

Dipping into state savings for NHI a risky gamble, pundits say – The Citizen 16 August 2018

Also, ‘the constitution does not empower government to set aside South Africans’ healthcare choices in favour of its own preferences’.

Pundits have highlighted several legal stumbling blocks likely to arise from the enactment of the National Health Insurance (NHI) Bill.

The various funding streams the Bill proposed included some which could raise constitutional problems as the law refers to property rights, according to Intellidex analyst Peter Attard Montalto.

The Bill would likely see private medical aid reserves expropriated to the benefit of a National Health Fund and would also reallocate funding for medical scheme tax credits.

“It raises the property rights question and the fear that it would in effect be expropriating funds from bond savings. Ultimately, Treasury would probably block this. It would probably be viewed as unconstitutional,” said Montalto.

He added that such a move would also be seen as a risky gamble.

“The understanding that we have is that wherever you have a stack of savings like that, they are somewhat ripe for the taking. But it is considered a huge risk ... it is a one-off source of money.”

The Free Market Foundation (FMF) raised the issue of one’s constitutionally enshrined right to choose whether to receive private or public healthcare. This was because while the NHI would not preclude the use of private healthcare, it could result in this being too expensive an option, thus forcing South Africans to seek care under NHI.

Martin van Staden, the FMF’s head of policy, argued that the right to healthcare as given in Section 27 should also be read in the context of Section 1(a) of the constitution, which dealt with freedom of choice.

“The constitution does not empower government to set aside South Africans’ healthcare choices in favour of its own preferences.

“Indeed, the best interpretation one can assign to Section 27 is that government must fund the healthcare services of the poor, something the NHI assuredly does not do,” he wrote in a statement.

The NHI made it impossible for South Africans to continue to have comprehensive medical aid, van Staden lamented.

The NHI also left it up to healthcare providers to deny patients treatment should they decide there was no medical necessity or if there was “no cost-effective intervention” for the condition.

According to DA leader Mmusi Maimane, NHI’s centralisation of healthcare provision removed the freedom of choice as well as competition. He said it effectively created a new state-owned enterprise, the NHI Fund.

In the context of an estimated R1.4 trillion worth of state funds lost through looting, mainly from other state entities, he suggested that the NHI Fund would be vulnerable to state capture.