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MICHELE CLARKE, MP
SHADOW MINISTER OF HEALTH

22 August 2022

Hon Dr Kenneth Leonard Jacobs

Chairperson of the Portfolio Committee on Health

Per e-mail: rkennethjacobs@gmail.com; kjacobs@parliament.gov.za; grhoxo@parliament.gov.za

Dear Hon. Jacobs

REQUEST TO HALT ALL NHI DELIBERATIONS UNTIL UNCONSTITUTIONAL CERTIFICATES OF NEED CONFIRMED

I refer to the above request as well as to my previous communications.

As previously mentioned, the North Gauteng High Court recently ruled that sections 36 to 40 of the National Health Act, relating to certificates of need ("CON"), are unconstitutional.

You are aware that CON's feature heavily in the NHI Bill and are a fundamental aspect of it. If the Constitutional Court is to confirm the unconstitutionality of these provisions, the NHI Bill may require significant amendments, if not changed in its entirety.

From my understanding, the judgment handed down by the Court is being appealed and frankly, it is nonsensical for the Committee to sit and deliberate, on a clause-by-clause basis, from 09:30am to 20:00pm on 23 August 2022, a Bill that may not even exist upon confirmation by the Courts.

There is no basis to push this Bill through the Committee with the current proverbial axe hanging over its head. If the Bill were to be pushed through prematurely, and the Courts confirm the unconstitutionality of the offending provisions, it will cause embarrassment on the part of the committee. For reference, I refer you to the instance of the AARTO Act in which Parliament pushed through an unconstitutional bill which was later set aside by the Courts.

Accordingly, and respectfully, I urge you to consider postponing all deliberations on the NHI Bill until such a time as we have legal certainty. I would like to emphasize that while there will be no prejudice suffered as a result of delaying these deliberations, the consequences of not delaying these deliberations would be far greater than any benefit derived.

In addition, by delaying the deliberations of the NHI Bill, it will give the Committee valuable time to conduct oversights, as the Committee should be doing, at poorly run hospitals such as Livingstone Hospital in the Eastern Cape, or Pelonomi Hospital in the Free State. It the people of these areas that need the assistance of this Committee most, and urgently so.

Given the gravity and urgency of the matter raised above I look forward to your urgent response so that the Committee can plan accordingly for the day.

Yours Sincerely,

Michele Clarke MP

Shadow Minister of Health

Democratic Alliance