1 There is a need for reform of both the health care financing and service delivery systems so that all South Africans have access to affordable, quality personal health care services regardless of their socio-economic status within the context of the burden of disease in South Africa.

2.1.2 The main problem relates to the fragmentation of health care fund pools in the South African health system and the aim is to create an integrated pool in order to achieve universal health coverage for health

care services by establishing a purchaser-provider split with the Fund being the single-payer for comprehensive health care services purchased on behalf of users.

2.1.3 The barriers to access that need to be addressed are—
(a) an onerous burden of out-of-pocket payments on some individuals due to the uneven implementation of user fee exemptions at public hospitals and the high cost of care in the private sector;
(b) distance to health facilities remains a major barrier to access, including in terms of the availability and costs of public and emergency transport;
(c) lack of sufficient, qualified staff within the public health sector relative to the size of the population served by this sector;
(d) misdistribution of health care providers between geographic areas, with a concentration in large urban areas;
(e) weak purchasing and incentive mechanisms;
(f) fragmented funding and risk pools, which limit the potential for income and risk cross-subsidies; and
(g) inefficient provider payment mechanisms in both the public and the private health sectors.

2.1.4 In order to achieve the objectives listed below, there must be a reconfiguration of the institutions and organisations involved in the funding, pooling, purchasing and provision of health care services in the South African health system.

2.2. The implementation of reforms in the 2017/18 to 2021/2022 period will take place in six phases:

2.2.1 The intermediate preparatory phase involve improving the quality of the health system by first certifying the health facilities to ensure they meet the requirements of the Office of Health Standards Compliance.

2.2.2 Initiate the establishment of the Fund whilst simultaneously introducing a national quality improvement plan that helps facilities to be certified and accredited to provide health care services to be funded under National Health Insurance (''NHI''). During this phase health facilities that are certified and accredited will start to provide health care services for users of the Fund (September 2019—March 2021)

2.2.3 Fund and its Executive Authority will bid for funds through the main budget as part of the budget process to expand coverage using certified and accredited public and private sector health facilities. This phase will focus on fully establishing the purchaser-provider split and associated reforms, such as changing provider payment mechanisms and the implementation of the Fund's institutional arrangements (May 2020-March 2021).

2.2.4 Shift some of the conditional grants such as the National Tertiary Services grant and the HIV/AIDS and TB grant from the Department of Health into the Fund and continue with step 2.5.3. (April 2021-March 2022).

2.2.5 Shifting some or all of the funds currently in the provincial equitable share formula for personal health care services (currently the main public health funding stream to the Fund to gradually extend these delivery and management reforms to all districts and public hospitals (April 2022).

2.2.6 The final phase will largely relate to expanding coverage in terms of being able to accommodate the maximum projected utilisation rates and gradually increasing the range of services to which there is a benefit entitlement. In a favourable economic environment there will

be an initiation of the evaluation of new taxation options for the Fund including evaluating a surcharge on income tax, a small payroll tax or as financing sources for NHI.

2.3 This phased approach will be described in more detail in a series of implementation plans by the Department of Health, and will be updated regularly on the basis of insights gained from piloting some of the activities and careful monitoring of each phase.

2.4 The purpose of the introduction of the reforms mentioned in paragraph 2.2 above is to ensure consistency with the global vision that health care should be seen as a social investment and not be subject to trading as a commodity. The universal health coverage system is a reflection of the kind of society we wish to live in: one based on the values of social solidarity, equity, justice and fairness.

3. AFFORDABILITY AND SUSTAINABILITY

3.1 A legitimate concern is the affordability and sustainability of National Health Insurance in South Africa. This can best be considered with reference to the nature of the proposed system and the checks and balances that will be put in place to limit unnecessary expenditure increases for supply-side as well as demand-side management.

