COMMENTS ON THE NATIONAL HEALTH BILL

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Preface

These comments have been prepared in a hurry to meet a South African Medical Association deadline due in a few days. The section in the bill on definitions has not been fully scrutinised.

Purpose of the legislation

The purpose of the legislation should not be broad as in a mission statement but should be specific. It should also not attempt to address all the issues over which the departments of health in the three tiers of government have jurisdiction.

Incorporating many issues into one bill/act would delay the resolution of an issue – the separation of functions between the different tiers of government – which this bill/act should address and which has for decades hampered the efficient provision of medical services to South Africans. Most of the issues are complex and some are controversial. Many fall within the jurisdiction of more than one government department. Laws on several issues relevant to health and disease have already been passed recently. Other issues such as human rights and criminal justice are addressed in other general laws.

The national health bill/act should be strictly limited to defining in law:

- the responsibilities of the health departments in the three tiers of government (national, provincial and local) in respect of medical service provision

national:	determining policy and standards, developing and maintaining a national medical service information system
provincial:	supervising, monitoring, and evaluating service provision
local:	providing all services (see caveat on the definition of local)

- the relationship between these three health departments
- the relationship between these three health departments individually and jointly with other government departments, the private medical service sector, non-profit organisations and NGOs, and civil society
- the relationship between these three health departments individually and jointly with international organisations
- the relationship between this legislation and other legislation directly relevant to health and disease whether promulgated and administered by the departments of health or by other government departments
- the relationship between this bill/act and parallel sections in the Health Act no. 63 of 1977, and which this bill/act should replace.

Implicit in the above is the conceptualisation of health as a state of being of individuals and groups. As such the health of the nation is the responsibility of many

if not all government departments and of civil society. Other issues some of which are included in the bill therefore should be addressed in other legislative instruments.

Definitions

The Departments of Health are the only departments concerned with medical care but together with other departments of state and with civil society they are concerned with the promotion and protection of health at both the personal and the public level. This should be spelt out unequivocally in the bill/act.

I therefore suggest the following definitions:

health	a state of well-being … as defined by the WHO
health care	no such thing - not to be used
medical care	care of individuals (ie personal, not public care) comprising health promotion, maintenance, and protection, disease prevention and diagnosis and patient management to promote disease cure and control, personal rehabilitation, and palliation – not confined to what doctors do: anybody who provides any of the above services is practising medical care.

levels and types of care:

primary care	first contact medical care in an out-patient, ambulatory setting
secondary care	next (intermediate) level of medical care
tertiary care	highest level of medical care
emergency care	stabilisation of severely injured, very ill or unconscious patients
first aid	immediate attention to injured, very ill or unconscious patients

health promotion, maintenance, and protection and disease prevention –
not distinct activities but it is useful to define them separately

health promotion, maintenance, and protection

comprehensive, inter-sectoral, and multi-disciplinary activities operating at both the personal and the group level and directed more at health than at disease

disease prevention as for health promotion but directed more at disease than at health

levels of disease prevention: levels tend to merge into each other

- primary preventing a disease from starting
- secondary preventing the disease from getting worse
- tertiary preventing complications from the disease

rehabilitation improving function after disease-induced disability

palliation TLC (tender loving care) when nothing else can help as in the case of terminal illness and severe intractable pain

basic health services

There is a very real problem with the definition of basic health services as "those services as prescribed by the Minister, after consultation with the National Health Authority". More than enough time has already been wasted in this country in attempting to define this concept and the bill implies that this debate should continue. Service needs are dependent on the particular social, cultural, political, and economic circumstances operating in a specific place and time. If this provision is not removed from the bill I envisage the National Health Authority (unless itself scrapped as I suggest below) being in permanent session for ever on this issue alone!

There is in this country as elsewhere a need to set priorities and to ration services. This will address the concern identified in the bill for affordable services and the moral need to provide at least something to everybody - hence so-called "basic services". I think that the bill/act should specify the conditions (including public participation, transparency, and accountability) for the setting of priorities and the rationing of services. This should be customised according to local circumstances and subject to regular review.

academic medicine teaching, training and research into all aspects and levels of medical care and personal and public health, and applicable to all categories of medical care providers.

district, local authority, municipality, or metropolitan area

Municipalities, local authorities, the old so-called section 30 areas and the tribal authorities have been or are still in the process of being amalgamated into larger integrated and unified units. These should be coterminous with magisterial (judicial) districts and should constitute the administrative units for what the bill refers to as health districts. In anticipation of the completion of this amalgamation the national health bill/act must be quite specific and unambiguous on this. The country can no longer afford to have several units of administration and the attendant confusion. Because health and disease is the responsibility of all sectors of the state and civil society, an integrated intersectoral approach within the same geographic boundaries is essential. Therefore only the word that defines local government in all legislative instruments in the whole country must appear in the bill/act.

Notwithstanding the above the amalgamated unit should have the right to devolve its functions and responsibilities to subsets within itself and to contract for services to be rendered by the SADF, the SAPS, research institutions, and organisations and

individuals in the private sector such as hospitals, clinics, private medical practices, commercial and industrial enterprises, social welfare agencies, self-help groups, etc.

