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Submission
on the
Draft NHI Fund Governance Regulations
submitted by the
Freedom Foundation
and
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1. Background Comment and Context

The Freedom Foundation and Izwe Lami (jointly "FF") welcome the opportunity to comment on the draft regulations concerning the governance of the National Health Insurance (NHI) Fund. We acknowledge the good faith effort by the Department of Health to codify administrative procedures and give form to the governance structure of the proposed NHI Fund. As with all new regulations, it is essential that they regulations be assessed not only by intentions but by effects and implications especially for healthcare. Freedom of choice, benefits of competition and the Constitution.

We submit these comments in response to the Draft Regulations on the Governance of the National Health Insurance Fund, as published under Government Notice No. 487 of 2025 in Government Gazette No. 50387, dated 1 March 2025.

The FF is a non-partisan non-profit policy institute founded by Leon Louw, who also founded the Free Market Foundation 50 years ago. We have been involved with and commented on healthcare for over 40 years. We are dedicated to promoting the best interests of all people, especially the poor. To that end, we research and promote best-practice policies grounded in constitutional rights, economic rationality, and the preservation of freedom. Unlike most who respond to this request for comment, we have no supplier, regulator, or bureaucratic interests. Our submission strictly pro-consumer and pro-freedom of choice.

2. Introduction and Summary

- 2.1. A fundamental observation is that these are not Draft *Regulations* for regulating the Fund, it's operations and the healthcare would fund. They are essentially the method by which the Board and Committee members will be appointed. Real regulations regulate such matters as the deployment of funds, spending priorities, tender processes, quality controls, record-keeping and the like¹.
- 2.2. These Draft Regulations, whilst presented as a rational step towards the realisation of universal healthcare, suffer from the same fundamental infirmities as the principal Act. Perhaps the most perplexing is that NHI is promoted as if South Africa does not already have universal healthcare, which it does – at least as defined for public health purposes.
- 2.3. The Draft Regulations and the proposed Fund envisage the total nationalisation and centralisation of authority supposedly for the benefit of the public generally. However, they risk of undermining not only the constitutional framework within which healthcare must be administered and access to healthcare liberated, but also the practical efficacy of healthcare delivery.
- 2.4. The FF draws attention to aspects of the National Health Insurance Draft Regulations that are a matter of concern and should reconsidered.
- 2.5. We do not dwell on regulations which we support.
- 2.6. The NHI, if implemented, in “full”, which is incompletely defined, would destroy private medical care without improving public health care. Indeed, it would deplete and

¹ This misnomer for regulations corresponds to the misnomer for the NHI Act itself. It is not an *insurance* act. On the contrary, it prohibits insurance. It envisages the *provision*, as opposed to the *insurance*, of healthcare,

overburden public healthcare resources by diverting millions from the full range of private alternatives to narrowly defined “public” care.

It would deny the majority the right to funding for what they freely and democratically consider “healthcare” including out-of-pocket private care (family doctors, psychologists, physiotherapists etc), traditional care (favoured by 80% of ‘black’ South Africans), alternative care (homeopathy, chiropractic etc), oriental care (acupuncture, meditation etc), and faith-based care (from counselling and prayer to faith healing).

That advocates of NHI and the NHI Fund might not consider anything but narrowly defined allopathic “Western” care to be legitimate is of no relevance beyond being presumptuous and patronising. This is a democracy in which bodily integrity is a fundamental right.

- 2.7. Standard economics teaches that what is proposed would promote malinvestment by diverting resources from competitive healthcare provision to monopolistic and collusive provision. Apart from healthcare malinvestment, this would damage the economy at large since public and private healthcare comprise a huge proportion of the economy (GDP).

NHI would be too costly for the Fund and South Africa, even if it were to attempt to offer no improvement on the current range and quality of public care.

- 2.8. The attempt of government to control prices and costs, and force practitioners to work where they do not wish to work, will lead to discontent and skills exodus. Should a mass exodus occur then damage to the entire medical industry, private and public, will be severe and permanent.
- 2.9. The NHI Fund cannot have more funding than the public care already has for two reasons. Firstly, the government is already collecting as much tax as it can because we are at the top of the Laffer Curve. Higher rates now generate diminishing returns – high tax rates = low tax revenue. Secondly, the already small and overtaxed tax base stands to shrink via emigration of capital and skills. The attempt to create the NHI Fund through the nationalisation of private medical investment will be strongly resisted, perhaps for years of litigation, and will violate the rights of citizens.

3. Specific aspects of the Draft Regulations

- 3.1. Although the introduction of any NHI Draft Regulations is arguably premature, we draw attention to aspects of specific concern.
- 3.2. It must be uppermost in the minds of policymakers that no one has the slightest idea who will be endowed with the extreme powers envisaged by the Draft Regulations after the current minister. The NHI Act will fall under an unknowable series of future ministers and officials. All trust and confidence in any of them now is of no future relevance.
- 3.3. The Draft envisages that present and future ministers will have extreme discretionary control without essential checks and balances over the composition of every committee, the Board and how these entities are to function.
- 3.4. Additional members of the Office of the President will be *ex officio* Board members 5(1). There is considerable potential for political interference in the operation of the

Fund, and political interference is a major cause of government failure and state capture. [Dr Leon Schneider.] 18(1).