3.2 Affordability and sustainability can be addressed as follows:

3.2.1 Placing increased emphasis on health promotion and preventive services and outlining how this will be achieved (e.g. through the activities of ward health agents);

3.2.2 establishing high quality primary health care services as the foundation of the health system, to ensure that the majority of health problems can be diagnosed and treated at this level;

3.2.3 introducing a mechanism for ‘gatekeeping’ through a primary health care approach and referral system, where patients access higher level services on the basis of referral networks;

3.2.4 a system of priority setting that emphasises health promotion and disease prevention and in which medically necessary interventions are used; and

3.2.5 improving public health facility infrastructure and to strengthen district health management.

4. STRENGTHENING PRIMARY HEALTH CARE (“PHC”) SERVICES

4.1 Building a high quality and effective PHC service delivery platform is the foundation upon which the health system will be based.

4.2 The PHC service delivery platform will be located within the District Health Management Offices and services will be delivered in a comprehensive and integrated way.

4.3 There will be an increased emphasis on health promotion and preventive services, in addition to improving curative and rehabilitative services.

4.4 The delivery of primary health care services will be population-orientated with extensive use of community and home-based services in addition to PHC facilities, follows:

4.4.1 PHC outreach teams will be deployed in each municipal ward, supported by a nurse and linked to a PHC facility such as a clinic;

4.4.2 PHC outreach teams will be allocated households that they will visit on a regular basis. They will provide health promotion education, identify those in need of preventive (e.g. immunisations), or rehabilitative services and refer them to the relevant PHC facility;

4.4.3 outreach teams will also facilitate community involvement and participation in identifying health problems and behaviours that place individuals at risk of disease or injury and implement appropriate interventions to address these problems at a community level; and

4.4.4 school health services will be provided to improve the physical and mental health and general well-being of school going children, including pre-Grade R, and Grade R up to Grade 12.

4.5 Private primary health care providers will be drawn on to increase service delivery capacity and to improve access to needed health services, especially in under-served rural and informal urban areas.

4.6 Contracting arrangements will be explored, including improved sessional appointments; contracts to deliver comprehensive PHC services from government health facilities or mobile health posts; and contracts with multi-disciplinary group or network practices operating from private premises.

4.7 Contracted private providers will be integrated into the PHC service delivery platform in line with the vision of making comprehensive promotive, preventive, curative and rehabilitative services accessible to all and will be coordinated through the Contracting Units for Primary Health Care (CUPs). They will be an integral part of district health services, contribute not only to clinical service delivery but, where appropriate, also clinical governance activities, and have strong working relationships with other elements of the district health care delivery platform.

4.8 District Health Management Offices (DHMOs) will be established as government-components reporting to the national sphere to which responsibilities are delegated. Appropriate governance structures will be established at district level to ensure that these institutions serve the public interest.

4.9 To ensure that the Fund purchases quality health services, the management of hospitals will be decentralised to ensure their effective functioning and sustainability. The delegation of management authority to public hospital facilities will be piloted.

4.10 Central hospitals will have semi-autonomous boards and administration, management, budgeting and governance functions. The central hospitals will become government components and the competence of the national sphere of government. They will contract directly with the Fund.

4.11 Provincial tertiary and regional hospitals or groups of hospitals and specialised hospitals will become semi-autonomous entities accountable to the Minister through regulation and whose functions can be delegated to different sphere of government.

5. OBJECTIVES OF THE BILL

5.1 Principles

National Health Insurance will be based on the following overarching principles:

(a) **Universality** — all will be able to access the same essential health care benefits regardless of their financial means; and

(b) **Social solidarity** — all regardless of their socio-economic status will benefit from a national system of health care, which is based on income

cross-subsidies between the affluent and the impoverished and risk cross-subsidies between the healthy and the sick.

5.2 Goal

The goal of the National Health Insurance is to move towards universal coverage by serving as a strategic and active purchaser of personal health care services and by—

(a) ensuring that the entire population, and not just particular groups, are entitled to benefit from needed, high quality health care;
(b) extending over time the range of services to which the population is entitled; and
(c) reducing the extent to which the population has to make direct, out-of-pocket payments for health services.

5.3 Objectives

The Fund will strive to achieve the following specific objectives:

(a) universal protection against financial risk;
(b) equitable distribution of the burden of funding the universal health system:
(c) equitable and fair provision and use of health services;
(d) efficiency in service provision and administration;
(e) quality in service delivery; and
(f) good governance and stewardship.

