

REPORT OF THE PORTFOLIO COMMITTEE ON HEALTH AND SOCIAL DEVELOPMENT ON NATIONAL HEALTH LABORATORY SERVICE AMENDMENT BILL, [B15B-2017]

1. INTRODUCTION

The Speaker referred the National Health Laboratory Service Amendment Bill, [B15B-2017] (the Bill) to the Portfolio Committee on Health and Social Development (the Committee) for consideration and report back to the House in accordance with the legal prescripts and the Rules and Orders of the Mpumalanga Provincial Legislature.

In terms of section 118(1) of the Constitution of the Republic of South Africa 1996, the Legislature has a mandate to facilitate public involvement in the legislative and other processes of the legislature and its committees. It is against this background that the Committee conducted public hearings to solicit inputs and views from members of the public on the above-mentioned Bill.

2. OBJECTIVES OF THE BILL

The purpose of the Bill is to;

- i. Amend the National Health Laboratory Service Act, 2000, so as to define certain expressions;
- ii. Amend or delete certain definitions;
- iii. Make the Preferential Procurement Policy Framework Act, 2000, applicable to the National Health Laboratory Service;
- iv. Adjust the objects and duties of the National Health Laboratory Service;
- v. Strengthen the governance and funding mechanism of the National Health Laboratory Service and to provide for matters connected therewith.

3. METHOD OF WORK

The Committee was briefed by the National Council of Provinces (NCOP) permanent delegate, Hon LC Dlamini who was accompanied by representatives from the National *Report of the Portfolio Committee on Health and Social Development on Children's Second Amendment Bill [B14B-2015]*

Department of Health on 21 August 2018. The Mpumalanga Department of Health also attended the briefing.

The Committee then conducted public hearings in order to solicit inputs/comments from members of the public. The Bill was published in the following newspaper publications: Mpumalanga News in Ehlanzeni District, Middleburg Observer in Nkangala District and Khanyisa Weekly Newspaper in Gert Sibande District.

The Public hearings were conducted on Friday, 31 August 2018, from 10h00 – 13h00 in the following Districts:

DISTRICT	VENUE	No. of Attendees
Ehlanzeni	Mjindini Community Hall – City of Mbombela Municipality	151
Nkangala	Adelaide Tambo Community Hall (Ext. 7 Mhluzi) – Steve Tshwete Local Municipality	117
Gert Sibande	Wesselton Community Hall– Msukaligwa Local Municipality	119

The Committee thereafter met on 12 September 2018 to consider the draft report and the negotiating mandate on the Bill and such mandate was duly submitted to the NCOP.

4. INTERACTION BY THE COMMITTEE WITH NCOP PERMANENT DELEGATE AND DEPARTMENT OF HEALTH ON THE BILL

Hon LC Dlamini gave an overview on the National Health Laboratory Service Amendment Bill, the following was noted from her overview:

- The objectives of the Bill;
 - To provide cost-effective and efficient health laboratory services,
 - Support health research and
 - Provide training for health science education.

- The identified problems and challenges within the health laboratory services that necessitated the amendment:
 - Leadership, management and governance,
 - Service delivery versus business interests,
 - Interface between NHLS and external stakeholders,
 - Using fee revenue to fund national functions and
 - Poor internal policies and controls.
- The composition of the NHLS Board

Advocate Moabelo from the National Department of Health gave a brief yet detailed presentation on the Bill, the following can be highlighted:

- The composition of the NHLS Board
 - In the National Laboratory Services Act 37 of 2000, there is one member from each province represented in the Board, the amendment Bill removes representation from provinces;
 - There is now a proposal of three members representing the National Department of Health, Higher Education and Science and Technology against the two currently represented in the active Act;
 - Proposal for a Chief Financial Officer in the amendment Bill, currently not in the active Act;
 - The removal of a representative from South Africa Local Government Association (SALGA).
- The Amendment Bill empowers the Minister to finance to prescribe the funding mechanism for National Health Laboratory Services;
- The regulations to be gazette for at least one month before commencement as opposed to the currently standing three months.

