SUBMISSION TO THE PORTFOLIO COMMITTEE ON HEALTH ON THE NATIONAL HEALTH INSURANCE BILL [11-2019]

THE PUBLIC SERVICE ACCOUNTABILITY MONITOR

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ENDORSED BY:

- Section 27
- Cancer Association of South Africa

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1. INTRODUCTION:

This submission on the National Health Insurance (NHI) Bill[1] is prepared by the Public Service Accountability Monitor (PSAM), which is a civil society organisation, based at the School of Journalism and Media Studies at Rhodes University, in Makhanda (formerly Grahamstown), South Africa. The PSAM was established in 1999 and its activities include research, monitoring, advocacy and technical assistance.

In 2018, two civil society organisations, namely Section 27 and the Treatment Action Campaign (TAC) gave comment[2] on the 2018 Draft NHI Bill in which they expressed two overarching concerns. Firstly, they submitted that the proposed changes under the 2018 Bill were likely to further weaken the health care system by creating undue complexity, and deepening governance and financial management problems. The 2018 Bill did not in their view, establish a coherent health system structure and risked exacerbating current dysfunctionality. Secondly, the 2018 Bill did not take into account the parlous state of the health care system at the time and therefore, even if the 2018 Bill were to set up a coherent structure, it lacked specificity on how it would overcome the serious defects in the health system and, thus, would not be capable of implementation. Both concerns meant, according to Section 27 and the TAC, that the NHI ran the risk of not achieving its goal of universal health coverage. In our submission detailed below, we echo these concerns, amongst others, and propose certain amendments to the Bill in order to support its revision in order that South Africa may progress more meaningfully towards universal health coverage.

Our primary submissions relate to the need for improved mechanisms to be introduced to the NHI Bill that will support enhanced governance, accountability and ultimately access to health care services.

2. GOVERNANCE AND ORGANISATIONAL STRUCTURES

If the NHI Bill is to bring about health systems strengthening in South Africa, it must be implemented and governed in a way that promotes accountability within health care services. It should also allow for increased transparency and responsiveness that benefits health care users, while supporting more effective, efficient, equitable, and inclusive access to health services.

It is the PSAM's submission that certain of the governance reforms proposed in the NHI Bill do not give sufficient consideration to existing systemic governance failures impacting upon health care services, and which will not be adequately corrected by the reforms proposed in the Bill. We propose that only sections of the Bill that can actually be implemented effectively be adopted and that those sections of the Bill which are likely to replicate or fail due to existing dysfunctional or seriously weak governance mechanisms be put on hold until such mechanisms are rebuilt or restored.

[1] As published in Government Gazette No 42598 of 26 July 2019

[2] http://section27.org.za/wp-content/uploads/2018/09/NHI-submission-from-SECTION27-and-TAC-21-September-2018.pdf

The success of the NHI is dependent on strengthened health system management. It is critical that the various structures created by the NHI Bill operate efficiently, effectively and accountably throughout the health system. Decision making processes that are introduced through the NHI Bill must be clearly framed and understood so as to enhance meaningful implementation that improves governance and health outcomes. The PSAM have considered the submission prepared by Section27 and endorse their concerns that the Minister holds too much power within the Bill and that the Board of the Fund are not sufficiently independent. We support their proposed amendments to address these concerns.

Below are certain sections from the NHI Bill that raise human resource management and governance questions and concerns and therefore prompt the proposed amendments:

Relevant section of the NHI Bill	**Questions, concerns and proposed amendments**
Section 36	2.1. This section of the NHI Bill makes it clear that District Health Management Office's (abbreviated to DHMOs) will be established as national government components. The proposed introduction of DHMO's will result in significant reforms to Provincial Health Services (see the major proposed changes to section 25 of the National Health Act as detailed in the Schedule of the NHI Bill) including the removal of provinces' powers to amongst others: plan, manage and develop human resources; control and manage the cost and financing of public health establishments and agencies. 2.2. PSAM has over the years raised concerns with systemic governance and accountability weaknesses (that often relate to HR management, budgeting and financing of health services), particularly in certain provincial health departments that have impacted negatively on health service delivery. However, not all provincial health departments exhibit the same levels of weakness. The NHI Bill's sweeping and drastic reduction in Provincial Hospital Services mandates, and the transfer of many of these mandates to the National Department, the NHI Fund and DHMOs, risks exposing the health system to further decline in service delivery during what will surely be an extended transitional period as new capacity is created and developed within the Fund, National Department and DHMO's to provide a range of critical health functions. The PSAM are concerned that this proposed transfer of mandates poses serious risks to an already substandard health system. Our concern

