



NATIONAL HEALTH INSURANCE BILL [B 11B—2019]

Submitted by

Consortium for Refugees and Migrants in South Africa (CoRMSA)

To

The Select Committee on Health and Social Services.

Attention: Ms. M Williams at mawilliams@parliament.gov.za Tel: 021 403 3770

15 September 2023.



A. Introduction:

The Consortium for Refugees and Migrants in South Africa (CoRMSA) is pleased to make this submission to the published **NATIONAL HEALTH INSURANCE BILL**. We further inform and communicate with the Department of Health that this submission is an updated version of the submission made on 29 November 2019.

The Consortium for Refugees and Migrants in South Africa (CoRMSA) is a national network of organisations working with asylum seekers, refugees, and other international migrants. CoRMSA currently has 25 member organisations across the country. It was established in 1996 as a loose network of organisations working with refugees as the National Consortium for Refugee Affairs (NCRA) and was later registered as an NPO. In 2007 NCRA's mandate was extended to include the protection of international migrants. Our members are made up of direct legal and social service providers; research institutions and refugee and migrant community groups. The CoRMSA model is such that through our members and partners, collectively we cover work at local, provincial, national, sub-regional, regional, and global levels to ensure that the daily challenges faced by non-nationals are addressed through policy and practices. CoRMSA has over fifteen years of experience working on migration engaging in advocacy and lobbying; coordination and network building; capacity building; rights awareness and information sharing. CoRMSA's overall objective is the protection and promotion of asylum seekers, refugees, and migrant's rights in South Africa, regionally and internationally.

CoRMSA welcomes this opportunity and below, makes recommendations (submissions) on specific sections of the National Health Insurance Bill.

CoRMSA is available to make an oral presentation regarding this submission should such an opportunity arise.

In our submission, the word "**Department**" refers to the National Department of Health (DOH).

CoRMSA supports the extension of available healthcare for all who live in South Africa. Additionally, we support the notion that the NHI attempts to 'achieve universal access to quality health care services in the Republic in accordance with section 27 of the Constitution. However, CoRMSA strongly holds ~~strong to~~ the belief that until significant structural and organisational changes are brought to the current health system the NHI is nothing but a chimera. This is based on the current public knowledge of widespread corruption, financial misconduct, and mismanagement which, if not dealt with adequately would prevent the realisation of the NHI. Furthermore, CoRMSA takes caution in supporting the current NHI Bill as it fundamentally plans to further marginalise and exclude access to healthcare services to certain populations including refugees, asylum seekers, and migrants,

amongst others. This poses a threat to the constitutionality of the NHI as it is not in line with Section 27 of the Constitution which grants ‘**everyone**’ and everyone is inclusive of asylum seekers, refugees, and migrants living within the borders of the republic, not to be misinterpreted on access to health care services, including reproductive health care. However, we strongly believe that until major misdealings and inequalities in the current healthcare system are resolved the NHI will fail in its mandate to provide universal health care.

CoRMSA further urges the Department ~~to~~ to divert from National Health Care Act No 61 of 2003’s objectives of recognising the socio-economic injustices, imbalances, and inequities of health services of the past and the need to improve the quality of life of all citizens and to free the potential of each person. The Act states this to make sure that the State takes reasonable legislative and other measures within its available resources to achieve the progressive realisation of the right of the people of South Africa to have access to health care services, including reproductive health care.

In doing so, CoRMSA makes these submissions raising concerns on two major aspects of the Bill. Firstly,

We make recommendations with regards to Section 1 definitions followed by Population Coverage Section 4 and lastly registration of users Section 5 of the NHI Bill.

Section 1. Definitions.

Under the list of definitions, CoRMSA proposes the inclusion of the full definitions of asylum seekers and refugees. Or the two definitions be included as an addendum or annexure to this Bill to educate the health care workers about these two groups of forced migrants? This should be extended to the definition of economic migrants, statelessness, etc.

