



# REGULATORY CONVERGENCE

An update on regulatory developments in the SADC region



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VOLVERE



# Legislation is responsive to context



## Factors

- Technology
- Globalisation/regionalisation
- Policy convergence



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# The sustainability of the region is dependent on the health of its population

## Health outcomes

- “Health for All” by 2020
- Specified targets / country



## Economic outcomes

- Macro-economic stability
- Regional convergence
- Co-operation on regulation of non-banking financial institutions



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Source: SADC



# SADC Protocol on Finance and Investment, 2006

- Co-operation on non-banking financial institutions and services
  - Committee for Insurance, Securities and Non-Banking Financial Authorities (CISNA)
    - Established 1998
    - Strategic plan
      - Successful regulation
      - Information sharing
  - Article 9 - Harmonised regulatory regime
    - Regulations, regulatory and supervisory practices
  - Article 11 - Cross-border co-operation
    - Prevention of unscrupulous practices
    - Increased access to information
    - Mutual exchange of information and assistance
  - Article 16 – Consultations
    - Strengthening regulation, supervision and efficiency
    - Avoid conflicts – differing regulatory and supervisory practices



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# Botswana

## Context

- Integrated Health Services Plan (2010-020)
- National Health Policy (2011)
- Essential health service package accessible to all
- Nominal cost recover for public sector services
- Private healthcare expenditure rapidly increasing

## Legislation

- Public Health Act, 1981
- Non-Bank Financial Institutions Regulatory Authority Act, 2016



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## **Non-Bank Financial Institutions Regulatory Authority Act, 2016**

- Application:
  - NBFI's
  - Prudentially regulated NBFI's – section 49
- Objective
  - Enhance safety and soundness of non-bank financial institutions (NBFI's)
    - Conduct standards
    - Fairness, efficiency and orderliness
    - Stability of financial system
    - Reducing/deterring financial crime



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# Non-Bank Financial Institutions Regulatory Authority

- Regulatory/ supervisory role
- Governed by a board
  - Strong financial services slant
  - Policies not in alignment with objectives – Minister can step in
- Self-regulatory organisations
  - Declared by Minister on recommendation of NBFIRA
  - Performance of regulatory/ supervisory functions approved by NBFIRA
- Exemptions and modifications of financial services laws



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# Namibia

## Acts

Medical Aid Funds Act

Namibia Financial Institutions Supervisory Authority Act  
(NAMFISA Act)

## Bills

Financial Institutions and Markets Bill  
(FIM Bill)

Namibia Financial Institutions Supervisory Authority Bill  
(NAMFISA Bill)

Financial Services Adjudicator Bill



# Medical Aid Funds Act

- **Object:**
  - Control and promotion of medical aid funds
  - Establishment of NAMAF
- **Fund**
  - Financial or other assistance
  - Defraying expenditure incurred in terms of rendering a healthcare service
  - Excluding any scheme created in terms of an insurance policy
- **Excludes:**
  - Schemes operated/ managed by Government
  - External medical aid funds



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## Medical Aid Funds Act (contd)

- Medical Aid Funds obliged to be members of NAMAF
- Subscription payable
- Conduct of medical schemes
- Rules and content
- Amalgamation and transfer
- Judicial management, winding-up



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# NAMFISA Act

- Establishment of NAMFISA
  - Supervision of financial institutions and financial services
  - Advise Minister of Finance
- “Financial Institution” – includes registered medical aid funds
- Levies and exemption mechanism



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## NAMFISA Bill

- Continued existence of NAMFISA
- **Objects**
  - Financial soundness
  - Stability
  - Highest standards of conduct
  - Fairness, efficiency, orderliness
  - Consumer protection
  - Public awareness
  - Reduce and deter financial crime
- **NAMFISA responsible for**
  - Risk management
  - Consider impact of regulatory and supervisory costs on public access to financial services
  - Balance effectiveness vs regulatory and supervisory cost
  - Reduce risk of failure of financial institutions and financial intermediaries
  - Reporting on financial soundness to Minister of Finance
  - Issuing of standards
- Minister of Finance can issue policy directions
- **Appeal Board**
  - Hear and determine appeal - NAMFISA Act, FIM Act and Microlending Act
  - Make a declaratory order



