

NATIONAL HEALTH ACT (NHI ACT) ACT 20 OF 2023

FREQUENTLY ASKED QUESTIONS ABOUT THE NATIONAL HEALTH INSURANCE (NHI) ACT, ANSWERED BY ENGEN MEDICAL BENEFIT FUND (EMBF) AND DISCOVERY HEALTH (PTY) LTD

Since the tabling of the National Health Insurance Bill (NHI Bill) in August 2019 and the subsequent signing of the NHI Act into law on

15 May 2024, by President Cyril Ramaphosa, we have received many questions and comments from medical scheme members and the public. Here we answer some of the frequently asked questions about what we know about the NHI Act, and our views on it.

Q: There's been a lot of reporting in the media about NHI, and it seems to be important - but what exactly is it?

A: The National Health Insurance Act (NHI Act) provides for a National Health Insurance Fund (NHI) be established in South Africa. The NHI Act has been passed by the National Assembly and the National Council of Provinces and was subsequently signed into law by President Cyril Ramaphosa on 15 May 2024.

The objective of the NHI is to improve access to healthcare for all South Africans. The NHI will pay for pre-determined healthcare and treatments so that registered users will not need to pay when they access the care. Healthcare services will be accessed according to a defined treatment pathway.

We don't know yet which treatments and medicines will be paid for by the NHI, and which will not be. The NHI will specify which hospitals and doctors can be accessed, and patients will need to use the specified referral pathways to obtain cover for your treatment. Where a person chooses not to follow the NHI pathways, and to use their own doctor or hospital, they will not be able to claim from the NHI.

Q: What is Engen Medical Benefit Fund and Discovery Health's view on the NHI Act, and do you have concerns about it?

A: The NHI is a very big and complex initiative with a considerable amount of planning and debate still required to make it workable. Aside from the constitutional and legal hurdles that lie ahead, there are also significant operational challenges and financial realities that will need to be navigated. Given the magnitude of the proposed change to South Africa's health system, this cannot be achieved overnight.

Our position on NHI has been clear and consistent throughout. We fully support the drive towards ensuring that all South Africans have access to quality health services based on need rather than affordability and, therefore, support an NHI that assists in strengthening and improving the healthcare system for all South Africans, especially given the inequalities that currently exist in healthcare. We therefore support NHI, but to make it workable requires collaboration with the private sector and additional funding.

A key area of concern about the NHI Act is its impact on the role of private medical schemes, and whether they will be limited in what they are able to cover for their members, as this is not altogether clear in the Act. We believe that private medical schemes should be able to provide benefits alongside NHI, and that this will support and enhance the NHI as it will relieve pressure on an already constrained public healthcare system. We discuss this issue in more detail in the question on the future role of medical schemes below. Our other concerns are that the Act is generally unclear and leaves many questions unanswered and details unspecified. Without a clear and realistic funding plan, the NHI is not workable.

We continue to work hard in making constructive contributions to the NHI process and looking for ways in which to participate in improvements to the overall healthcare sector. We believe that there are extensive and unique assets, skills, and experience available in the private healthcare system, which can be leveraged to ensure the success of the NHI roll out, and so the Act creates an opportunity for collaboration in this regard.

We, as Engen Medical Benefit Fund, through Discovery Health, have submitted our concerns and suggestions to the Portfolio Committee on Health, National Council of Provinces and to the President. We are disappointed that the President did not consider any of our submissions before the Act was signed into law during May 2024. To this end, we will continue to engage constructively in all appropriate forums in the future while also taking the necessary steps to ensure that the rights of medical scheme members are not adversely affected through the implementation and a workable NHI.

Q: What will be the role of medical schemes once the NHI system is implemented?

A: A central issue arising from the NHI Act is the future role of private healthcare and medical schemes once the NHI is implemented. The NHI Act states that when the NHI is ‘fully implemented’, medical schemes will not be able to provide cover for services that are paid for by the NHI.

Q: What are the implications of limiting the role of medical schemes?

Limiting the role of medical schemes would be counter-productive to the NHI because there are simply insufficient resources to meet the needs of all South Africans. Additionally, limiting people from purchasing the health insurance coverage they need, without a viable and sustainable alternative, is unconstitutional. It also poses the risk of denuding the country of critically needed skills and is impacting negatively on local and international investor sentiment and business confidence. Furthermore, by preventing those who can afford it from using their medical scheme cover, and forcing them into the NHI system, will increase the burden on the NHI and drain the very resources that must be used for people in most need.