5.4 Applicable Legislation

National legislation (as amended) and applicable or related to the contents and mandate of the Bill, and any other legislation that may or may not require amendment at a later stage, include:

Act No. 63 of 1982	Allied Health Professions Act, 1982
Act No. 130 of 1993	Compensation for Occupational Injuries and Diseases Act, 1993
Act No. 89 of 1998	Competition Act, 1998
Act No. 111 of 1998	Correctional Services Act, 1998
Act No 19 of 1979	Dental Technicians Act, 1979
Act No. 56 of 1974	Health Professions Act 56 of 1974 as amended
Act No. 101 of 1997	Higher Education Act, 1997
Act No. 58 of 1962	Income Tax, 1962
Act No. 40 of 2002	Institution of Legal Proceedings Against Certain Organs of State Act, 2002
Act No. 97 of 1997	Intergovernmental Fiscal Relations Act, 1997
Act No. 28 of 1974	International Health Regulations Act, 1974
Act No. 117 of 1998	Local Government Municipal Systems Act, 1998 as amended
Act No. 131 of 1998	Medical Schemes Act, 1998
Act No. 101 of 1965	Medicines and Related Substances Act, 1965
Act No. 17 of 2002	Mental Health Care, 2002
Act No. 9 of 2009	Money Bills Amendment Procedure and Related Matters Act, 2009
Act No. 61 of 2003	National Health Act, 2003
Act No. 32 of 2000	Municipal Systems Act, 2000
Act No. 37 of 2000	National Health Laboratory Services Act, 2000
Act No. 33 of 2005	Nursing Act, 2005
Act No. 78 of 1973	Occupational Diseases in Mines and Works Act, 1973
Act No. 85 of 1993	Occupational Health and Safety Act, 1993

Act No. 63 of 1982	Allied Health Professions Act, 1982
Act No 13 of 2006	Older Persons Act, 2006
Act No. 53 of 1974	Pharmacy Act 1974
Act No 70 of 2008	Prevention of and Treatment for Substance Abuse Act, 2008
Act No. 56 of 1996	Road Accident Fund Act, 1996
Act No. 35 of 2007	Traditional Health Practitioners Act, 2007

6. CLAUSE BY CLAUSE ANALYSIS

6.1 Clause 1

Clause 1 provides for the definitions of the Bill.

6.2 Clause 2

Clause 2 provides for purpose of the Bill.

6.3 Clause 3

Clause 3 provides for the scope and application of the Bill.

6.4 Clause 4

6.4.1 Clause 4 deals with the eligibility to become a beneficiary of the Fund. Clause 4 provides that the Fund must, in consultation with the Minister, purchase comprehensive health service benefits as determined by the Benefits Advisory Committee of the Fund on behalf of—

(a) South African citizens;
(b) persons who are permanently resident in the Republic;
(c) the dependants of persons referred to in paragraphs *(a)* and *(b)*;
(d) all children, including children of asylum seekers or illegal immigrants are entitled as provided for in section 28 of the Constitution; and
(e) all inmates as provided for in section 12 of the Correctional Services Act.

6.4.2 This clause also provides that an asylum seeker or illegal foreigner is only entitled to emergency medical services and service for notifiable candidates of public health concern.

6.5 Clause 5

Clause 5 of the Bill deals with the registration as users with the Fund and for, amongst others, the presentation of an identity document, smart card, valid permit or visa in terms of the provisions of the Refugees Act, 1998 (Act No. 130 of 1998), or the Immigration Act, 2002 (Act No. 13 of 2002), as the case may be, for persons intending to register with the Fund.

6.6 Clause 6

Clause 6 deals with the rights of the users of the Fund. These include, amongst others, the right to receive quality health care services free of charge from certified and accredited health care service providers and health establishments upon presentation of proof of registration.

6.7 Clause 7

Clause 7 provides that the Fund will purchase health care service as determined by the Benefits Advisory Committee in consultation with the Minister for the benefit of users who are registered with the Fund.