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# Financial Institutions and Markets Bill

Consolidate and harmonise laws regulating financial institutions, financial intermediaries and financial markets in Namibia

## Financial institution

- Includes registered medical aid fund

## Financial intermediary

- Fund administrator
- Broker

## Financial services laws

- FIM Act
- Financial Services Adjudicator Act
- NAMFISA Act



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## Financial Institutions and Markets Bill (contd)

Insurance

Financial  
markets

Collective  
investment  
schemes

Retirement  
funds

Friendly  
societies

Medical Aid  
Funds

Fund and  
society  
administration

Property held  
in trust



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# Financial Institutions and Markets Bill (contd)

- **Business of a medical aid fund**
  - Liability in return for contributions
    - Obtaining any health service
    - Grant assistance in defraying expenditure
    - Rendering of a health service by any supplier or group of suppliers in association with or in terms of an agreement with a medical aid fund
- **Health Service**
  - Healthcare treatment by registered person
  - Ambulance service
  - Accommodation in registered institution
  - Accommodation in institution where surgical or other medical activities performed
  - Any other service set out in the standards
- Excluding medical aid fund established in terms of the Public Service Act



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# Medical Aid Funds

- New Medical Aid Funds
  - Must be registered in Namibia – N\$5m fine/10 years' imprisonment/both
  - Registration requirements include:
    - Such further information as NAMFISA "on reasonable grounds may require"
    - Report of valuator on current financial position and projected financial soundness
    - Financial guarantees
    - No direct or indirect unfair discrimination against any person
    - Every member of BoT, PO and trustees are fit and proper
    - Direct/indirect control of fund not contrary to the interests to consumers of financial services
    - Proposed structure will not potentially hinder effective supervision by NAMFISA
    - Registering the fund not contrary to the public interest
  - NAMFISA can impose conditions which it considers appropriate
    - Applicant has 21 days to make representations
- Existing Medical Aid Funds
  - 12 months to apply or NAMFISA will take action that it considers appropriate



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## Brokers

- Must be registered in Namibia - N\$5m/10 years' imprisonment/both
- Registration requirements include
  - Reasonable grounds – not in position to offer inducement or use coercion or undue influence to control, direct or secure business
  - Not convicted of an offence – in NAMFISA's opinion – unfit to hold registration
  - Reasonable grounds – carry on activities with honesty and integrity
  - Has not and unlikely to engage in conduct identified as misconduct in standards
  - Every shareholder, owner, director, PO or other officers fit and proper
  - In/direct control of entity unlikely to be contrary to the interests of financial services consumers
  - Organisational or group structure no hindrance to effective supervision by NAMFISA
- Existing brokers have 12 months to register



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# Administrators

- Registered with NAMFISA
  - Un/conditionally
  - Subject to un/conditional exemption
  - Not contrary to public interest
- Existing administrators -12 months to register
- Enter into contract filed with NAMFISA
- Must have a principal office in Namibia and a principal officer
- Statutory fiduciary duty and responsibility imposed on administrator
- Performance monitoring of administrator



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## Governance provisions

- NAMFISA can request removal of PO who is not fit and proper
- Active and retired members can in/directly elect 50% of the BOT\*
- *"A board member must, at any time, inform NAMFISA in writing on becoming aware of any material matter relating to the affairs of the fund which, in the opinion of the board member, may seriously prejudice the financial viability of the fund or the benefits or rights of its members"*
- Contravention – N\$2.5m fine/10 years' imprisonment/both
- Appoint valuator to investigate the financial position of the fund every 3 years
  - Ex gratia payments permitted by rules
    - Board to determine and inform NAMFISA of amount/scale of benefits taken into consideration for purposes of valuation

\* Scheme can apply to NAMFISA for exemption



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# Finance provisions

- Financially sound
  - Minimum solvency requirements
  - Able to pay claims
  - Kind of assets and liabilities and valuation of both
- Allowed to encumber assets
  - Not deemed to hold the asset to the extent of the encumbrance
  - Provide personal suretyships / other guarantees for obligations of a third party
- Not allowed to purchase insurance or reinsurance
  - Except:
    - Financial guarantee needed to register
    - Additional financial guarantees - additional benefit options
  - Financial Services Compensation Fund