Section 31(2)	is perhaps best summarised by the cautionary expression: “Don't throw the baby out with the bathwater.” 2.3. Our concerns in this regard include that this significant shift in mandates may impact negatively on work relations between provincial and national government and present significant co-operative government challenges in conflict with Chapter 3 of the Constitution, which in turn is likely to further compromise health service delivery. 2.4. The PSAM note that section 31(2) of the NHI Bill requires that the Minister “*must clearly delineate in appropriate legislation the respective roles and responsibilities of the Fund and the national and provincial Departments… in order to prevent duplication of services and wasting of resources and to ensure the equitable provision and financing of health services*.” 2.5. Considering the significant reforms proposed in the NHI Bill, and the governance and decision-making processes and complexities that will be introduced and the likely politicisation of such processes, legislation to delineate roles and responsibilities should not be delayed - if anything such critical information should be ***included*** within the NHI Bill. 2.6. In light of the aforesaid, the following is proposed: 2.6.1. Section 36 of the NHI Bill be revised in such a manner as to create a mechanism that allows for reform and transition that does not adversely impact upon current levels of health service delivery, especially within Provincial Health Services that have displayed a track record of progressive improvement in their delivery of services. The section should introduce a phased process for the creation of DHMO’s once certain cooperative governance milestones have been reached. This would require revision to the proposed new clause 31A of the National Health Act.

	2.6.2. Section 31 of the NHI Bill be revised to include sub-sections that clearly delineate the roles and responsibilities of the Fund and the national and provincial Departments so as to support human resource management, accountability, reporting, the prevention of duplication and wasting of services and to ensure more equitable provision and financing of health services. 2.6.3. If the NHI Bill is not revised to include sections delineating roles and responsibilities, then it is proposed that section 31(2) be revised to introduce **a clear timeline** for the introduction of such delineation legislation (for example: "The Minister must **within 12 months of the enactment of the NHI Bill**, clearly delineate within appropriate legislation the respective roles and…")
Section 37	2.7. The NHI Bill and proposed amendments to the National Health Act envisage the creation of "Contracting Unit for Primary Health Care" (abbreviated for present purposes to CUPs) that will be established by DHMO's. Due to the concerns raised immediately above and which relate to section 36, it is proposed that: 2.7.1. This section be revised in such a manner as to create a mechanism that allows for reform and transition that does not adversely impact upon current levels of health service delivery, especially within Provincial Health Services that have displayed a track record of progressive improvement in their delivery of services. The section should be revised to introduce a phased process for the creation of CUPs once certain cooperative governance milestones have been reached. This would require revision to the proposed new clause 31B of the National Health Act.
Section 39	2.8. Section 39 gives the Fund the power to accredit healthcare service providers and health establishments that provide healthcare 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." 2.9. In order to be accredited by the Fund, the healthcare service provider and establishment **must** be in the possession of proof of certification by the Office of Health Standard Compliance (OHSC) and proof of registration by a recognised health professional council. 2.10. The OHSC is mandated with monitoring and enforcing compliance by health establishments with norms and standards prescribed by the Minister of Health. In its 2016/17 report, the OHSC explained that it had inspected 649 of 3816 public health facilities in South Africa. Of the facilities that were inspected, the OHSC reported an overall outcome of 52%, with three provinces, Gauteng (61%), KwaZulu-Natal (57%), and Western Cape (56%) scoring average percentage outcome scores higher than the national average. Eastern Cape and Limpopo provinces had the lowest average percentage outcome with scores of 43%.[3] 2.11. The OHSC outlined that improving quality of care in public sector facilities across provinces should be an absolute priority of the National Department of Health. Health services at public sector clinics, community health centres and district hospitals are most widely used by low income households in South Africa. Promoting equitable access to quality healthcare therefore requires a particular emphasis on ensuring improved quality at these facilities supported by a functional referral system supporting more specialised treatment where medically required. 2.12. The PSAM have questions and concerns surrounding the implications that may result where a service provider or health establishment is/are unable to secure accreditation as envisaged by section 39. While section 39(8) provides a procedure where the Fund "may withdraw or refuse to renew the