6.8 Clause 8

Clause 8 deals with the cost coverage in relation to the Fund. This clause provides that a person who is registered as a beneficiary will receive the required services as purchased on his or her behalf by the Fund from certified and accredited health care service providers at no cost.

6.9 Clause 9

Clause 9 provides for the establishment of the Fund as a national public entity as contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999) (''PFMA'').

6.10 Clause 10

Clause 10 contains a list of functions of the Fund.

6.11 Clause 11

Clause 11 contains a list of the powers of the Fund.

6.12 Clause 12

Clause 12 makes provision for the establishment of an independent Board that is accountable to Parliament in accordance with the provisions of the PFMA.

6.13 Clause 13

Clause 13 makes provision for the constitution and composition of the Board. It sets out the process for the nomination of candidates to serve on the Board and the role of the *ad-hoc* panel tasked with interviews of the shortlisted candidates and making recommendations to the Minister of Health (''Minister'') for his appeal. Clause 13 also outlines the conditions in terms of which the Minister may dissolve the Board after consultation with the Portfolio Committee.

6.14 Clause 14

Clause 14 deals with the appointment of the Chairperson and Deputy Chairperson of the Board.

6.15 Clause 15

Clause 15 makes provision for the functions and powers of the Board. In terms of this clause, the Board must fulfil the functions of an accounting authority in terms of the provisions of the PFMA and is accountable to Parliament. The Board shall advise the Minister on any matter concerning—

(a) the management and administration of the Fund;
(b) the improvement of efficiency and performance of the Fund in terms of universal purchasing and provision of health care services;
(c) terms and conditions of employment of Fund employees;
(d) collective bargaining; and
(e) the budget of the Fund.

6.16 Clause 16

Clause 16 deals with the conduct and disclosure of interests by members of the Board.

6.17 Clause 17

Clause 17 makes provision for the Board to determine its own procedures.

6.18 Clause 18

This clause deals with the remuneration and reimbursement of members of the Board.

6.19 Clause 19

Clause 19 makes provision for the appointment of the Chief Executive Officer (''CEO'') of the Fund. The CEO shall 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.

6.20 Clause 20

Clause 20 provides that the CEO is directly accountable to the Board and his or her responsibilities include, amongst others—

(a) the formation and development of an efficient Fund administration;
(b) the organisation and control of the staff of the Fund;
(c) the maintenance of discipline within the Fund;
(d) the effective deployment and utilisation of staff; and
(e) the establishment of an Investigating Unit within the national office of the Fund.

6.21 Clause 21

Clause 21 provides for the relationship of CEO with the Minister, Director-General and Office of Health Standards Compliance.

6.22 Clause 22

Clause 22 deals with the power of the CEO in relation to the appointment and dismissal of the executive management officials of the Fund.

6.23 Clause 23

Clause 23 empowers the Minister to appoint technical committees.

6.24 Clause 24

Clause 24 empowers the Board to establish technical committees.

6.25 Clause 25

Clause 25 makes provision for the appointment of a Benefits Advisory Committee by the Minister, after consultation with the Board.

6.26 Clause 26

Clause 26 provides that the Minister must, after consultation with the Board, establish a Health Care Benefits Pricing Committee.

6.27 Clause 27

Clause 27 makes provision for the appointment of a Stakeholder Advisory Committee by the Minister, after consultation with the Board.

6.28 Clause 28

Clause 28 provides for the disclosure of interests by members of a committee.

6.29 Clause 29

Clause 29 provides for the remuneration and procedures of a committee that is established by the Minister in terms of clause 23 of the Bill and empowers the Minister to determine the remuneration and procedures in respect of such a committee.

6.30 Clause 30

Clause 30 provides for vacation of office by members of the committee.

6.31 Clause 31

Clause 31 provides for the legislative role of the Minister in relation to the governance and stewardship of the national health system and the governance and stewardship of the Fund.

6.32 Clause 32

Clause 32 provides for the legislative role of the Department as contemplated in the National Health Act, 2003 (Act No. 61 of 2003) (''National Health Act'').