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# General

- Waiting periods
- Additional benefit options
  - Financially sound
  - Not jeopardise financial soundness of existing benefit option
- Prohibition on cession / attachment of benefits
- Charges by suppliers of health services
- Offences
  - Including broad definition of FWA
- Bill tabled in National Assembly – 26 June 2019
  - All indications – will not be accepted by the National Assembly



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# Financial Services Adjudicator Bill

- Establishes the office of the Financial Services Adjudicator:
  - Enquire and determine complaints about financial service providers and financial services
  - Advise the Minister
- Financial service providers include medical aid funds
- Funded by:
  - NAMFISA and the Bank of Namibia, as determined by the Minister
  - Cost orders and interest on cost orders
- Procedure:
  - Complaint lodged
  - Adjudicator conducts enquiry – ensures all parties joined
  - Determination made – monetary award, cost award, punitive monetary penalty, interest
  - No legal representation – juristic person may be represented by permanent employee who is not a legal or other relevant expert



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## Article 18 - Constitution

### Right to administrative justice

*Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on such bodies and officials by common law and any relevant legislation...*



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# Zimbabwe



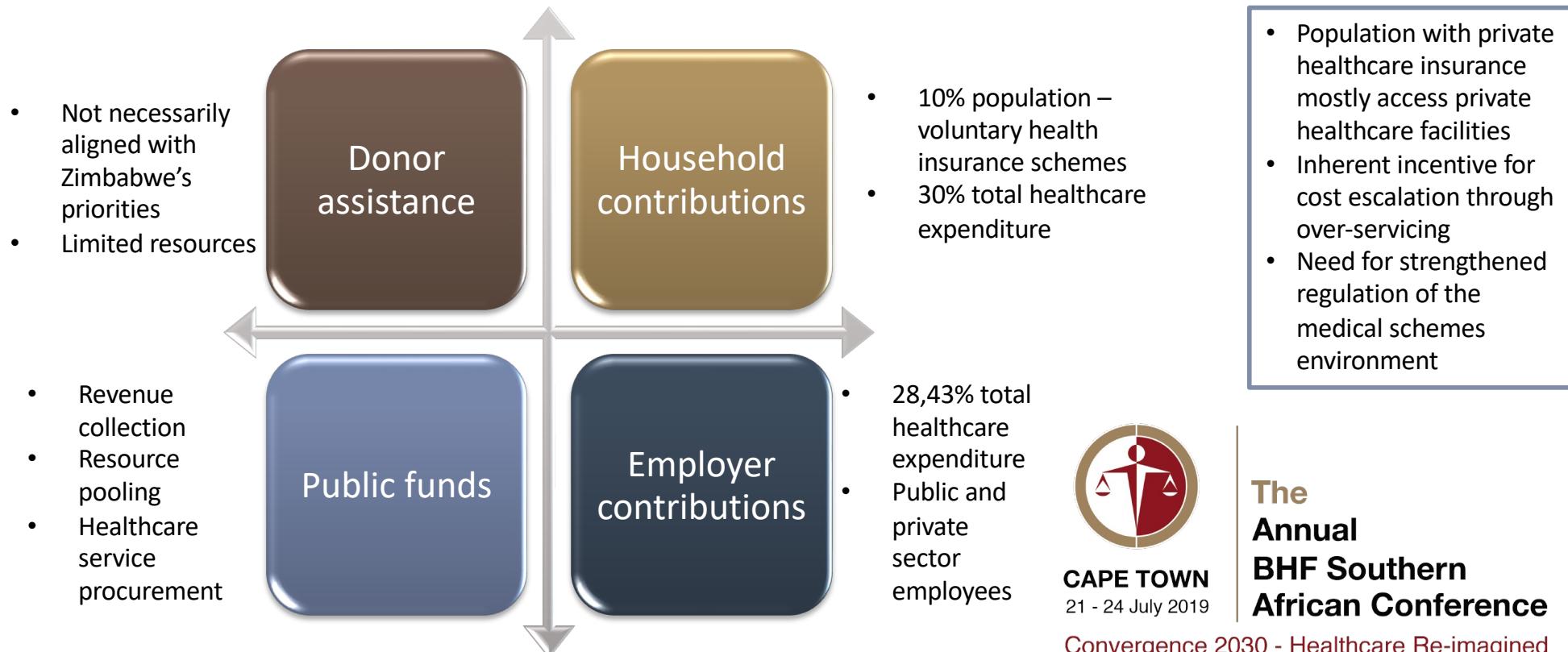
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# Zimbabwe Health Financing Strategy 2017