[3] Office of the Health Standards Compliance 2016/17 Annual Inspection report P. 16 (Accessed on 28 November 2019 at http://ohsc.org.za/wp-content/uploads/OHSC-2016-17-ANNUAL-INSPECTION-REPORT.pdf).

	accreditation of a health care service provider or health establishment", what happens where current service providers and health establishments fail to meet the accreditation requirements? 2.13. The NHI Bill needs to clearly explain the legal and funding implications for unaccredited parties and against which legal frameworks their conduct will be monitored and assessed. 2.14. Proposed: 2.14.1. The NHI Bill should elaborate further at section 57, describing what transitional arrangements will be introduced to support improved functioning by health care service providers and establishments in order to progress such persons and entities towards accreditation by the OHSC. 2.14.2. Section 39 of the NHI Bill must contain a subsection explaining the implications and procedure where accreditation is not obtained by a health care service provider or health establishment. The section should also explain what mechanisms will be put in place to support unaccredited parties until such time as they meet the accreditation requirements. 2.14.3. Section 79 (e) of the National Health Act to be amended to allow the Office of Health Standard Compliance to make recommendations for intervention to the Fund, the National and Provincial Departments of Health and the District Health Management Office on what can be done to assist establishments that fail to meet the requirements for accreditation and those who meet the requirements but later lose the accreditation. Assistance must be given to health establishments to comply with National norms. 2.14.4. Section 5(7) of the NHI Bill requires unaccredited health establishments to maintain a register of all users containing such details as may be prescribed. As emphasized earlier, the NHI Bill must clearly explain the legal, operational and funding

	implications of health establishments that do not meet the requirements for accreditation. 2.14.5. The NHI Bill should contain provisions to support increased resourcing of the OHSC in order to help fulfil its extended mandate as envisaged by the Bill. 2.14.6. Section 39 (5) of the NHI Bill to be amended to include, in the list of documents the healthcare service provider or health establishment must submit to the fund for recording the Health Patient Registration System, a copy of the passport and valid visa/permit for temporary residence visa/permit holders as registered users of healthcare services.

3. ACCESS TO INFORMATION

Section 32 of the South African Constitution recognises everyone's right of access to information held by the state. Good governance and accountability are supported through increased levels of transparency, whereas corruption and maladministration thrive where access to information is restricted. By providing timely access to accurate information pertaining to the Fund and healthcare services offered by the Fund, the public at large are given increased opportunity to participate and provide feedback regarding the services offered and whether they support or impact upon the realisation of human rights and the delivery of health services. The PSAM encourage the drafters and reformers of the current NHI Bill to take guidance from the Global Initiative for Fiscal Transparency (GIFT) Principles of Public Participation especially when considering access to information and before enacting this proposed legislation.[4]

Relevant section of the NHI Bill	**Questions, concerns and proposed amendments**
Section 34(2)	3.1. It is proposed that this section include the following sentence: "The Fund must provide the public, through an online platform, monthly updated information concerning key health indicators, (especially related to Sustainable Development Goals concerned with health) drawn from the Information Platform. Such monthly information should be disaggregated to district level (while remaining

[4] http://www.fiscaltransparency.net/pp_principles/

	adequately anonymised to protect patient confidentiality) so as to support accountability and responsiveness within the health system."
Section 40	3.2. Section 40 requires the Fund to establish an information platform to enable it to make informed decisions on population health needs assessments, financing and 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. 3.3. Proposed: 3.3.1. Section 40 (1) to be amended as follows: "The Fund must establish an information platform to enable it to make informed decisions regarding resource allocation, the impact of health programmes, population health needs assessments, financing, purchasing, patient registration, service provider contracting and reimbursement, utilization patterns, performance management, setting the parameter for the procurement of health goods and fraud and risk management. Such information should be drawn from a variety of sources which include disease surveillance, facility surveys and routine reporting of health service statistics."[5] 3.3.2. Section 74 of the National Health Act to be amended to read as follows: "The national department must facilitate and coordinate the establishment, implementation and maintenance by provincial departments, district health councils, district health management offices, municipalities and the private health sector of health information systems at national, provincial, and local levels in order to create a comprehensive national health information system." This amendment will bring section 74 of the National Health Act in line with the suggested amended section 31A of the National Health Act which requires district