Medical service information system

This term encompasses the recording (including patient records), collection, collation, analysis and reporting of all data relevant to the prevention and management of disease. It does not refer to information on health as defined above and is therefore not a health information system (HIS).

Other definitions

Words in common use such as gamete do not have to be defined in the bill/act. Then there is the strange definition of the word "organ" …

Terms such as communicable diseases should be avoided. If reference needs to be made to disease categories it is best to use terms from the ICD (International Classification of Diseases) publications. Blanket terms such as health research and health surveillance should not be used and therefore do not need to be defined. Research and surveillance have standard definitions. Linking them with the ambiguous word, health, creates confusion and a legal definition with subdivisions of the concatenation serves to restrict the ambit of the definitive word.

If definitions from other bills/acts are used, these should be redefined in this bill/act. There should be no referral for definitions to other bills/acts as is the case for example with "health officer". The bill states that a “health officer means “health officer” as defined in the Health Act, 1977 ". I have assumed this is what used to be called an inspector of health and more recently an environmental health officer.

Laws and regulations

The bill/act should not contain details that are better handled by regulations such as the exact composition of advisory and other bodies and committees. The detailed functions of the health departments also do not have to be spelt out in the bill/act. Similarly, offences, and functions of health officers and examples of issues on which the Minister will have power to promulgate regulations should not be itemised in the bill/act. What happens if something was omitted or changes or becomes irrelevant over time? Will amendments have to be passed by parliament each time?

Authorities, committees, and other bodies

There is no need for statutory advisory bodies. If the functions of the health departments in the three tiers of government are not duplicated and their interactions clearly defined, there will be no need for national, provincial, and local Health Authorities nor for a National Health Management Committee. Besides it has been

the experience especially in the recent past that similar bodies waste time and money and delay decisions unnecessarily and often indefinitely.

Provision is made for the establishment of special advisory and technical committees. This provision should suffice where in-house expertise needs to be supplemented. The right to establish such committees should be provided to all three tiers of government and not only to the National Minister of Health.

While constraints on the composition and business of such committees could be specified in accompanying regulations it is not necessary for the bill/act to specify conditions for the establishment of specific operational committees. It is also not necessary to specify by whom the parameters must be determined, who and what bodies must be represented on the committees, nor the procedures for conducting business. The rights of the public should however be protected by prescribed processes for public participation, supervision, transparency, and accountability.

Separation – not duplication – of responsibilities

Duplication of functions between the three tiers of administration should be avoided. There should be a clear separation of duties but with a chain of accountability and mechanisms for feed-back and support. For example: local authorities must implement the policies and apply the standards as determined nationally. Provinces must ensure that they do so and support them. The local authorities must report to the provinces who in turn must report to the national department on their own and the local authorities' performance and problems. The provinces must give feed-back to the local authorities. The national department must respond to the issues raised by the provinces and use the provinces as their conduit to the local authorities.

Plans and finance

The bill makes provision for every tier of government to "prepare strategic medium term and annual health plans" and for the "Director-General [to] annually compile a summary of the health plans of the national department and provincial departments and [to] submit these to the National Health Authority for recommendation". The mind boggles at the enormity of the effort, and the time and money to be wasted.

What's the point? The bill states that this is needed as a basis for deciding on the annual budgetary requirements of the National Health department. But local authorities and areas within local authorities have different financial requirements. There should be goal and target-setting rather than planning. These processes should be decentralised to the smallest possible unit and the budgetary requirements should be built up from these. Care providers and the public being served know generally what needs to be done. They should be encouraged and empowered by legislation to participate in setting local goals and targets and in considering how the local budget pie should be divided and possibly also supplemented by local donations and fund-raising efforts.

The financial requirements for medical services should not be separated from the activities of the other sectors within a local authority where these impact on health and disease such as housing, transport, recreation, policing, etc. With this is mind it would be better for each local authority's health department to submit its budget requirements to its own financial department so that the needs of the different sectors can be integrated and each local authority can administer its own budget. Each local authority's health department should be allocated finance by its own unit and be accountable to it for how the money is used. The need for the National Health Department to collect and interrogate data so as to be able to decide on the annual budgets of the other tiers falls away.

The provinces should nevertheless continue to exercise their supervisory and supportive roles and to report to the national department on the goals, targets and financial performance and requirements of the local authorities' health departments. The data will serve primarily to inform policy decisions.

Information systems

A national medical service information service (MSIS) must be adminstered by the National Health Department and must be the only one used by the other tiers of government and by all service providers, both public and private, when reporting to the National Health Department.

Regulations within this bill/act will have to provide for regular reviews of the scope of routine data on morbidity and mortality (including drug related and other causes of disease as well as perpetrators of injury as in the ICD) and service provision (including physical and human resources), etc to be collected and submitted to a central national data processing and storage depot, and for the determination from time to time of additional ad hoc data requirements.

Legislation should specify penalties for non-compliance with data submission and feed-back, penalties for breaches of confidentiality, and other matters not covered in legislation dealing with human rights, freedom of information, professional conduct, research into health and disease, etc.