# Medical Services (Medical Aid Societies) Regulations

- Registration
- Conduct
  - Unfair practices
  - Financial matters
- Amalgamation, transfer, dissolution and deregistration



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Source: <http://www.ahfroz.org/wp-content/uploads/2017/09/MEDICAL-AID-SOCIETIES-FRAMEWORK.pdf>



# Medical Aid Societies Bill

- Legislative process
  - Bill submitted to Cabinet and accepted (2016)
  - Public consultations held
- Establishment of regulatory authority
  - Including representation from healthcare service providers – 3 board positions
  - Medical aid societies not represented
  - Costly to run given board size
- Annual registration renewal of existing medical aid societies conditional on:
  - Claims settlement
  - Audited accounts
  - Statutory returns
  - Audit committees
- No specific provisions dealing with governance
- Criminalisation of non-compliance
- No sustainable solution:
  - Fraudulent claims
  - Failure of employers to remit contributions to medical aid societies on time or at all
- Deregistration of medical aid society should be by agreement with the medical aid society or in terms of a court order
- No ability to conclude service level agreements



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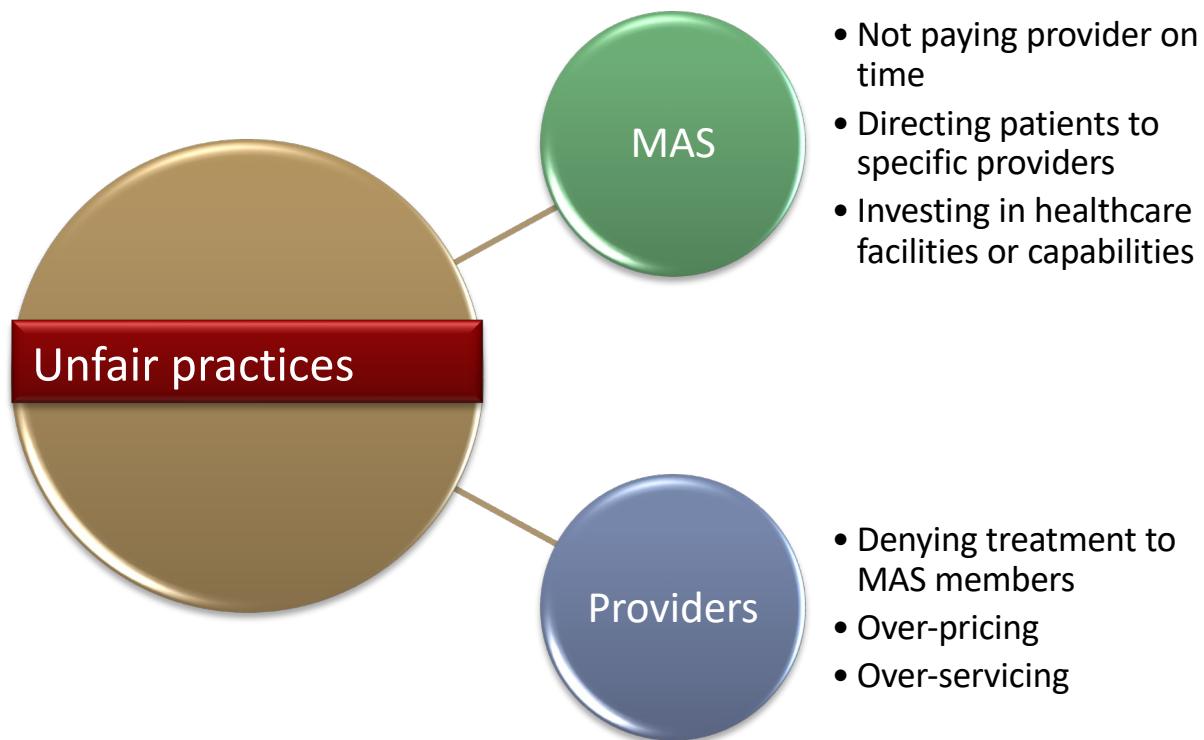
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Source: <https://www.herald.co.zw/medical-aid-societies-bill-what-difference-will-it-bring/>, <https://www.dailynews.co.zw/articles/2017/08/22/parirenyatwa-unveils-medical-aid-societies-bill>, The Herald (Zimbabwe) 21 Sep 2017 Business Reporter "Medical aid societies call for seats on regulatory board", <http://www.ahfroz.org/wp-content/uploads/2017/09/MEDICAL-AID-SOCIETIES-FRAMEWORK.pdf>