[5] A Garrib; K Herbst; L Dlamini; A McKenzie; N Stoops T Govender; J Rohde An evaluation of the District Health Information System in rural South Africa SAMJ, S. Afr. med. j. vol.98 n.7, Jul. 2008 Pg.549.

	health management offices to manage, facilitate, support and coordinate the provision of healthcare services at a district level. 3.3.4. Section 40 (6) of the NHI Bill to be amended to include "c" which reads as follows: "Section 40 (6) in order to fulfil the requirements for dissemination of information and the keeping of records, the information platform must facilitate- a..... b..... (c) the evaluation and updating of the health information system to ensure that the information system is efficient, able to collect high-quality and relevant information and can be taught to and used by administrators, nurses, doctors, community health workers, managers and policy makers." 3.3.5. Section 40(2) to be revised as follows: "Healthcare service providers, health establishments and health personnel should be trained to compile, analyse such information and must submit such information as may be prescribed to the Fund, taking into consideration the provisions of the Protection of Personal Information Act." 3.5.6 The Department of Health must improve their information systems so as to ensure that the information outlined in sections 6 and 40 is readily available, that it is updated on a regular basis, routinely uploaded onto the health system. 3.5.7 The district health offices must improve their information systems. Many operational and annual performance plans for districts are not uploaded on the provincial or national departments websites so this information cannot be readily obtained by oversight bodies and interested members of the public.

4. PROCUREMENT

Public procurement in South Africa carries constitutional obligations and is recognised as a means of addressing apartheid era discriminatory policies and practices.[6] Procurement also constitutes a significant area of service delivery - with health procurement being especially vulnerable to maladministration and corruption. Transparency International estimates that governments in low to middle-income countries like South Africa spend approximately 50% of public funds on procuring goods and services. This procurement space, therefore, constitutes the single largest product market in many developing countries. The inherent economic and social implications underscore the importance of a system that is both effective and efficient. Odhiambo and Kamau (2003) in Ambe and Badenhorst-Weiss 2012 state that this requires partly that;

> *" ...the whole procurement process should be well understood by the actors: the government, the procuring entities and the business community/suppliers and other stakeholders, including professional associations, academic entities and the general public"*[7]

Relevant section of the NHI Bill	**Questions, concerns and proposed amendments**
Section 27	4.1. A notable assumption made in the contracting structures is that the districts and departments will have the requisite technical/human resource capacity to fulfil the supply chain management demands that the Fund will introduce. 4.2. The PSAM proposes the inclusion of supply chain management experts within the Stakeholder Advisory Committee to provide critical guidance - particularly during the Fund's inception stages. 4.3. The PSAM proposes that section 27 read as follows (as proposed by the CSO, SECTION27): - "The Minister must, after consultation with the Board and by notice in the Gazette, appoint a Stakeholder Advisory Committee <u>as one of the advisory committees of the Fund</u>. The committee shall comprise of representatives from the statutory health professions councils,

[6] Bolton, P. 2006 in Ambe and Badenhorst-Weiss, 2012. Procurement Challenges in the South African Public Sector, *Journal of Transport and Supply Chain Management,* Available online: https://ukznextendedlearning.com/wp-content/uploads/2019/04/INFO-PACK-FOR-MDP-10-APRIL-2019-PROF-M-SUBBAN.pdf

[7] Page 245

	health public entities, supply chain management experts, 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."
Section 38	4.4. The PSAM appreciate that centralising procurement *can* have significant benefits including substantial cost savings. The National Treasury outlines a range of benefits of centralisation such as; ● eliminating unnecessary duplication, ● reducing leakage and ensuring better utilisation of scarce procurement skills; ● reducing the administrative burden for suppliers, resulting in policy consistency; ● providing an opportunity for long term supplier relationships and certainty in the marketplace; ● reducing the administrative burden government has with repetitive quotes which could have been directed towards contracts; and ● allowing government to refocus on contract management.[8] 4.5. The PSAM are concerned, however, that these benefits are only likely to be reaped under specific conditions - not all of which are currently met by the health administration. 4.3. Firstly - the Bill envisions centralised control at the national level - with the assistance of District Health Management Office's (though still controlled at the national level as per Section 36). This limits administrators at the local level of control and creates a distance between the site of implementation and SCM decision-making. In a context in which communication and administrative integration between national, provincial and district entities has been notoriously weak - this may have the effect of