Limiting the rights of citizens to purchase additional health insurance, after they have contributed to the NHI, would be globally unprecedented and inappropriate. In virtually every other country with some form of NHI, citizens are free to purchase additional private health insurance cover, including cover that overlaps with services covered by the national system. A restriction on choice of medical scheme cover is not dissimilar to limiting the rights of citizens to purchase private education for their children or private security, on the basis that the public system already provides state schooling and security services.

Q: When will the NHI be implemented?

A: Full implementation of NHI remains a long way off – more than a decade at least. During this period, very little to nothing will change in relation to medical schemes.

Q: Are you engaging with government about the NHI and the impact on medical schemes?

A: Yes. We, as Engen Medical Benefit Fund are actively engaging, through Discovery Health, with the National Department of Health and the Presidency and various other stakeholders alongside the broader business community. We will continue to do so to ensure that medical schemes and private healthcare remains part of the overall national health system, together with the NHI.

Q: Where will the money for NHI come from?

A: The funding model for NHI is not yet finalised and the Act makes no reference to the likely costs of the NHI once fully implemented. However, any fundamental change that improves quality and access and that can contract private providers will require substantial additional funding.

We understand that National Treasury will soon be publishing a costing document, and that this is likely to be based on an incremental approach to providing NHI benefits. A significant first step in the proposed funding of the NHI is to centralise the healthcare funding that is currently allocated to the provinces. This accounts for more than 85% of the current public health budget of R260 billion and is used for the delivery of public healthcare services across the provinces.

In our view, the government faces significant challenges in securing the funding required to implement the envisaged NHI, including the current and likely future fiscal constraints facing government. The Act specifies that payroll taxes and a surcharge on personal income tax could be considered as sources. Such taxes would need to be determined by National Treasury. At the presentation of the Act, the Minister of Health indicated that no tax changes are envisaged over the next three years.

Q: Can the Government use some of the funds sitting in private medical schemes to fund the NHI?

A: No. The funds in medical schemes are contributed voluntarily by members, mostly from their after-tax earnings. The money belongs to the members of the schemes and there is no mechanism to use these funds, because they are well protected by law.

The funding of the NHI will have no impact on members' savings accounts, or on the reserves of the Scheme. The funds are protected and managed by Trustees, effectively as trust funds, functioning as "mutuals" on behalf the members.

The only mechanism which the Government can use to raise additional funding for the NHI is via the taxation system.

Q: Will taxes increase now that the NHI Act has been signed into law?

A: No. Not yet. The NHI Act does not affect the current level of any taxes. Only National Treasury can introduce legislation that changes taxes, and no Money Bill has been proposed yet.

The mechanism for funding for the NHI is not defined in the NHI Act and substantial work is still required to determine how the NHI will be funded. Additionally, once the Money Bill has been defined, this would need to go through the full legislative process before it can be implemented.

Q: Is the tax credit going to be removed now that the NHI Act has been signed into law?

A: No. Only National Treasury can amend or remove the medical scheme tax credits, and this is not expected to happen in the short term.

Medical scheme tax credits reduce the amount of tax payable by individual medical scheme members. If you are a member of a medical scheme, you can recover the tax credit by reducing the amount of tax you pay by a fixed amount. The removal or reduction of medical scheme tax credits would therefore increase the tax burden for medical scheme members and may impact on their ability to afford private cover thereby increasing the burden on the public sector.

The proposal to abolish the medical scheme tax credits has been a long-standing request from the National Department of Health. However, medical scheme tax credits represent a progressive mechanism of funding healthcare that has been preferred by National Treasury for some time. The tax credits were deliberately restructured in 2012 by the National Treasury to be more beneficial to lower income earners, and they have been effective in making medical schemes more accessible for lower income earners. Removing or adjusting the tax credits will, therefore, lead to many lower income earners dropping off medical scheme cover due to affordability constraints, further exacerbating the pressure on public sector facilities. Further, the amount of additional tax that would be collected if tax credits were entirely withdrawn is approximately R30bn, which is only around 5% of total annual cost of funding the NHI, as indicated by the National Department of Health in its presentation to Parliament's Portfolio Committee on Health in 2022.

Q: What does NHI mean for my medical scheme membership?

A: According to the NHI Act, medical schemes will continue to exist alongside the NHI, and will provide funding for treatments and medicines that the NHI does not pay for, providing what the Act refers to as "complementary cover to services not reimbursable by the NHI". This arrangement will only come into effect once NHI is fully implemented, as determined by the Minister of Health through regulations in the Gazette.