## Medical Aid Societies Bill (contd)



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# Insurance Act [Ch 24:07]

- Mutual Insurance Society
  - Association of persons
  - Established solely/ principally to carry on any class of insurance business
    - All members of society qualify as members because they are policyholders
    - Entitled to participate at general meeting:
      - Control of society
      - Election and appointment of directors
    - Profits of society distributed to owners
  - Registration required
  - Liability of members limited to the amount of the contribution paid



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# Insurance and Pensions Commission Act [Ch 24:21]

- Supervise, regulate, develop and administer business and operations of insurance companies and pension funds
- Establishes the Insurance and Pensions Commission
  - Governance
  - Financed
    - Levies
    - Loans/ donations/ grants
    - Public funds
    - Any other monies that accrue in the course of the Commission's operations or otherwise



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# South Africa

## Policy

- Presidential Health Summit

## Legislation

- Medical Schemes Act

## Draft legislation

- Medical Schemes Act Amendment Bill
- National Health Insurance Bill
- Conduct of Financial Institutions Bill



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# Presidential Health Summit (Oct 2018)



- Roadmap for universal healthcare
- By 2030 quality healthcare to all
  - Free at point of service
  - Publicly provided
  - Privately funded insurance



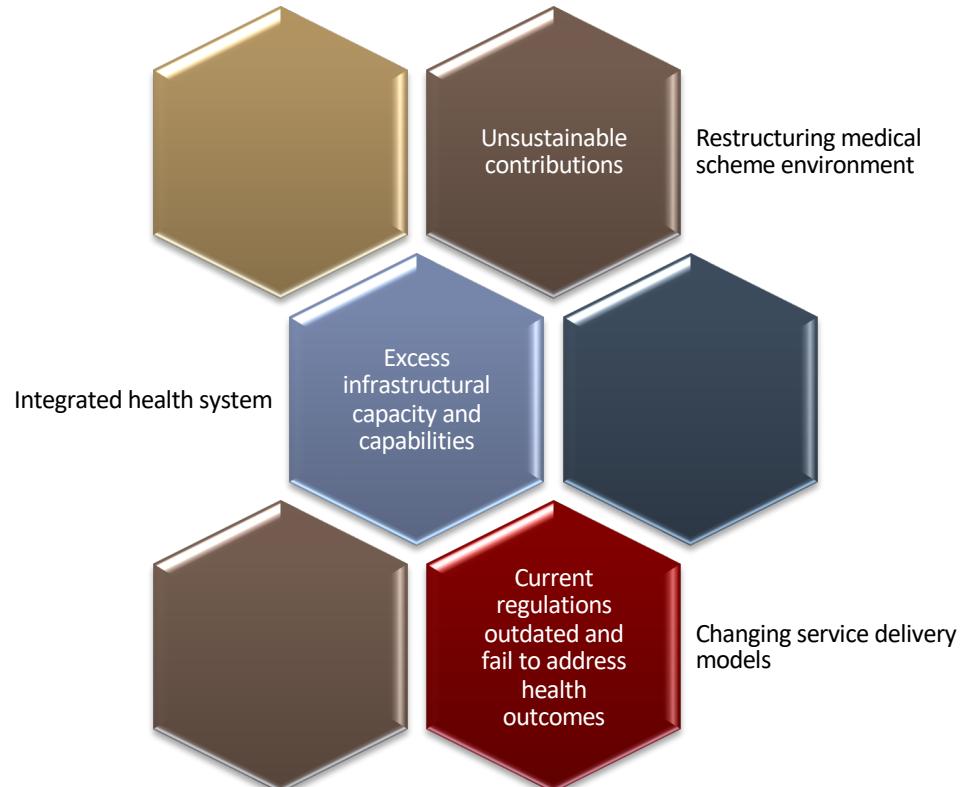
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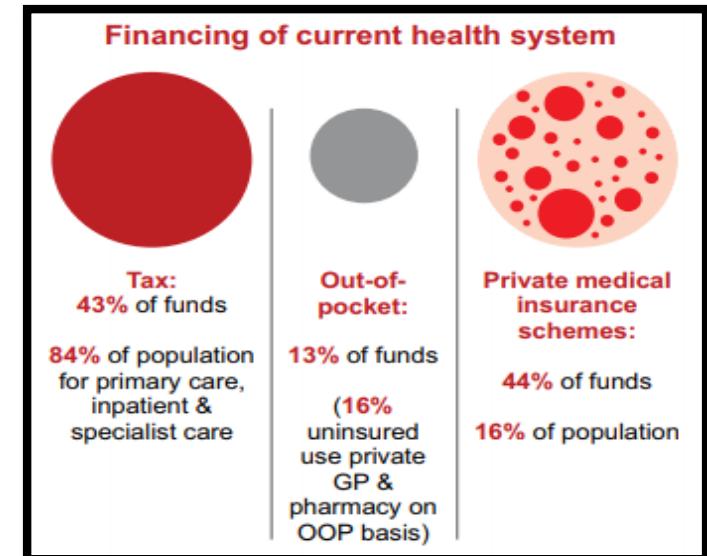
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# Current challenges



## Situational analysis



Source: <http://www.health.gov.za/index.php/2014-03-17-09-09-38/strategic-documents/category/532-2019-strategic-documents#>



