# Legal challenges mount against South Africa's National Health Insurance Act



Since its enactment in May 2024, the National Health Insurance (NHI) Act in South Africa has been the subject of significant legal opposition from key organisations within the health sector. These challenges, lodged in various courts, aim to amend or overturn the legislation amid concerns about its implementation, constitutional validity, and impact on healthcare delivery.

Five main legal challenges against the NHI Act have been registered, each brought forward by prominent bodies: the South African Medical Association (Sama), the Board of Healthcare Funders (BHF), the Hospital Association of South Africa (Hasa), the South African Private Practitioners Forum (SAPPF), and the trade union Solidarity.

The South African Medical Association, representing over 11,900 medical practitioners across public and private sectors, launched its challenge in April 2024 at the Gauteng Division of the High Court in Pretoria. Dr Mvuyisi Mzukwa, chairperson of Sama, described this as the most comprehensive constitutional challenge to date. Sama’s grievances include concerns over mandatory registration of all South Africans as NHI users, limitations placed on patients to receive care only at their registered primary healthcare facility—which may be overloaded or under-resourced—and centralisation of complaint management within the NHI Fund’s National Office. Additionally, Sama highlights ambiguities in service coverage, procurement procedures, the risk of overburdening healthcare professionals under stricter accreditation criteria, and insufficient medico-legal protections for private doctors operating under NHI protocols. Despite opposing the current Act, Sama supports universal health coverage and is part of the Universal Healthcare Access Coalition (UHAC), advocating alternative reforms believed to be more practical.

The Board of Healthcare Funders, which represents over 40 medical schemes, contested the Act in May 2024 also at the Gauteng High Court, seeking judicial review and setting aside of President Ramaphosa’s assent. Their concerns focus on the vague wording of the legislation, which they argue allocates excessive power to unelected officials with insufficient parliamentary oversight. The BHF also faulted the Act for lacking a clear funding model, restricting patient choice regarding healthcare providers and medical schemes, and imposing strict referral pathways that could undermine private sector viability. They criticise the government for not addressing these issues following public consultations and assert that the President should have referred the Bill back to Parliament instead of enacting it directly. The court heard this matter in early March 2024, with judgment pending.

The Hospital Association of South Africa, a collective including private hospital groups such as Mediclinic, Life Healthcare, and Netcare, filed its challenge in February 2024. Hasa’s primary objection concerns Section 33 of the Act, which restricts medical schemes to offering only complementary coverage outside the national fund’s benefits once NHI is fully implemented. The association labels these restrictions as irrational and questions the Act’s financial coherence and constitutional compliance. Melanie da Costa, chairperson of Hasa, affirmed their commitment to constructive engagement during the ongoing legal process.

The South African Private Practitioners Forum initiated its legal action in October 2024, challenging the constitutionality of the NHI Act on grounds including inadequate scrutiny by the President, vague provisions leading to uncertainty among healthcare providers and patients, and the absence of necessary feasibility and impact studies. Their case argues that the legislation violates rights to dignity, freedom to practice one’s profession, and access to healthcare.

Solidarity, a trade union with over 200,000 members, was the first to lodge a legal challenge shortly after the Act’s passage in May 2024. Their affidavit highlights the absence of a clear funding framework and the problematic role of the NHI Fund as a monopsony purchaser of health services. Solidarity is particularly critical of Section 33’s lack of explicit criteria governing the minister of health’s power to limit medical scheme services and views the Act as potentially undermining the state’s obligation to respect socioeconomic rights. The union also raises concerns about concentration of decision-making power within the Health Minister and the NHI Fund’s leadership.

In response to the legal controversies, Health Minister Dr Aaron Motsoaledi has publicly reaffirmed his support for the NHI Act, dismissing many criticisms as stemming from elitist perspectives. He highlighted that the Act aims to extend access to private healthcare services to the majority who currently rely exclusively on public facilities. Speaking at international forums, Motsoaledi described the NHI as a step towards equity and strengthened health resilience, ensuring financial protection regardless of socioeconomic status.

The Department of Health, through spokesperson Foster Mohale, acknowledged the legal challenges as part of organisations exercising their constitutional rights and emphasised the government’s commitment to transformative healthcare reform. Mohale cited extensive public consultations during the legislative process and underscored the government’s mandate to remove obstacles to quality and affordable healthcare for all citizens.

At this juncture, with several substantial legal proceedings underway and no definitive rulings issued, the future trajectory of the National Health Insurance Act remains unclear. The outcomes of these challenges are set to significantly influence South Africa’s healthcare reform agenda.

Source: [Noah Wire Services](https://www.noahwire.com)

## Bibliography

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2. <https://www.webberwentzel.com/News/Pages/the-nhi-act-a-flawed-execution-of-a-laudable-idea.aspx> - This analysis highlights the NHI Act's constitutional challenges, particularly how it infringes upon rights to access healthcare services, practice a trade, and own property, forcing patients to use a public healthcare system that may not meet needs.
3. <http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S0256-95742024000600001> - The article notes that there have been numerous legal challenges to the NHI Act, including those from major healthcare organizations, reflecting widespread concerns over its constitutional validity and implementation.
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