The committee appreciated both the overview and the presentation, however, the following concerns were raised:

- The lack of detailed information on the funding of the NHLS;
- The removal of provincial and SALGA representation from the Board;
- The poor overall management of NHLS.

5. INTERACTION BY THE COMMITTEE WITH STAKEHOLDERS ON THE BILL

The following stakeholders were invited by the Committee to attend the public hearings held on 31 August 2018;

- i. Community Members
- ii. Department of Health
- iii. Mpumalanga House of Traditional Leaders (HTL)
- iv. South African Local Government Association (SALGA)
- v. Public Service Commission (PSC)
- vi. LANCET
- vii. AMPATH
- viii. South African Medical Association
- ix. Right to Care

During the public hearings, members of the Committee explained the Bill in the local languages spoken in the three listed districts. The stakeholders who were present at the public hearings expressed different views on the Bill. The following inputs were noted:

- Ad proposed amendment to Section 1
The insertion of the term “diagnostic health laboratory services” to the definitions, the term appears only in the now amended section 4. The stakeholders note that the term is an expansion of the health laboratories to include “the conducting of tests...and the associated participation in patient care with information about the presence, severity and cause of disease in patients”. Elsewhere in the Act the words “laboratory services” appear; is this in reference to diagnostic or health laboratory services as both the definitions are retained.
- Ad proposed amendment to Section 4 & 5
The NHLS will no longer provide training, but support training for health science education. It will further only promote the training of its laboratory and associated personnel. This is to elevate the burden on the NHLS. The stakeholders enquired on

what is to happen to the teaching grant that the NHLS receives from national treasury for this particular purpose. If they propose to only support training, asked on who the main training provider would be. This amendment creates uncertainty on the position of training of undergraduate medical students as well as technologists trained by the NHLS. The NHLS further provides training to health officials at the instance of the department when called upon. Clarity needs to be obtained on the effect these provisions will have on the training of the officials.

- Ad proposed amendment to Section 7

The proposed amendment to reduce the size of the board, whereby positions that were previously held by individuals from the nine provinces fall away. This is reportedly a serious concern to the stakeholders due to the fact that the board, in terms of section 6(2) (a) determines the policy of the NHLS. The very same policy that may affect one province differently compared to the next. Legislation such as the Traditional Health Practitioners Act 22 of 2007 which established the interim Traditional Health Practitioners Council consisting of maximum 22 members, nine of whom are traditional health practitioners from each Province as well as the Pharmacy Act 53 of 1974 which established the South African Pharmacy Council which has as members, nine pharmacists nominated by each MEC of the respective province amongst others. The need for the inclusion of provincial representatives especially in health related matters cannot be understated on account of the fact that health services is one of the matters of concurrent legislative competence of both National and Provincial governments. This Bill has a direct effect on the provinces and therefore representation is imperative.

A reason advanced for the removal of these membership positions was that provincial executives were failing to nominate members. The stakeholders reported that this can be remedied by subjecting the nomination process of provincial representatives to the same procedure laid out in section 8(2) of placing notices in the respective gazettes for interested persons to nominate individuals they believe are fit for appointment.

A further argument advanced on the proposed amendment was that the members use their positions on the board to advance provincial health department agenda because these members are appointed because they are nominated by the

provincial executive. The call for the impartiality of board members. The stakeholders cited that if legislator intended for absolute independence and impartiality of board members, the legislation would have expressly excluded members within the employ of the health departments of the respective provinces from being appointed to the board. The current amendment reportedly does not exclude employees from provincial health departments therefore the argument on impartiality is not well established and the department is of the opinion that it cannot be upheld. It would be appropriate to rather revisit the manner in which provincial representatives are appointed rather than to exclude them all together. Potential members, even if they are in the employ of the department should no longer be nominated by provincial executives and should be subjected to a process of applying directly or by the process stated in Section 8(2).