# Presidential Health Summit: Proposed Interventions

Public-private  
collaboration  
framework

Collective  
leadership &  
stewardship

Leverage strengths

Stakeholder  
transparency and  
communication

Access to data

Close monitoring  
of movement of  
funds

Medico-legal cover  
for private  
practitioners in  
public sector



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# Medical Schemes Amendment Bill

CMS	Beneficiaries	Contributions	Benefits
<ul style="list-style-type: none"><li>• CPA</li><li>• PFMA</li><li>• NHI Fund relationship</li><li>• Central beneficiary register</li><li>• Rule amendment directive</li><li>• Deemed rule amendment</li></ul>	<ul style="list-style-type: none"><li>• Dependant child waiting period</li><li>• Condition-specific medical history</li><li>• Continuation on death/retirement</li><li>• Cancellation/suspension of membership</li></ul>	<ul style="list-style-type: none"><li>• Community rating</li><li>• Permissible differentiation</li><li>• DSP discounts</li><li>• Disclosure of application of contributions</li></ul>	<ul style="list-style-type: none"><li>• Comprehensive service benefits</li><li>• Healthcare providers' register</li><li>• Financially viable benefit options – conditions and financial guarantees</li><li>• Restrict benefits given NHI cover</li><li>• Right to inspect</li><li>• Actuarial report</li><li>• Restriction of NHE</li></ul>



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# Medical Schemes Amendment Bill (contd)

## Complaints, disputes & appeals

- Complaint and dispute process
- Right of appeal to Appeal Board
- Constitution of Appeal Board

## Corporate governance

- BOT duties
- Preferential procurement
- No concurrent official duties
- Remuneration of trustees and officers
- CEO
- Governance standards and reporting
- Fiduciary duties
- Reportable irregularities
- Personal financial interests
- Compliance directives