- 3.5. The use of Advisory Committees on Benefits and Pricing embody all the faults of centralised planning. They will not and can never have access to the information people use when making important personal decisions regarding their health and life needs, and therefore whatever plans these boards generate they are guaranteed to result in distortions, inefficiency and misallocation of resources, and therefore worse health outcomes than a free market in health would deliver.
- 3.6. A free market would exist where the word “insure” in National Health Insurance literally means insurance, that is the government through the Fund or otherwise funds private premiums for the poor to give them the same freedom now enjoyed by the rich and buyers of traditional care.
- 3.7. There are affirmative action requirements attached to some committees 2(1)(b)(ii), 5(2)(c)(ii). This suggests an agenda that has nothing to do with creating a successful NHI Fund. It is highly questionable whether the technical functioning of an NHI Fund would be improved through diversity *per se*. The insistence on diversity reduces the pool of skills and expertise available. The policy should be to enlist the most capable people whatever their demographics.

4. Positive Features

There are elements of the Draft Regulations which deserve recognition and support:

- 4.1. **Formalisation of Structures**
The effort to codify governance arrangements, particularly the structure of the Board and the appointment of a Chief Executive Officer, represents a commitment to procedural clarity and rules-based administration.
- 4.2. **Creation of Advisory Committees**
The inclusion of the Benefits Advisory Committee and the Health Care Pricing Committee suggests recognition of the importance of technical expertise in complex policy domains. If appropriately empowered, these structures may, in time, temper the excesses of politicised decision-making.
- 4.3. **Invitation for Public Comment**
The call for public submissions aligns with democratic principles and allows civil society to interrogate proposed instruments of policy especially one as consequential as the NHI.

5. Concerns Regarding Freedom, Competition and Constitutional Principles

We raise the following concerns regarding the regulatory trajectory and ideological orientation of the Draft Regulations:

- 5.1. **Purported Independence of the Fund**
Despite its procedural veneer, the draft embeds excessive executive control. The Minister appoints the Board, appoints the Advisory Committees and retains authority over the appointment of the CEO, in all cases with Cabinet sign-off. This undermines the very independence that sound governance requires.

What is proposed is ministerial patronage.

The ostensible independence of the NHI Fund is belied by the manner of appointment of its Board and Chief Executive Officer. The process, although clothed in participatory formality, is rendered nugatory by virtue of the ultimate appointing power vesting exclusively in the Minister, subject to endorsement by the approval of Cabinet.

Such concentration of discretion in a political office-bearer renders nugatory any legitimate expectation of independence and stands in contrast to the standards of institutional governance envisaged by the Constitution, particularly the imperative of accountability as enshrined in section 195(1)(f) of the Constitution of the Republic of South Africa, 1996.

Absence of Consumer Choice

Nowhere in the regulations is provision made for parallel systems, voluntary opt-outs, or patient-directed decision-making. The NHI is framed as a monolithic state instrument. There is no indication that consumers will be able to purchase additional cover for services not offered by the state, nor that providers may operate outside of the NHI system.

This constitutes an effective ban on private health liberty and conflicts with section 27 of the Constitution, which guarantees *access* to healthcare—not *exclusive state provision*.

5.2. Distortion of Competitive Markets

The regulations do not promote competition; they suppress it. There is no market for price discovery, no competitive bidding and no assurance that service providers will be remunerated on value delivered. Instead, we see the outline of a monopsony – a single buyer determining terms, pricing and scope.

It is precisely competition that lowers costs, improves outcomes, and drives innovation. The absence of these forces will result in the very inefficiencies the NHI purports to correct.

5.3. Advisory Committees Without Authority

Although the committees may consist of experts, they remain toothless. Their advice may be disregarded at the Minister's discretion. Expertise without independence is an illusion and technocracy without accountability is tyranny by another name.

The composition and mandate of the various advisory committees – the Benefits Advisory Committee, the Health Care Benefits Pricing Committee, and the ad hoc Advisory Committee – reveal a troubling pattern.

These structures, which ostensibly serve as expert input mechanisms, are in fact entirely subordinate to the Minister who retains unfettered discretion over the appointment of their members and the acceptance or rejection of their advice.

This renders them advisory in name only. The real effect is a concentration of decision-making power in the hands of the Executive without the necessary safeguards of transparency, diversity of input, or enforceable independence.

5.4. Fiscal Vagueness and Implausibility

As with the broader NHI framework, the regulations are silent on financing. There is no disclosure of cost, funding mechanisms, tax implications or sustainability. In the absence of a fully compliant Socio-Economic Impact Assessment (SEIA), as legally required since 2015, the promulgation of these regulations would be premature.