6.33 Clause 33

Clause 33 deals with the role of medical schemes. In terms of this clause, medical schemes registered in terms of the Medical Schemes Act, 1998 (Act No 131 of 1998), or any other voluntary private health insurance scheme, shall be restricted to providing complementary cover for health care service benefits that are not purchased by the Fund on behalf of users.

6.34 Clause 34

Clause 34 provides for the National Health Information System.

6.35 Clause 35

Clause 35 provides for the purchasing of health services by the Fund. The Fund shall actively and strategically purchase health care services on behalf of users in accordance with need and the provisions of this Act.

6.36 Clause 36

Clause 36 provides for the role of District Health Management Offices. The District Health Management Office established by section 31A of the National Health Act must facilitate, coordinate and manage the provision of non-personal public health care programmes at district level in compliance with national policy guidelines and applicable law.

6.37 Clause 37

Clause 37 makes provision for the establishment of the Contracting Unit for Primary Health Care. The Contracting Unit is the organisational unit with which the Fund contracts for the provision of primary health care services within a specified geographical sub-district area.

6.38 Clause 38

Clause 38 provides for the establishment by the Minister of the Office of Health Products Procurement that is accountable to the Board of the Fund.

6.39 Clause 39

Clause 39 provides for accreditation of public and private health establishments by the Fund.

6.40 Clause 40

Clause 40 deals with the payment of service providers of the Fund. In terms of the clause, the Fund, in consultation with the Minister, will determine the nature of service provider payment mechanisms and adopt mechanisms to establish that health care service providers, health establishments and suppliers are properly accredited in terms of clause 39, before they receive payment.

6.41 Clause 41

Clause 41 provides that an affected natural or juristic person, namely a user, health care service provider, health establishment or supplier, may lodge a complaint with the Fund in consultation with the Minister and the Fund must deal with such complaints in a timeous manner and in terms of applicable law.

6.42 Clause 42

Clause 42 deals with the lodging of complaints with a Fund.

6.43 Clause 43

Clause 43 deals with the lodging of appeals to the Appeal Tribunal against a decision as contemplated in clause 42.

6.44 Clause 44

Clause 44 deals with the establishment of the Appeal Tribunal, its composition and the term of office of its members.

6.45 Clause 45

Clause 45 makes provision for the powers of the Appeal Tribunal.

6.46 Clause 46

Clause 46 provides for the designation of the secretariat of the Appeal Tribunal.

6.47 Clause 47

Clause 47 provides for the remuneration and procedures of the Appeal Tribunal.

6.48 Clause 48

Clause 48 makes provision for the sources of income of the Fund. In terms of clause 48, the South African Revenue Service will undertake all revenue collection related to the Fund, including the collection of any supplementary health tax levies if applicable. The Treasury will, in consultation with the Minister of Finance, the Minister and the Fund, determine the budget and allocation of revenue to the Fund on an annual basis.

6.49 Clause 49

Clause 49 provides for the chief source of income of the Fund.

6.50 Clause 50

Clause 50 deals with the auditing of the books of the Fund.

6.51 Clause 51

Clause 51 provides that the Board, as the accounting authority of the Fund, must submit to the Minister an annual report on the activities of the Fund during each financial year. Furthermore, the clause makes provision for the requirements of the annual report in terms of its content and the obligation on the Minister to table the annual report in the National Assembly and the National Council of Provinces without delay.

6.52 Clause 52

Clause 52 deals with the assignment of duties and delegation of powers of the Fund.

6.53 Clause 53

Clause 53 makes provision for the protection of confidential information.

6.54 Clause 54

Clause 54 creates a list of offences in instances where a natural or juristic person contravenes specific provisions in the Bill.

6.55 Clause 55

Clause 55 makes provision for the powers of the Minister to make regulations.

6.56 Clause 56

Clause 56 makes provision for the powers of the Fund to issue directives.

6.57 Clause 57

Clause 57 deals with transitional arrangements in respect of the Bill.

6.58 Clause 58

Clause 58 deals with the repeal and amendment of laws as provided in the Schedule to the Bill.

