



NHI Draft Bill Daily Analysis

The NHI Draft Bill was published in Government Gazette 41725 on 21 June 2018. The South African Private Practitioners' Forum will be sharing an analysis of the Draft NHI Bill with members, highlighting issues of importance and concern.

NHI Draft Bill – Day 16 Excerpt from the Draft Bill



Offences

51. (1) Any person who -

- (a) knowingly submits false information to the Fund or its agents;
- (b) makes a false representation with the intention of obtaining benefits from the Fund to which he or she is not entitled;
- (c) utilises money paid from the Fund for a purpose other than that in respect of which it is paid;
- (d) obtains money or other gratification from the Fund under false pretences; or
- (e) sells or otherwise discloses information owned by the Fund to a third party without the prior knowledge and written consent of the Fund,
- is guilty of an offence and liable on conviction to a fine not exceeding R100 000.00 or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Any penalty imposed under subsection (1) is a debt due to the Fund.

Analysis

Only a court can convict and sentence an individual to imprisonment. Such a conviction would be done under the criminal procedures act.

There is no precedent in the current law for a criminal fine issued by a court, to be paid to any other entity but the state itself. Even traffic fines, which are issued at a municipal level, go to the municipality, which is a sphere of government and not a parastatal entity external to government, such as the NHI fund would be.

The legality of such a clause without changes to the other relevant legislation such as the Criminal Procedures Act, would be questionable. The NHI fund will always have to option of civil action to recover funds, or the court can order reparations as part of their findings, but a criminal fine will never be due to the NHI fund under current Criminal Legislation outside the NHI Bill.