CoRMSA further, proposes before the department to include the “**special permits**” under the list of definitions. This is to make sure that the bill covers and is inclusive of the special permit holders such as the Zimbabwe Exemption Permit (ZEP) and Lesotho Special Permit as granted by the Ministry of Home Affairs.

CoRMSA proposes that the specific health care services that fall under ‘complementary cover’ are listed as part of the definition or addendum to this Bill.

CoRMSA is concerned with the definition of ‘emergency medical services.’ This definition is vague in what will be considered as pre-hospital treatment, we request that this is specifically listed as part of the definition. The current definition will do

little in the way of providing all people with inclusive emergency services and may result in people being turned away from health facilities on arrival. This will violate section 27 (3) of the Constitution which states that “No one may be refused emergency medical treatment”. Furthermore, CoRMSA is opposed to the limitations to preventative and protective health care that this definition implies. In a context with high levels of communicable disease (HIV/AIDS, Tuberculosis) as well as lifestyle diseases (Diabetes, High Blood Pressure) the current services offered under this definition will be detrimental to individuals and widespread public health.

Chapter 2: Access to Health Care Services

4 (1) Population coverage

The idea of ‘population coverage’ is contrary to the notion of the Bill to provide universal health care. Furthermore, 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 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. This principle is something that the NHI Bill seems to have overlooked. We urge the Department to ensure that the implementation of the NHI Bill is in line with Section 27 of the South African constitution.

CoRMSA calls for the removal of the phrase ‘illegal foreigner’ or ‘illegal migrant’ to be replaced by the term ‘undocumented migrants/persons’ to ensure that victimizing or discriminative language is removed from the Bill.

There are several exclusions of vulnerable people groups from the current population coverage. These include:

Stateless Persons: The widely recognised definition of stateless is a person who is not recognised as a national by any State under the operation of its law. While this definition is debated statelessness can be understood as the inability of someone to be recognised as a citizen in their country of residence for several reasons. There are various categories of people who fall under these circumstances. These include:

- 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.

Asylum Seeker: An asylum seeker is an individual who is seeking international protection. In countries with individualised procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognised as a refugee, but every refugee is initially an asylum seeker. In the South African Context, one becomes an Asylum Seeker before being recognised as a Refugee. Individuals can stay for over 15 years on asylum seeker permits before being recognised as refugees and during ~~that 15 year~~those 15 years, an individual will be residing in the republic and will somehow have to access health care services. The NHI requires people to be registered as a “user” to be eligible to receive health care services, to register you have to provide an identity card, original birth certificate, or refugee identity card. The NHI currently excludes the various categories of people listed above who would not be able to register as users of the fund or even be granted access to emergency medical treatment. CoRMSA believes this is unconstitutional and should be revised to include everyone as stipulated in Section 27 of the Constitution. A clause should be added to accept asylum seeker permits (section 22 in terms of the South African Refugee Act of 1998) as a form of identification.

CoRMSA submits that in section 5 (5) (b) of the Bill “*an original birth certificate*” should be revised to read “an original birth certificate and or confirmation of birth”. This is because of majority of children born out of migrants, asylum seekers, and refugees are normally issued with handwritten notification of birth instead of an original birth certificate.

CoRMSA finds similar concerns with the people who are irregularly travelling to South Africa for reasons relating to work, study, or travel, as will be discussed below

People Travelling to South Africa:

The South African Immigration Act of 2001 and its amendments give provision for people to apply and be granted or refused a visa to travel to South Africa for reasons relating to work, medical treatment, research, study, or travel. The NHI Bill requires that people traveling to South Africa have travel insurance to receive health care services under their relevant travel insurance contract. However, the NHI requires any user to be registered to receive medical treatment and for users to comply with Section 5(5) of the Bill. Both groups mentioned above will run into difficulty as they won't be able to register as users, especially the SADC ~~traveler~~travellers because

of certain migration agreements and treaties, The Bill does not make clear how these users would receive medical treatment.