6.59 Clause 59

Clause 59 provides for the short title and commencement.

7. DEPARTMENTS/BODIES CONSULTED

- National Health Council
- National Treasury
- Forum of South African Directors General
- Public Consultations through 197 received and evaluated written comments
- Civil Society
- Traditional Leaders
- Health Professional Groups
- Finding intermediaries

8. FINANCIAL IMPLICATIONS FOR THE STATE

The Fund will be financed in various interrelated phases as determined in consultation with the National Treasury:

8.1 The costing/budgeting focuses on practical issues, rather than general models (three of which were previously contracted). The latest focuses on three issues:

(a) Quality of care improvement programme: The War-room is of the view that a new funding component is required to accelerate quality initiatives, to support a stronger response post OHSC audit and also to support progressive accreditation of facilities for Fund. Amounts of R75 million, R125 million and R175 million will be considered for potential reprioritisation as part of the budget process.

(b) Establishment of Fund: The preliminary costing is R57 million, R145 million and R287 million. These should be seen as ideal and will probably be less given practical delays e.g. in passing Bill. Again in the short term these funds can largely be found through reprioritisation within the grant.

(c) Actuarial costing model: Treasury commissioned a simplified intervention-based costing tool for 2019/20 which provides simple estimates of costs of a set of 15 or so interventions. These include for example removing user fees, extending chronic medicine distribution programme (CCMDD), extending ARV rollout, increasing antenatal visits, rolling out capitation model for General Practitioners (GPs), cataract surgery programme, establishing Fund. The full set of interventions costs in the longer term around R30 billion per annum. The Department will adapt the tool to find a set of priority interventions. Most of these interventions can be scaled up progressively as funding becomes available and does not need significant new funds in Budget 2020.

8.2 The Human Resources Capacitation Grant will be used to appoint staff to ensure implementation of the Fund already increases from R330 million spending in 2018/19 to R600 million in 2019/20 to R1 billion in 2020/21 and R1.1 billion in outer years. This should be focussed in the first instance on statutory posts such as interns and community service, given problems in provinces funding these key posts and national interest in making sure these are fully funded.

8.3 The above is preliminary work and to be taken forward will need to be further developed around Budget 2020.

8.4 The rising Fund budget baseline (R4.2 billion was reprioritised from tax subsidy; NHI grant rises from R2.5 billion in 2019/20 to R3.1 billion in 2020/21) and under-spending in 2018/19 (around R600 million), requires that most of the short term funding for the above is derived from reprioritisation and rising baseline. The 2020/21 budget of R3.1 billion is already substantially above 2018/19 spending of R 1.7 billion.

8.5 In the next phase the Fund and its Executive Authority will be able to bid for funds through the main budget as part of the budget process.

8.6 Thereafter consideration will be given to shifting some of the conditional grants such as the National Tertiary Services grant and the HIV/AIDS and TB grant from the Department to the Fund. Preliminary analysis suggests this will require legal amendments.

8.7 The table below outlines the 2019 MTEF Fund Conditional Grant allocations:

Table 1: National Health Insurance Conditional Grant 2019 MTEF Allocations

Non-Personal Services Component	**758,000**	**832,000**	**858,860**
CCMDD	420,000	476,000	483,280
Ideal Clinic Component	23,000	26,000	27,430
Information Systems	315,000	330,000	348,150
Medicine Stock Surveillance System	*143,000*	*150,000*	*158,250*
Health Patient Registration System	*172,000*	*180,000*	*189,900*
Personal Services Component	**639,288**	**783,000**	**915,068**
HP Contracting Current Model (contr - In)	289,288	305,198	321,053
GP Contracting - Capitation	150,000	200,000	211,000
Mental Health Services	100,000	125,000	150,000
Other priority services (Oncology)	100,000	152,802	233,015
Total NHI Indirect Grant	**2,533,699**	**3,210,816**	**3,336,016**
Total Conditional Grants Allocation (Direct & Indirect)	**47,522,518**	**52,435,758**	**57,424,345**