[8] National Treasury, 2016. S*CM Review Update - 2016*. Available online: http://www.treasury.gov.za/publications/other/SCM%20Review%20Update%202016.pdf p.3

	increasing inefficiencies within the system, increasing delays and ultimately cost and procurement backlogs. 4.4. Secondly - the Bill currently provides for multiple structures with overlapping and often un-delineated responsibilities, risking duplication of duties and increased human resource management and governance challenges. 4.5 While legislation to delineate roles and responsibilities is contemplated (see section 31(2) of the NHI Bill) concerns have been raised earlier in this submission relating to the challenges that the NHI Bill in its current form are likely to create or exacerbate. 4.6. In terms of Section 22a of the Medicines Act, the Health Minister has gazetted a list of scheduled substances. The Minister is also required to formulate regulations on the introduction of a pricing system that is transparent and includes a single exit price which must be "…*the only price at which manufacturers shall sell medicines and scheduled substances to any person other than the State*".[9] 4.7. We note the fact that even though sales of medicines or scheduled substances to private purchasers must be at the single entry price, the same is not true for sales to public entities. This price is open to negotiation and is unregulated. The Bill envisions that the single exit price at which medicines are to be sold will be prescribed by the Office of Health Product Procurement as per section 38. 4.8. This would mean that the prices of medicines to which the single exit price did not previously apply will now be included. Taking into account the requirements of the PFMA, Treasury Regulations and Procurement Regulations for openness, fairness and transparency - it is not clear how the arrangements within the Fund will meet these where the price of medicines will not be open to negotiation, being fixed at the single exit price.

[9] Refer to Section 22 g of the Medicines Act relating to pricing regulations, 2005

	4.8. It is especially concerning that it is not clear what impact this may have on competitive bidding processes as well on the tender adjudication and evaluation processes. Clarity on the pricing mechanism is required in addition to the precise tendering procedures the Fund will follow. 4.9. Proposed: 4.9.1. Increase oversight and monitoring by involving more non-government actors within the procurement processes. 4.9.2. Research indicates that maladministration and fraud within SCM processes could be limited through the involvement of stakeholders such as civil society organisations. Presently - the procurement system requires the establishment of three bid committees. Ambe and Badenhorst-Weiss (2019) recommend that non-government stakeholders should be involved in two of the three committees; evaluation and adjudication. This will ensure and support more open governance practices and increased public monitoring. 4.9.3. Implement more e-government and open data platforms to support health procurement. 4.9.4. South Africa is a founding member of the Open Government Partnership (OGP). The NHI Bill should seek to respond to South Africa's OGP commitments as outlined in its National Action Plan. 4.9.5. Align tender data with the Office of the Chief Procurement Officer's e-tender portals and central supplier databases to ensure access and centralisation of data using uniform open data standards. 4.9.6. The inclusion of the following under section 38(3): "(j) Provide the public with online access to all contracts concluded by the Office of Health Products

	Procurement, provided that such Office redacts or sever those portions of contracts that are subject to protection afforded by the Promotion of Access to Information Act and the Protection of Personal Information Act." 4.9.7. There needs to be an adjustment to the transitional arrangements, in particular, phase 1 which seeks to ensure that between 2017-2022 there is a process for the accreditation of healthcare providers, which must require that health establishments are inspected and certified by the Office of Health Standards Compliance.

5. EXCLUSION

The Constitution of South Africa, as the supreme law of the land, affirms the right to equality, human dignity and bodily and psychological integrity. The Constitution upholds and protects the right that everyone has to access healthcare services, including reproductive services, the right to emergency medical services and the right of every child to basic healthcare services. This right is confirmed by the National Health Act (NHA) which guarantees the provision of free primary healthcare services for certain categories of persons in South Africa.

The term "everyone" as used in section 27(1) (a) of the Constitution includes stateless persons, migrants, asylum seekers, undocumented foreigners and visa holders. The Constitution expressly provides that the Bill of Rights enshrines the rights of "all the people in the country" and the Constitutional Court in the decided case of *Khosa and Others v Minister of Social Development and others*[10] has confirmed that "everyone" in section 27 of the Constitution cannot be construed to refer to only citizens. As such, qualification for the rights enshrined and protected in the Bill of Rights is not based on one's citizenship or nationality.