## General

- Unaccredited administrator, broker or MCO – fine of R10m / 5 years' imprisonment/both
- Managed care standards
- Transformation charter guidelines
- Auditor guidelines
- Member fair treatment guidelines



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# National Health Insurance Bill

NHI Fund	Beneficiaries	Benefits	Governance
<ul style="list-style-type: none"><li>•Mandatory</li><li>•Procurement</li><li>•Design healthcare services</li><li>•Contract with providers</li><li>•Establish payment rules</li><li>•Determine prices</li><li>•Ensure appropriate funding</li><li>•Collate data and implement IT systems</li><li>•Provider service &amp; performance profile</li><li>•Quality and value of healthcare services</li><li>•Report to Minister</li><li>•Internal audit</li><li>•Research on national health outcomes</li><li>•Exchange info</li><li>•Maintain national database</li><li>•Health economic analysis</li></ul>	<ul style="list-style-type: none"><li>•Citizens</li><li>•Permanent residents</li><li>•Inmates</li><li>•Refugees and asylum seekers – emergency healthcare, public health issues, paediatric and maternal services</li><li>•Apply for registration of user and dependant</li><li>•Quality healthcare for free within a reasonable time</li><li>•Purchase complementary cover through voluntary medical insurance scheme – MSA – not reimbursed by fund or make out of pocket payments</li></ul>	<ul style="list-style-type: none"><li>•Comprehensive health service benefits</li><li>•Register with primary healthcare provider of choice</li><li>•No access to specialist services without referral</li></ul>	<ul style="list-style-type: none"><li>•Board</li><li>•Accountable to Parliament</li><li>•Committees</li><li>•CEO</li><li>•Standards compliance</li><li>•Executive management</li></ul>



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# Ministerial Committees

## Benefits advisory

- Health service benefits
- Types of service at each level of care
- Treatment guidelines
- Health service benefits

## Health benefits pricing

- Recommend prices of health service benefits to NHI Fund

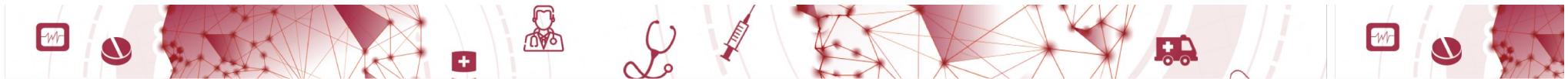
## Stakeholder advisory

- Functioning of fund to achieve objects
- Community input
- Public and private healthcare provider input
- Equitable and efficient functioning of fund

## Technical

- Multiple committees

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Responsible for NHI Fund  
Responsible for national health system

## Minister

National health policy  
Guidelines  
Health matters norms and standards  
Monitoring and evaluating national health goals and priorities  
Promote health  
Communicable and non-communicable diseases  
Provincial and municipal co-ordination  
Reporting

## National

## Roles and responsibilities

### Province

Health services  
Provincial disasters  
EMS, forensic services, medico-legal  
Maintain vehicles, equipment and facilities  
Environmental health

### Municipality

Water quality  
Food control  
Waste management  
Health surveillance  
Communicable diseases  
Vector control  
Environmental pollution control  
Disposal of the dead  
Chemical safety



## National Health Information Repository

- Health servicing data

## Healthcare service purchasing

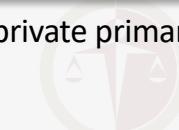
- Public sector
- Private sector

## District Health Management Office

- District level
- Facilitate, co-ordinate and manage non-personal public healthcare programmes

## Primary healthcare contracting unit

- District hospital, clinics, community health centres, ward-based outreach teams, private primary healthcare providers
- Functional user-referral system
- Issue accreditation certificates
- Integration of public and private healthcare services
- Resolve user complaints



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## Accreditation

- Certification from Office of Health Standards Compliance, HPCSA, Nursing Council, SA Dental Council, SA Pharmacy Council
- Minimum required range
- Appropriate number and mix of healthcare professionals
- Adherence to treatment protocols and guidelines
- Adherence to healthcare referral networks
- Submission of data to National Health Information Repository
- Adherence to national pricing regimen
- Performance expectation – performance monitored and evaluated
- Renewed every 5 years