The regulations are also silent on the fundamental question of feasibility. No adequate financial model is adduced. As the Finance Minister observed, there is no budget.

There is no explanation as to how the Fund is to be capitalised, what actuarial assumptions underlie its risk and benefit projections, or how it is intended to sustain an indefinite obligation to procure and finance all healthcare services for all persons in the Republic.

One of the greatest concerns is that not even “healthcare” is defined. It is therefore impossible for the Fund and all who serve it to know the basics of what it should do and how it should operate. The definition of “skill sets”, for example, is that it “means ... technical expertise, skills and knowledge”. But of what? Herbalism, meditation, prayer, hypnosis (for hypnotherapy), voodoo?

South Africa's current fiscal condition does not permit the luxury of utopian social engineering. To embark upon such a scheme without demonstrable fiscal prudence is to imperil not only the public purse but the very lives of those whom the policy purports to serve.

5.5. On Constitutional Infirmities

The NHI framework, and these regulations in particular, appear to contradict both the letter and the spirit of section 27 of the Constitution. That section does not require government to provide all healthcare to all persons, nor does it mandate a monopoly on funding or service provision. It requires only the progressive realisation of *access*, which may be achieved by a diversity of mechanisms, including but not limited to public-private partnerships, decentralised systems, private care and insurance, and choice-driven frameworks.

Moreover, the proposed “contracting arrangements” contemplated by the Act and these regulations amount, in effect, to regulatory expropriation of private medical infrastructure without just and equitable compensation. This raises grave concerns under section 25 of the Constitution, which prohibits arbitrary deprivation of property.

6. Conclusions and Recommendations

The Freedom Foundation welcomes the ambition of quality healthcare for all and urges the Department to revise the Draft Regulations to ensure alignment with constitutional principles, personal and economic freedom, and bodily integrity. Private access to healthcare and the practical requirements of quality healthcare delivery.

Before assuming falsely that the NHI Fund will have more than is presently budgeted for public care, and before assuming unrealistically that the quality of healthcare will improve because the budget is channelled through a “Fund” or that because existing universal healthcare starts being called “national healthcare insurance”, it is worth reflecting on what Finance Minister Godongwana said that he could not budget for NHI because there was no NHI budget. An NHI-specific budget cannot exist beyond the existing Treasury budget for the Health Department.

It is also worth pausing and reflecting on the letter read by the Finance Minister during his budget speech.

“Working in a public hospital with way too few resources punches you in the gut every day. It’s not just the trauma of seeing your patient die, it’s having no gloves in a delivery room; no alcohol swabs to clean wounds; and knowing that nurses stop at the shop on their way to work to buy their own gloves and masks because the clinic has run

out. Where waiting times for a scan are months long and surgery delays needlessly let disease progress to the point of being inoperable. It's the limited beds in high care that mean doctors are regularly forced to decide whose life is worth saving more because there's only space for one."

Given this grim option, everyone should be free to choose the care for which they care.

Specifically, we recommend:

- 6.1. **Decentralisation:** Governance appointments should include independent panels drawn from multiple sectors to dilute political influence.
- 6.2. **Voluntary Participation:** The public must be free to choose between the NHI and alternative options, including private insurance funded by government to the extent essential to improve the quality of care and relieve the public health burden.
- 6.3. **Market Mechanisms:** Provider contracts should be subject to open bidding, with price discovery mechanisms and performance-linked payments.
- 6.4. **Empowered Committees:** Advisory bodies must have binding influence in their areas of technical remit, and there must be expertise regarding all forms of healthcare.
- 6.5. **Legal Compliance:** A comprehensive SEIA must precede implementation.
- 6.6. **Withdraw and redraft:** The current draft regulations be withdrawn and redrafted to provide for real independence of oversight bodies.
- 6.7. **Make appropriate advisory committees binding:** In clearly defined areas to ensure expert influence, not merely ceremonial consultation.
- 6.8. **A full actuarial and socio-economic impact assessment:** Both are required and should be published for public scrutiny and comment.
- 6.9. **The principle of voluntarism entrenched:** Basic respect for free people in our democracy demands freedom of contract and bodily integrity within or outside the Fund.
- 6.10. **Property rights should be respected.** The rights of private owners, insurers, medical scheme, practitioners along with all healthcare providers and beneficiaries are expressly protected by section 25 of the Constitution.
- 6.11. **Abandon failed central planning.** The regulations under review perpetuate the central planning ethos that has failed consistently across policy spheres in South Africa. Instead of enhancing access to quality care, they risk collapsing the healthcare ecosystem by driving out private practitioners, stifling competition and removing incentive-based service delivery.

We affirm and support the state's duty and desire to expand the constitutional right of *access* to healthcare, whether public or private, which should never be at the expense of liberty, market dynamism or constitutional integrity.

Respectfully submitted,
Freedom Foundation
Johannesburg, South Africa
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