The Public Service Accountability Monitor (PSAM) has considered the submissions of Section 27, The Treatment Action Campaign, Medecins Sans Frontieres/ Doctors Without Borders, Sonke Gender Justice and the Southern Africa Litigation Centre pertaining to exclusion, and align ourselves with their concerns and proposals.

In addition the PSAM make the following comments and proposals:

[10] Khosa and other v Minister of Social Development and others 2004 (6) BCLR 569 (CC) at para 47.

Relevant section of the NHI Bill	Questions, concerns and proposed amendments
Section 4 (Population Coverage)	5.1. Under section 4 of the NHI Bill, the Fund must purchase healthcare services on behalf of the following categories of persons: ▪ South African Citizens ▪ Permanent residents ▪ Refugees ▪ Inmates ▪ Certain categories or individual foreigners determined by the Minister of Home Affairs. 5.2. The Bill, in its current form, excludes categories of persons who for a variety of reasons currently reside in South Africa and who fall under the definition of "everyone" as decided by the Constitutional Court in the above cited judgement. Should the NHI Bill not align with the current legal position it will likely be subjected to litigation in order to make its provisions constitutionally compliant. 5.3. **Stateless persons:** While the definition of who qualifies as a stateless person is couched with uncertainty due to states not agreeing on who qualifies, Article 1 of the 1954 Convention on the Status of Stateless persons provides the most widely accepted definition of stateless person in international law. Under this Convention, a stateless person is defined as a person who is not recognised as a national by any State under the operation of its law". 5.4. The definition of statelessness is wide enough to cover people who ought to be citizens of a particular country but who are not recognised as such by the state in question for various reasons and/or persons who qualify for nationality under the law but have been denied recognition due to lack of sufficient proof of citizenship. Within the South African context, statelessness and child protection as prescribed under the 1989 United Nations (UN) Convention on the Rights of the Child springs immediately to mind, with the following categories of children inimically affected: ● Orphans, abandoned children and unaccompanied foreign minors who come to South Africa with parents or relatives who later

	disappear due to death, neglect or abandonment. • Children of South African citizens who are orphaned or abandoned and who do not enter the child protection regime. • A child with one parent who is a South African citizen and another who is a foreign parent whose birth is not registered before the citizen parent's death. 5.5. Article 7 of the aforementioned UN Convention places an obligation on member states to ensure the implementation of the right of the child to be registered after birth and be assigned a nationality, especially where the child would otherwise be stateless. 5.6. **People travelling to South Africa:** The Immigration Act makes provisions for applicants to apply for and be granted a visa to be in South Africa for reasons of study, work, medical reasons or research. While in South Africa, the NHI Bill requires that they have travel insurance for the duration of their stay. International travel insurance covers medical and related expenses and assistance service, evacuation, cancellation, curtailment, personal liability, personal accident, lost or stolen luggage, travel delay, legal assistance, expenses incurred due to illnesses or injuries during travels, , trip interruption or cancellation, loss of passport or wallet, , assistance in the event of a natural disaster and repatriation benefits.
Section 5 (Registration of Users)	5.7. The NHI Bill, under section 5, stipulates that those eligible to receive healthcare services must be registered as a user at an accredited healthcare service provider or health establishment. Section 5 goes on to list the documents that are required for the registration of the user which include an identity card, an original birth certificate or a refugee identity card. 5.8. In South Africa, the following factors inhibit and/ or frustrate the process of children who later become adults, being issued with birth certificates and/or