A further argument was that provincial representatives fail to attend meetings which affects the ability of the board to make decisions as no quorum can be constituted. The stakeholders stated that this argument is also not sound as the poor attendance of members cannot be imputed squarely at the provincial representatives. Even if all nine of the provincial representatives are not in attendance, the remaining members should be able to form a quorum. Attendance of meetings is the responsibility of ALL members. It was also stated that provincial representatives also fail to participate and make contributions to the work of the board. The Act makes provisions on how matters of this nature can be addressed. Section 10(1) (e) empowers the minister to withdraw the appointment of a member on account of their incompetence or unfitness to fulfil their duties.

The final argument advanced was that members resign due to the political changes made within the provincial executive. The members of the board are appointed for a fixed period notwithstanding these changes.

- Ad proposed amendment to Section 7
The member appointed in terms of section 7(1) (e), being the representative from organised labour, should not be eligible for appointment as Chairperson of the board. This position should be reserved for members appointed in terms of 7(c) and 7(d) as they possess the necessary skillset and expertise. A member from organised labour

cannot chair a meeting and also have a casting vote when issues relating to employee relations are being decided upon. There will be conflict of interest.

- Ad proposed amendment to Section 11
The current position is that the Chairperson votes during deliberations and in the event that there is an equality of votes, he had an additional casting vote. The deletion of the words “in addition to his or her casting vote” in the proposed amendment creates confusion on whether or not the Chairperson has a deliberative vote. It is not stated elsewhere in the Act or the Bill that he cannot vote during deliberations. If it is the intention of the legislator that the Chairperson does not vote unless there is an equality of votes, then this should be expressly stated as the formulation of the provision as proposed creates uncertainty because it is unclear.
- Ad proposed amendment to Section 18
The amendment provides for the minister to prescribe (by way of regulation), the financing mechanism for the Service to ensure its sustainability. The basis of the proposed amendment was that provinces were not paying for the services rendered by the NHLS resulting in the NHLS experiencing challenges in running its services. It is also indicated in the memorandum of the objects (which is the intention of proposing this legislation) at Par 4 that the new funding model moves away from an inefficient fee-for-service reimbursement system. The impression created is that the provinces, in terms of the Bill, will not have to pay for services. However, the very same memorandum goes on to state that “ with regard to the core mandate of providing pathology services to the public sector, tests will be based on a current cost structure through capitated model of re-imburement”. You cannot seek to eliminate the inefficient fee-for-service that resulted in massive provincial debt and also retain it in the same breath.

A model was previously presented to the department where there would be services that would be labelled as the “in basked” services. The provinces would not be paying for these services anymore as funding for them would be through money appropriated from Parliament directly to the NHLS. Whether this means that provinces will no longer receive money for NHLS services is unclear. What is clear is that section 18(3) of the Bill allows for the service to charge fees for services not

covered by the financing model. These are the so-called “out-basket” services. Having already appropriated the money for in-basket services, the stakeholders enquired on where the provinces are in having to finance the out-basket services, how provincial expenditure would be monitored on the in-basket as well as the situation when the in-basket services runs out. There is a likelihood that provinces will struggle to pay for these out-basket services which will place the NHLS in the current position it find itself in.

Legislation has to be clear. The current Bill as it is drafted creates confusion on the position of the payment for services, further exacerbated by the repeal of Section 20 which dealt with the charges for services. The departments’ position is that all services rendered by the NHLS to the public health sector should be funded through money appropriated by parliament and the legislation should be clarified to indicate that the NHLS will only charge fees for services rendered to foreign governments and the private health sector.

Proposed amendments

The Mpumalanga Province is in support of the passing of this Bill provided the following changes are made. Citing that these matters cannot be left to the regulations as the regulations are informed by the Bill therefore the Bill must be clear so as to not create confusion on the intention of the Bill.

- Bill should clarify the position on who will provide the training for health science education if the NHLS only plays supporting role particularly with regards to undergraduate medical students;
- Retain the provincial representatives in the board;
- Indicate that the organised labour representative is ineligible to be appointed as the chairperson/ vice chairperson;
- Clarify on whether the Chairperson has a deliberative vote;
- Indicate that ALL services rendered to the public health sector will be covered by appropriated funds.