About the above CoRMSA submits that the Bill should make provisions for groups of people listed above and provide alternatives to prior registration to avoid denying people access to essential health care services.

Section 4 (2).

a.) According to the definition of emergency medical treatment in the NHI Bill asylum seekers and undocumented migrants will be provided with ambulance transport service to a health care facility, with limited to no treatment following this. This is detrimental to all asylum seekers and migrants and to South Africa's public health profile. Section 27 of the Constitution states that 'everyone has the right to have access to 'health care services, including reproductive care'. CoRMSA submits to the Minister of Health to carefully consider the fact that access to health care service is equivalent to the right to life as per section 11 of the Constitution. The denied right to health care service is a denied right to life.

b.) The term used here: 'services for notifiable concern' is vague and not comprehensive. CoRMSA requests that the inclusion of TB and Anti-retroviral (ARV) medication be mandatory for everyone who lives in South Africa. Of paramount importance, is the inclusion of primary, sexual, and reproductive health care services as stipulated in Section 27 of the Constitution. Currently, on paper asylum seekers and migrants enjoy the same basic health care services equivalent to all South Africans, with payment determined by a means test, although regular reports of persons being denied access to health care occur. CoRMSA raises concern about the exclusion of basic health treatment for these population groups for both the detrimental impact it will have on individuals and South Africa's general public health profile.

In supporting this argument CoRMSA would like to present the following points:

1.) Achieving the goals laid out in the NHI

2.1 The preamble of the NHI lays out the hopes of the NHI to achieve Universal Health Coverage based on principles of universality and social solidarity. In the Memorandum on the objectives of the NHI, the goals of the NHI include "ensuring that the **entire population**, and not just particular groups, are entitled to benefit from needed, high-quality health care". The word entire population" for CoRMSA reads as all the people living or residing within the republic of South Africa regardless of their nationality statuses, colour, race, gender, sexual orientation, disability, ethnicity,

language, beliefs, etc. This is attested by section 9 (3) of the South African Constitution.

CoRMSA recommends that the NHI Bill should and must live up to its expectations and achieve goals of providing universal health coverage for all without prejudice based on the above classification.

Section 4 (3).

CoRMSA supports the provision made in the Bill in meeting its constitutional obligation to grant **all** children access to basic health care services. CoRMSA raises some concerns relating to the registration of 'illegal foreigners' through their parents. 'Illegal foreigners' will not meet the eligibility criteria as stipulated in Section 5 to register as a user and no provision is made for alternatives in which children of 'illegal foreigners' can register their children.

CoRMSA further submitted the replacement of the word "Illegal Foreigner" with "undocumented migrants" with the belief that a person or (human being) born out of a human race will never be illegal but his/her action/s are the ones deemed illegal.

There is the constant use of "illegal foreigner" throughout the Bill, CoRMSA recommends the replacement of this word with "undocumented migrants".

Section 4(4) CoRMSA raises some major concerns relating to the registration as users which will be mentioned in Section 5.

Section 4(5)(b) As stated above CoRMSA believes that the current definition of 'emergency medical services' contravenes the constitutional mandate stipulated in Section 27 and must be reconsidered to include basic medical treatment.

Registration as users- section 5.

Section 5 (1) CoRMSA makes the following submission based on section 4 – population coverage:

The Bill states that in section 4 (2) (a) "An asylum seeker or illegal foreigner is only entitled to— (a) emergency medical services; and'. This refers to the point made in 2.1 above about the exclusion of asylum seekers and so-called illegal foreigners (according to this Bill) from benefiting fully from the NHI health care service.