	identity documentation making registration as a user under the NHI Bill impossible: ● Children born outside of a registered hospital or clinic (home births with unregistered midwives). ● Children born to non-South African parents, who do not have any valid passports, visa or permit as required by the Birth and Deaths Registration Act of 1992. ● Children of parents who have lost their citizenship under the Citizenship Act. ● Children born to parents with permanent residency who leave South Africa before the age of majority and decide to return thereafter. 5.9. While the NHI Bill stipulates all children, including those of asylum seekers and migrants, are entitled to basic health care services in accordance with section 28 (1) (c) of the Constitution Act 104 of 1996, the Bill fails to provide guidance on what would happen once these children reached the age of majority, especially in the case where the child is without the documents required for registration as a user? 5.10. Furthermore, while people traveling to South Africa are required to have travel insurance, for those without, section 4 (5) outlines that they will be eligible for emergency medical services however, complications may arise under the NHI when people travelling to South Africa require medical attention or to be hospitalised. According to the Bill, to get medical attention, they would need to be registered as a healthcare user and to be registered, they would have to comply with the requirements of section 5(5) of the Bill. These groups of persons would not comply and it is not clear from the Bill how they would access treatment and care. 5.11. In the absence of registration as a user, anyone seeking healthcare services from an accredited healthcare provider or establishment, will not be able to access healthcare services. Registration as a healthcare user requires that the applicant produce an identification card, original birth certificate or a refugee card. Those who fall within the definition of stateless persons will not be able to register as a healthcare

	user and as such, will not even have access to emergency medical services because they do not fall within the "Bills" definition of refugees and asylum seekers. 5.12. While the PSAM endorse the idea of the NHI and acknowledge that it seeks to fundamentally change healthcare in South Africa and make it more equitable to all, regardless of one's socio-economic background, it is imperative that it meets and passes constitutional muster. As it stands, the Bill leaves already vulnerable groups either with no access to healthcare services, or with insufficient healthcare cover. To deny vulnerable groups access to healthcare and to discriminate against them on the grounds outlined as "prohibited grounds" in the definition section of the Promotion of Equality and Prevention of Unfair Discrimination Act, is automatic discrimination and without rectification, the Bill will be open to constitutional challenges. 5.13. Denying vulnerable groups, including stateless persons and people who are not ordinarily resident in the country, access to the same healthcare services offered to South African citizens and permanent residents violates constitutional rights and international conventions, of which South Africa is a signatory. This is of grave concern. 5.14. Proposed: 5.14.1. Section 4 (1) of the NHI Bill to be amended to include the purchasing of healthcare services on behalf of temporary resident visa/permit holders. 5.14.2. Section 4(1) to be amended to read as follows: "The Fund after consultation with the Minister, must purchase healthcare services, <u>including mental healthcare services,</u> determined by the Benefits Advisory Committee, on behalf of- (a)..... (b)..... (c) …… (d)..... (e).....

	(f) all those resident in the Republic including temporary resident visa/permit holders, asylum seekers, stateless persons, undocumented foreign nationals and migrants. 5.14.3. The definition section of the Bill states that Emergency Medical Services are "Services provided by any private or public entity dedicated, staffed and equipped to offer **pre-hospital acute medical treatment** and transport for the ill and injured;" Section 2 of the NHI Bill should be deleted as it fails to make provision for cases where asylum seekers and undocumented foreign nationals need to be hospitalised and as such, leaves these vulnerable groups without sufficient health care services. 5.14.4. Section 4(3) to be amended to read as follows: The Fund, in consultation with the Minister, must purchase healthcare services, determined by the Benefits Advisory Committee, on behalf of all children, including children of asylum seekers, undocumented foreign nationals, temporary visa/permit holders, refugees and stateless persons. 5.14.5. The South African Medical Scheme Association should be required to include in its list of acceptable medical aids, international medical aids that can be used by foreign nationals travelling to South Africa. 5.14.6. Section 4(5) of the NHI Bill to be amended as follows: A foreign national visiting the Republic for any purposes- (a) must have travel insurance or medical aid from their country of permanent residence to receive healthcare services under their relevant travel insurance or medical aid contract or policy; and (b) who does not have travel insurance contract or medical aid contract or policy referred to in paragraph (a), has the right to basic health services as provided for in section 28 (1) (c) of the Constitution.

	5.14.7. Section 5(5) of the NHI Bill to be amended to read as follows: "When applying for registration as a user, the person concerned must provide his/her biometrics and such other information as may be prescribed, including fingerprints, photographs, proof of habitual place of residence and- (a) …….. (b)..... (c) …….. (d) copies of passport and valid visas to be in the Republic for any purpose." This will allow for foreign nationals travelling to South Africa the option of applying for and being granted the right to be seen as a user. 5.14.8. The NHI Bill should clarify if once registered, the user of healthcare services can access such services in any geographical area of South Africa.

We hope that these submissions will assist the Committee during its deliberations on the Bill.

We request an opportunity to make oral submissions at the hearings in Parliament.

Should you require any further information, please contact:

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