

NHIF (AMENDMENT) ACT OF 2021 HIGHLIGHT AND REVIEW

By Dr Kahura Mundia

On 10th of January 2022 the NHIF (Amendment) Act was assented to and it was set to commence on 28th of January 2022.

The key changes to the act are as follows:

- I. **Renaming:** National Hospital Insurance Fund to National Health Insurance Fund
- II. **Cards:** Usage and requirement of NHIF cards plan to be abolished
- III. **Children:** The definition of a child under the act has been made to include a stepchild, adopted child and situations where there exists loco parentis-
- IV. **Employer:** Improvement of the definition of an employer-An employment relationship exists where there is a contract of service; Relationship can be interpersonal, with national government and entities or with county government and entities
- V. **Beneficiaries:** Definition of beneficiary- persons below 21 years without an income and who are contributors; persons below 25years and who are on full time schooling and training; disabled persons who are under a contributor; spouse; contributors
- VI. **Health Care Providers:** Definition of HealthCare Provider-Now includes individual care givers as well as facilities providing services that are of the nature: outpatient, inpatient, diagnostic, therapeutic, nursing, rehabilitation, palliation, convalescence, preventive and promotive
- VII. **NHIF Funds:** Sources of the funds to the fund clarified and will include individual contributions, National Assembly special allocations for indigents and vulnerable persons, Gifts, grants and donations, compulsory public service insurance benefit scheme, and funds from post-retirement fund schemes.

- VIII. **Board changes:** Now made up of 10 members; Chairman appointed by the president; PS-Health, PS-Finance, Kenya Medical Association rep, Federation of Kenya Employers rep, COTU rep, Two reps from the Council of Governors, and Two appointees by the CS Health. Representation by KNUT, KUPPET, and faith-based healthcare organizations repealed. Specificity of the two appointees by the CS as at 2012 provided that the appointees were to be from Association of Kenya Insurers and a representative from the Non-Profit Healthcare Providers. Currently no specificity exists on the appointments.
- IX. **Objects and Functions of the Board:** Revised to include empanelling and contracting of healthcare providers as the requirements of all the existing regulatory bodies; Facilitation of attainment of UHC with respect to health insurance.
- X. **Role of Public Participation:** Entrenchment of public participation and stakeholder involvement in the act.
- XI. **Contribution Rates:** Board has been given powers to determine the rate of contributions to be made into the fund
- XII. **Board remuneration:** To be guided by SRC guidelines
- XIII. **CEO appointment:** Function expressly allocated to board; CEO to serve as ex-officio member of board; process of appointment to be made competitive; remuneration according to SRC terms; qualifications-Minimum relevant masters training, 10year work experience as a senior manager; chapter 6 of CoK 2010 merits; Terms of service capped to a term of 3years, with a further renewable one term option. Previous position no term limits and qualifications were provided.
- XIV. **Corporation Secretary:** Appointment created; Requirements of a duly qualified CS provided; To serve as secretary to the board.
- XV. **NHIF Seal:** Revision of NHIF common seal uses as required of and by board members
- XVI. **Registration of Members:** All persons on attaining age 18 and who are not existing beneficiaries. Further regulations to be issued on this.
- XVII. **Contributions:** To be made by all persons resident in Kenya; over 18years; salaried and self employed persons. Contributions done by the 9th day of every month.

- XVIII. **Liability for contribution:** National Government and entities as employer; County Government and entities as employer; Private Employers; National Government for the case of indigents and vulnerable persons; Self-employed persons;
- XIX. **Self-employed persons:** To be further defined in regulations; distinctions to be made where person is a sole beneficiary and where self-employed person has other beneficiaries dependent on them.
- XX. **Standard and Matching Contributions:** To be made by all employers(National Government and entities, County Government and Entities and Private Employers)
- XXI. **Exemption of Private Employers:** Matching contributions exempted where private employers take out private insurance that is better or equal to benefits provided under NHIF.
- XXII. **Exemption procedure:** Application to board; Requirements-Provide IRA certificate of adequacy and sufficiency of private cover (availability, benefits and validity period). Period of determination of exemptions to be within 30days of applications
- XXIII. **Rates of NHIF contribution:** To be based on total income earned whether salaried or self-employed and to be mandatory;
- XXIV. **Enhanced benefits:** Provision allowed for additional voluntary contributions to the scheme for persons to get enhance benefits.
- XXV. **Guidelines:** Contribution regulations to be made to allow for the streamlining of contributions.
- XXVI. **Matching Contributions:** These are not be deducted from an employees salary.
- XXVII. **Enhancement of Penalties and Fines to Offences:**
- a) **Non-payment, late payment and non-remittance** of standard and matching contribution-employer to be fined Kshs 500,000 up from Kshs 50,000.
 - b) **Late Contribution penalties:** A percentage interest rate based on current CBK rate on all pending contributions; Previous position-micro and small enterprises 25% of contribution, other cases 2 times penalty provision repealed.