This means that for the foreseeable future, medical schemes will continue as they currently do. It is expected that the role of medical schemes will evolve incrementally as NHI is rolled out. This view is also supported by Section 57 of the Act which amongst other things states that National Health Insurance will be gradually phased-in using a progressive and programmatic approach based on financial resource availability (Section 57 1 (b), NHI Act).

We believe that implementation of the NHI will take several years – likely decades. We therefore do not expect any material impact on medical schemes in the near future. In other countries with a national health system, it is common that private healthcare operates alongside state-funded healthcare. This is seen as the preferable way of

establishing healthcare funding, as the State provides the services it can afford, while allowing individual freedom of choice in funding additional healthcare on a private basis.

Q: So, should I cancel my medical scheme membership?

A: No. Not at all. The NHI will take many years to be established after the Act has been passed into law. It will be a long time before the NHI will be funded, and it will be known what services it will reimburse.

It is important to bear in mind that healthcare needs are often unexpected and can involve very large expenses. Cancelling your medical scheme may pose a serious risk to you and your family's physical and financial wellbeing. Furthermore, the NHI package of benefits is also unlikely to cover the extent of the benefits that medical schemes currently cover, least of all the existing package of prescribed minimum benefits that all medical schemes' benefit options are currently required to cover.

Q: Will medical schemes be required to change their benefits now that the NHI Act has been passed and signed by the President into law?

A: No. Not yet.

The NHI Act will not have an immediate effect on medical scheme benefits. Medical schemes will only be required to change their benefits once the NHI is fully implemented. As the implementation of the NHI will take several years – likely a decade or more – there will be no impact on medical schemes for the foreseeable future.

The National Department of Health has indicated that it will take at least 5 years for the NHI to be established and start providing benefits, and several years after that for it to be fully implemented. It is possible that some years into the future, medical scheme benefits will adjust to work alongside the NHI. These changes will only take effect after quite a few years and will be introduced gradually. The specific wording of the Act regarding what a medical scheme can pay for is open to interpretation, and we are actively engaging with policymakers to obtain clarity.

Q: What will happen to private hospitals and healthcare professionals?

A: The Act envisages that the NHI will contract with private hospitals, healthcare professionals and other medical service providers on a voluntary basis, to supplement the current public sector delivery system. For the foreseeable future, we expect that the NHI will contract with some GPs to supplement its public primary care services, and certain high priority services to address specific gaps in public sector provision e.g., oncology or renal dialysis services. If this is achieved, it will already be a significant step forward. Beyond that, we expect that the vast majority of NHI services will continue to be delivered by public sector clinics and hospitals, and that private hospitals, specialists and other providers will continue to be funded by medical schemes.

Q: What about the healthcare professional community in South Africa?

A: We have a valuable, highly skilled, and world-class healthcare professional community in South Africa. These professionals work hard, provide excellent care, and are committed to our Country.

We will continue to advocate for the private sector, especially the doctors, on their right to work in an optimal working environment, receive fair remuneration, and retaining these resources within the National Health System while promoting sustainability of the industry, quality health outcomes and ideal patient care.

Q: Will the NHI mean that everyone can go to private hospitals and doctors even if you don't have medical scheme cover?

A: The extent of the NHI benefits, and access to health facilities (public and private), will be subject to the level of funding available to the NHI. Given the uncertainty of the level of funding available to the NHI, it is not clear what services will be included in the NHI package and whether this will include hospitals and specialists.

The NHI Act includes the provision that all users need to register with an allocated primary care facility and can only access the benefits through a defined referral pathway. This means that patients will only be eligible for cover according to where they are directed by the NHI.

It does not appear that the NHI will, for quite a few years, be able to cover extensive hospital and specialist benefits or medication beyond the essential medicine list, until funding can be sourced to sustainably support this. The NHI Act also specifies that benefits will be provided to vulnerable groups first and incrementally rolled out to the rest of the population.

Q: Will all doctors in South Africa be forced to contract with the NHI?

A: No. South Africa's constitution protects the rights of individuals to determine who they want to contract with, and the terms will need to be sustainable.

The level and extent of the NHI package remains very uncertain, as well as the extent of the funding that will be required and how this will be raised in a sustainable way. Considering the uncertainty about the available funding, and the benefits that will be covered under the NHI, it is unclear whether contracting with the NHI will be commercially viable for doctors.

Q: What happens next in terms of the Act?

We understand that the NHI will be rolled out in two phases:

Phase One (up to 2026): focus on infrastructure and other foundational elements. There will be strengthening of the Health Platform overall. The funding model of the NHI will be defined and confirmed.

Phase Two (2026 to 2028): focus on the actual rollout of the NHI, intensive conclusion of the implementation phases and ironing out of any issues or areas of concern.