## Payment

- NHI Fund to determine and adopt payment systems
- All-inclusive performance-based reimbursement
- Risk-adjusted capitation basis – size of population served and range of services

## Healthcare providers



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# Conduct of Financial Institutions Bill

- Consolidated, comprehensive and consistent regulatory framework for conduct of financial institutions:
  - Consumer protection
  - Fair treatment
  - Fair, transparent and efficient financial markets
  - Innovation and investment in innovative technologies
  - Trust and confidence
  - Sustainable competition
  - Financial inclusion
  - Financial sector transformation
  - Assist SARB in maintaining financial stability



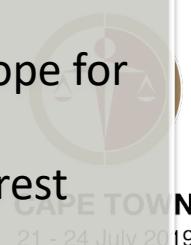
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Application	Proportionate application	Exemptions	Supervision
<ul style="list-style-type: none"><li>• Financial institutions</li><li>• Prudentially regulated financial group or financial conglomerate or holding company</li></ul>	<ul style="list-style-type: none"><li>• Licensing framework</li><li>• Conduct standards</li><li>• Supervisory approach</li><li>• Enforcement</li><li>• Exemptions</li></ul>	<ul style="list-style-type: none"><li>• Disproportionate regulation</li><li>• Practicalities</li><li>• Existing Act of Parliament</li><li>• Developmental, financial inclusion &amp; transformation objectives</li><li>• Provide scope for innovation</li><li>• Public interest</li></ul>	<ul style="list-style-type: none"><li>• Creation of authority</li><li>• Overlap with SARB and Prudential Authority</li><li>• Consider impact of requirements imposed on financial institutions</li><li>• Monitoring compliance</li></ul>



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## Licensing

- Financial institution
- Outsourcing partners – conduct standards
- Fluidity of application to new financial services
- Prohibition - structuring to avoid compliance

## Licensing requirements

- Fit and proper
- Business plan
- Adequate operational management capabilities
- Able to comply with requirements
- Able to comply with Act and other financial sector laws
- Not contrary to interests of financial customers or public interest
- Specific licensing requirements – financial institutions regulated by another regulator
- Progressive realisation of specific requirements
- Scope for innovation, development and investment in innovative technologies
- Prescribe institutional form (if not created in terms of statute)
- Prescribe conduct standards – content of constitutional documents



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## Licensing conditions

- Only conduct business for which licensed
- Conditions – progressive realisation of licensing conditions, financial inclusion, promotion of innovation
- Business arrangements including outsourcing
- Scope of customers
- Limiting scope or size of business or activities
- Prohibiting particular contractual terms
- Limiting value of benefits
- Limiting fees/ remuneration
- Appropriate terms in constitutional documents with amendment limitation

## Variation of licensing conditions

- On application by licensee
- Public interest
- Interests of (potential) financial consumers
- When revoking suspension
- To promote licensee development
- To facilitate financial inclusion
- To promote innovation
- To promote progressive realisation of conditions/licensing requirements
- Specified period



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## Representatives

- Licensing
- Conduct standards

## Culture and governance

- Fair treatment of consumer
- Openness and transparency
- Compliance
- Accountability
- Unfair contract terms
- Confidentiality
- Corporate governance standards and conduct standards
- Transformation Policy – Financial Sector Code for BBBEE
- Key persons and significant owners
- Avoidance or mitigation of conflict of interest
- Remuneration and compensation



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## Financial products

- Design, suitability and performance
- Governance
- Conduct standards

## Promotion, marketing and disclosure

- Conduct standards
- Selection of distribution and advice channels
- Distribution and advice models
- Responsibilities
- Post-sale barriers and obligations
- Service levels



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## Key insights

- Regional convergence in regulation of healthcare insurance
- Financial sector regulation – insurance / financial products
- Universal healthcare
- Healthcare insurance = financial product
- Focus on consumer protection
- Over-regulation?
- Refine existing legislation and improve enforcement/ regulation?



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# THANK YOU



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