The data should be used to monitor and evaluate achievements in respect of previous plans, proposals and projects but especially goals, targets and utilisation of funds, and to make recommendations on future goals, targets, and budget and resource requirements. The data and the analyses should therefore be accessible from the central depot to every level and authority in the three tiers of government, to all service establishments and to all service providers within the jurisdiction of this bill/act, as well as to other public and private sector bodies and individuals, according to conditions to be specified in regulations.

The MSIS must also be accessible to other information systems in the country such as those administered by SAS and internationally such as those adminstered by the WHO, and be able to interface (both IN and OUT) seamlessly with them.

With a national MSIS in place there will be no need for the old notification system as recommended in the bill for "certain communicable diseases" only (!). There is also no need for a national or a provincial Health Information System Committee.

Sections that should be excluded

The following sections should be excluded from the bill/act (listed in the order in which they appear in the bill). Some are briefly considered below.

- rights and duties of users and care providers
- health establishments
- certificates of need (CON)
- academic health service complexes
- human resources
- use of tissues and organs in humans
- surveillance
- research and ethics
- environmental health

rights and duties of users and care providers

Issues in this section of the bill are either covered in these comments or are addressed in other legislative instruments.

health establishments

The establishment of places where medical services should be allowed to operate and the acquisition of equipment should not be addressed in this bill/act. Legislation needs however to be enacted – if it does not already exist – to specify and control the parameters of all public and private sector health establishments including all categories and sizes and all levels of care. Provision should be made for inspection and penalties for transgressions.

certificates of need (CON)

Like graduates everywhere South African medical graduates are vulnerable to being poached by other countries and within South Africa by the private sector from the public sector and from affluent urban to deprived rural areas unless they are encouraged, nurtured, supported, promoted, and respected in every way including appropriate financial remuneration, adequate, if not good, working conditions, and perhaps even incentives. From this perspective certificates of need to practice in

order to redress human resource maldistribution, promote equity or for any other purpose are counter-productive and should not appear in any bill/act.

If certificates of need are nevertheless included in the bill/act, the specific details should be changed as they are currently totally irrational and impractical. The need for renewal implies that if permission is not granted an establishment (even a large hospital) must be closed down and in the case of service providers, they together with their partners, children, grandmother, elderly aunts, employees and other dependants and hangers-on, the dog, goods, and chattels must relocate elsewhere!

academic health service complexes

Academic health service complexes are defined in the bill as “several health establishments and a consortium of educational institutions all working together to educate and train a wide range of health professionals and conduct research. This is an unwieldy conglomeration. Institutions of learning and research should not to be attached legislatively and administratively to service delivery facilities. Facilities for practical training and for teachers, trainers, supervisors, and mentors in the practical learning component can be contracted from relevant establishments and individual service providers according to need and under specified conditions.

The training and education of medical service personnel should be regulated by separate legislation within the departments of health and education and other relevant government departments. The SAQA, the SGB, professional councils, committees and boards such as the HPCSA are legislatively charged to control syllabuses and curricula as well as post-graduate study and CPD for all categories and grades of human resources involved in every aspect of health and disease.

The regulation of research into health and disease conducted by members of academic institutions should be vested with the institution and determined by government departments with due compliance with relevant statutes in respect of the place, time, source of funding, and subjects studied.

human resources

The National Health Department must not specifically be entrusted in law to "develop policy and guidelines for and monitor the production, provision, distribution, development, management, and utilisation of human resources within the health system". This function is subsumed within the general responsibility on policy development of the National Health Department. In other words this section is duplicated; it should not be specifically or separately referenced in the bill/act.

All manner of people work in the health and disease sectors. They should be trained in academic institutions as discussed above and elsewhere as appropriate. Their performance and actions should be regulated by professional councils, committees and boards and by the terms of their employment contracts. Data collected by all the

bodies involved in their training and employment can form the basis for a monitoring and evaluation process within the health departments' MSIS programme and related data management programmes in other government departments.

use of tissues and organs in humans

This section definitely does not belong in this bill/act. It needs its own bill/act.

surveillance

The bill joins the word health to surveillance and defines the joined term "to include morbidity and mortality surveillance, disease surveillance, health systems surveillance, epidemiological surveillance, and socio-demographic surveillance".

The definition is tautological and circular (surveillance is surveillance). The recommended MSIS should provide enough data with which to survey service provision. If as recommended the MSIS interfaces seamlessly with data from other state sectors, a comprehensive picture can be obtained. Where this is not possible or where any tier of government determines that there is a need for a more focussed ad hoc survey it can be done within the department itself or a body or individual can be funded to pursue such an investigation within the regulations on the MSIS.

There is no need in the bill/act to refer in any way to surveillance however prefixed.

research and ethics

Research in an academic institution has been discussed above and does not fall within the ambit of this bill/act. Research in a medical service or health establishment other than routine operational analyses of data from the MSIS should be controlled by the legislation that also regulates the activities of the existing Medical Research Council and other research councils. This includes considerations of research ethics.

With this in mind the sections on ethics with its recommendations on councils and committees in the bill/act falls away.

environmental health

This is an area that straddles many statutes and departments. A separate bill/act is needed to do justice to this big and important area.