Building on the point made in 2.1 above, currently in South Africa, asylum seekers, and illegal foreigners are benefiting fully from the current health care service system. The NHI bill proposes to take away that right as it stands. The proposed Bill will

create health inequalities amongst the population coverage. Health inequalities are defined as differences in health status between groups within a country. Inequalities across groups are most frequently considered in terms of socio-economic position, race, ethnicity, place of residence/geographic location, gender, nationality status age, etc.

CoRMSA therefore, submits that asylum seekers and illegal foreigners be included and considered to benefit from the NHI as equally as everyone. The user of health services should be according to the need not nationality status.

Right of users' section 6.

Section 6 (f) states that “to access health care services within a reasonable period”. CoRMSA submits that a specific time frame period be specified to avoid deliberate denial or delay of health care service delivery. CoRMSA proposes 24 hours as a timeframe for the provision of health care service.

Health care service coverage – section 7.

Section 7 (2) (d) of the Bill states that “a user— (i) must first access health care services at a primary health care level as the entry into the health system. CoRMSA strongly feels that the Bill did not take into consideration the fact that South Africa is an unequal society when it comes to access to socio-economic rights and basic services. The Bill makes it a “Must” for the user to first access primary health care services normally offered by local clinics. The Bill fails to take into consideration the realities of the primary health care facilities standard in South Africa which include working hours and resources. Many users may find it difficult to access primary health care services to gain entry to the NHI services because of many known factors.

CoRMSA submits that this subsection be rephrased to read “(d) a user— (i) may or not first access health care services at a primary health care level as the entry into the health system. The word “must” already ~~putsput~~ a limitation to the user.

Constitution and composition of Board- section 13 (1) and (8).

CoRMSA is concerned by this section “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” and subsection (8) stating that “The Minister may remove a Board member if that person. This section seems to put or invest all powers to the Minister alone to appoint and remove the Board Members. This may lead to abuse of power and corruption by the Minister during this process.

CoRMSA submits that this section be rephrased to include “the Minister in consultation with the parliament may appoint, remove or dissolve board members....”.

Chairperson and Deputy Chairperson section 14.

Subsection (1) The Minister must appoint a Chairperson from amongst the members of the Board as contemplated in section 13 (1). CoRMSA submits that certain mechanisms be put in place before the appointment of the chairperson and deputy chairperson of the Fund. Appointment of these two positions should be done through the democratic voting process involving the Board members and the Minister.

On the schedule relating to the repeal and amendment of the legislation affected by the Act (section 58). CoRMSA makes the following submissions:

On the proposed Act No. 56 of 1996, Road Accident Fund Act, 1996, CoRMSA proposes that the word “shall” be replaced by “must” for the sentence to read “**must** be determined, under the National Health Insurance Act, 2019”. This is to confirm and not make it optional for the matter to be dealt with through the NHI and to avoid unnecessary delays.

Act No. 111 of 1998, Correctional Services Act, 1998- CoRMSA proposes the insertion of “**and inclusive**” for the section to read ““(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 **and inclusive** access to primary health care, to allow every inmate to lead a healthy life”

Still, on the same Act, CoRMSA submits the addition of the “**with a valid accredited certificate**” for the section to read “every inmate may be visited and examined by an accredited health care service provided **with a valid accredited certificate**, subject to the permission of the Head of the Correctional Centre”. In South Africa, we have witnessed cases of bogus Medical Practitioners who claim to be registered but with no valid accredited practice certificates.

On the proposed Act No. 61 of 2003, National Health Act, 2003, CoRMSA proposes the insertion of “**inclusive**” for the section to read ““(viA) develop and manage **an inclusive** the national health information system”. Currently and practically so, our national health information system is not at a standard to capture every service user accordingly based on the type of documentation they possess. This makes it difficult to develop and produce accurate statistical data on service users.

End of submission.



Contact Details:

Thifuluheli Sinthumule (MR) – Executive Director

Email: thifuluheli@cornsa.org.za

Web: www.cornsa.org.za

Telephone: 011 403 7560/1. Fax 011 403 7559.

Mobil: +27 84 870 3825.