6. OBSERVATIONS AND FINDINGS BY THE COMMITTEE

The Committee considered all submissions made by members of the public and state institutions.

The Committee made the following observations and findings regarding the Bill:

a. Views of the public on the Bill

- Members of the public in the Ehlanzeni District public hearing that was held at Umjindini Community Hall within City of Mbombela Municipality rejected the Bill, in the absence of provincial representation;
- Members of the public in the Gert Sibande District public hearing that was held at Wesselton Community Hall within Msukaligwa Local Municipality and members of the public in the Nkangala District public hearing that was held at Adelaide Tambo Community Hall within Steve Tshwete Local Municipality supports the Bill, with the following conditions:
 - Inclusion of provincial representatives;
 - Budget allocation for training not limited to NHLS personnel only;
 - Improved overall budget allocation for NHLS;
 - Doing away with service fees in identified rural areas for improved access.

b. Constitutional Implications

The Bill is consistent with the Constitution, in particularly Section 76 that provides a procedure in dealing with Bills affecting provinces, it is also consistent with section 118 that deals with public access and involvement in provincial legislatures. The Bill is further consistent with Rule 201 of the Rules and Orders of the Mpumalanga Provincial Legislature when dealing with National Bills affecting provinces.

7. RECOMMENDATIONS

The Portfolio Committee on Health and Social Development after considering the Bill confers on the permanent delegate representing the Province of Mpumalanga in the NCOP, the mandate to vote in favour of the Bill.

8. CONCLUSION

The Chairperson wishes to thank all members of the public for their worthwhile involvement and participation in the public hearings and for the inputs and comments they have made. A word of gratitude to the NCOP permanent delegate, Hon Dlamini, both the National and Provincial Department of Health, Members of the Portfolio Committee on Health and Social Development for their efforts in ensuring that the Committee meets its obligation and the support staff who contributed to the success of the public hearings and the production of this report.



HON DF MANANA
CHAIRPERSON: PORTFOLIO COMMITTEE
ON HEALTH AND SOCIAL DEVELOPMENT

13.09.2018
DATE



Office of the Chairperson

Portfolio Committee on Health and Social Development

Enquiries: Hon DP Manana/Adv T Mosoetsa

Tel. No: 013 766 1140/ 1378

NEGOTIATING MANDATE

To : The Chairperson: Portfolio Committee on Health and Social Development

Name of the Bill : National Health Laboratory Service Amendment Bill

Number of the Bill : [B15B - 2017]

Date of Deliberation : 12 September 2018

Vote of the Legislature

The Portfolio Committee on Health and Social Development (the Committee) supports the National Health Laboratory Service Amendment Bill [B15B-2017], and confers on the permanent delegate representing the Province of Mpumalanga in the National Council of Provinces, the mandate to vote in favour of the Bill with the following amendment as proposed below:

CLAUSE 5: "Composition of Board"

On the Section of the Composition of the Board to read as follows: "**The board consists of the following members, appointed by the Minister:**

1. The chief executive officer by virtue of his or her office;
2. The chief financial officer of the Service by virtue of his or her office;
3. Three members representing—
 - a. The National Department of Health;
 - b. The Department of Science and Technology, nominated by the Director-General of that Department;

- c. The Higher Education Sector, nominated by the Council on Higher Education;
4. Six members who must have extensive experience in the fields of:
 - a. Commerce, finance, auditing and economic matters;
 - b. Corporate management;
 - c. Public health;
 - d. Diagnostic laboratory services;
 - e. Legal matters; and
 - f. Epidemiology;
5. One representative of Organised Labour and;
6. **Nine provincial representatives in health related matters**

Kind regards,



HON DP MANANA (MPL)

**CHAIRPERSON: PORTFOLIO COMMITTEE ON
HEALTH AND SOCIAL DEVELOPMENT**

13'09'2018

DATE