	2019 MTEF Allocations		
	2019/20	2020/21	2020/21
Direct Grants	**R'000**	**R'000**	**R'000**
Health Prof Training and Dev Grant	2,940,428	3,102,152	3,272,770
National Tertiary Services Grant	13,185,528	14,068,863	14,842,650
Comprehensive HIV and AIDS, TB & COS	**22,038,994**	**24,408,471**	**27,752,587**
HIV/AIDS Component	*19,963,269*	*22,195,284*	*24,518,748*
TB Component	*485,300*	*511,989*	*540,151*
Community Outreached Services Component	*1,500,000*	*1,584,000*	*2,582,500*
Malaria Component	*90,425*	*117,198*	*111,188*
Health Facility Revitalisation Grant	6,006,973	6,359,557	6,858,024
Human Papillomavirus (HPV)	211,200	222,816	235,071
Human Resources Capacitation Grant	605,696	1,063,083	1,127,227
TOTAL	**44,988,819**	**49,224,942**	**54,088,329**

8.8 In a later phase consideration will be given to shifting of funds currently in the provincial equitable share formula for personal health care services (currently the main public health funding stream consisting of around R150 billion per annum) to the Fund. This will require amendments to the National Health Act, 2003. This will also depend on how functions are shifted, for example if central hospitals are brought to the national level.

8.9 Chapter 7 of the Fund White Paper details several new taxation options for the Fund, including evaluating a surcharge on income tax, a small payroll-based taxes as financing sources for the Fund. Due to the current fiscal condition, tax increases may come at a later stage of NHI implementation.

9. PARLIAMENTARY PROCEDURE

9.1 The Constitution regulates the manner in which legislation may be enacted by Parliament and prescribes the different procedures to be followed for such enactment. Section 76 of the Constitution provides for the parliamentary procedure for ordinary Bills affecting the provinces. In terms of section 76(3) a Bill must be dealt with in accordance with the procedure established by either section 76(1) or section 76(2) if that Bill provides for legislation envisaged in section 76(3)*(a)* to *(f)* or if it falls within a functional area listed in Schedule 4.

9.2 In ***Tongoane and Others v National Minister for Agriculture and Land Affairs and Others***[i] (''***Tongoane*** judgment''), the CC confirmed and upheld the test for tagging that was formulated in ***Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill***[ii], where the CC held that—

> *"the heading of section 76, namely, 'Ordinary Bills affecting provinces' provides a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76.".*

9.3 At paragraph 50 of the Tongoane judgment the CC held that the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect the functional areas listed in Schedule 4 and not on whether any of its provisions are incidental to its substance.

9.4 The CC stated the following at paragraph 58 of the Tongoane judgment:

> ''*What matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill 'in substantial measure fall within a functional area listed in Schedule 4'.*''.

9.5 The CC further held that the test for tagging must be informed by its purpose. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the purpose concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interest, concerns and capacities of the provinces, the more say the provinces should have on its content.[iii]

9.6 To determine whether the provisions of the Bill in substantial measure fall within a functional area listed in Schedule 4, the Bill ought to be considered against the provisions of the Constitution relating to the tagging of Bills as well as against the functional areas listed in Schedule 4 and Schedule 5 to the Constitution.

9.7 The test compels the consideration of the substance, purpose and effect of the subject matter of the Bill. In view of the discussion above and after careful scrutiny of all the provisions in the Bill, we are of the opinion that the Bill in substantial measure falls within the ambit of ''health services'' which is an area listed in Part A of Schedule 4, which makes provision for functional areas of concurrent national and provincial legislative competence. As such, the

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[i] CCT 100/09 [2010] 10.

[ii] [1999] ZACC 15; 2000 (1) SA 732 (CC); 2000 (1) BCLR 1(CC).

[iii] Paragraph 60 of the Tongoane judgment.

State Law Advisers and the Department of Health are of the opinion that the Bill must be tagged as a section 76 Bill.

9.8 The State Law Advisers are of the opinion that there is no need for a referral of the Bill to the National House of Traditional Leaders as it contains no provisions pertaining to customary law or the customs of traditional communities as envisaged in section 18(1)(*a*) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003.)

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