- c) **Special Contribution:** 10% penalty to be paid by self-employed and by the National Government which is responsible for the payment of special contributions to indigents and vulnerable persons.
- d) **False statements of contribution:** penalty enhanced to Kshs 1 million or at least 1 year imprisonment or both terms; Previous penalty was Kshs 10,000 or at least 6months or both terms.
- e) **Benefits Fraud Payments:** Penalty enhanced to a minimum of Kshs 1 million or 6 years imprisonment or both terms; Previous penalty was Kshs 500,000 or 2years imprisonment term.
- f) **Impersonation of living or dead persons:** Penalty enhanced to Kshs 1 million or 3years or both terms; Previous penalty was Kshs 500,000 or 3years imprisonment term.
- g) **General Penalty:** Enhanced to Kshs 1million or two years or both terms; Previous penalty was Kshs 50,000 or 2 years or both terms.
- h) **Inspection delay and obstruction of inspectors:** Enhanced from Kshs 10,000 penalty to Kshs 100,000 or 6months imprisonment.
- i) **Inspectors falsification of reports:** Enhanced to Kshs 10 million or 5years or both terms; Previous penalty was Kshs 10,000 or 1year or both.
- j) **Striking out of healthcare providers from register of providers:** Gazettement to be effected, 2 newspapers of wide circulation and NHIF website.
- k) **Revocation of empanelment:** Due process to be followed, notice of revocation to be issued, 7 days allowed for a response to be made; board review to be made and appeals to be forwarded to high court; After revocation of empanelment-information to be published to 3 newspapers of wide circulation

XXVIII. **Costs of Care Liability and Reimbursement:** This to be shouldered and recovered from employer where employer fails to remit NHIF contributions; Accounting officers to be personally held liable.

XXIX. **Case of Unemployed persons:** The board shall prescribe rates to be paid under voluntary contributions.

- XXX. **Mode of Identification of Beneficiaries:** New system of identification to be employed where existing legal framework of national registration is to be followed; Roll out of the biometric identification system.
- XXXI. **Centralized Healthcare Provider Management System:** A healthcare management information system shall be installed and used by all healthcare providers for the purpose of claim management, payments and data collection.
- XXXII. **Payment of services:** NHIF board shall endeavor to pay Healthcare providers for all expenses incurred in service provision as per the set limits and conditions of benefits. Emergency treatment for conditions such as primary angioplasty, thrombolysis, thrombolysis with rescue angioplasty as well as other emergent conditions to be catered for as well on direction by the board.
- XXXIII. **Enhanced schemes:** These may have different tariffs payable to healthcare providers as well as contributions into the fund. The tariffs shall be reviewed every two years.
- XXXIV. **Use of risk spreading:** This is to be employed by NHIF and it means transfer, sharing or distribution of the risk insured as between one or more insurance companies or other providers with a view to reducing the financial cost in the eventual happening of the insured event.
- XXXV. **Effect of Private Insurance:** This shall pay upto the limits of coverage. NHIF fund shall top up for care coverage after private insurance limit exhaustion subject to beneficiary limits as set by board. Daily rebates shall also be paid for inpatient care.
- XXXVI. **Non-Withdrawal of Benefits:** Board shall not withdraw the benefits of persons with chronic illness and shall also make regulations for the access of inpatient care services.
- XXXVII. **Delegated Legislation:** Cabinet Secretary to come up with regulations on amounts and rates of contribution, rebates to contributors who make voluntary contributions, healthcare provider services fees to be levied and conditions for treatment benefits variance.
- XXXVIII. **Empanelment:** Regulatory bodies as established in Health Act to be used to guide process of empanelment

- XXXIX. **NHIF Investments:** Central bank to advise on NHIF investments in reputable banks, Funds can be invested in GoK securities; Investment in procurement of medical equipment and advancement of investment of funds to hospitals repealed.
- XL. **NHIF Audits:** To be done at the end of each financial year in accordance to the Public Finance Management Act of 2012 and the Public Audit Act of 2015. Report of operations to be shared to by Cabinet Secretary to the Parliament.
- XLI. **Institution of Legal Proceedings:** Requirement of 3-12months investigation period to gather sufficient evidence has been repealed. The board shall be at liberty to institute legal proceedings as it deems fit.
- XLII. **Non-Attachment of Assets:** NHIF funds shall not be attached following the proceedings of any legal dispute.
- XLIII. **Work Injury Benefits Act:** To be applied and reimbursements not to be double claimed from NHIF.
- XLIV. **Insurance Act Compliance:** Provisions to apply only in respect to risk spreading and claims administration services
- XLV. **Retirement Benefits Act Compliance:** Provisions to apply only with respect to post-retirement medical contributions.
- XLVI. **Vacation of Office:** Any member of board can resign from office with the exception of the CEO; Resignation letters to be forwarded to CS. Previously the Chairperson and CEO were disallowed from resignation; Powers of CS to remove members of board equally put in check.
- XLVII. **Board Honorary Treasurer:** Requirement to elect a honorary treasurer to the board repealed.
- XLVIII. **Meetings Notice:** Requirement of at least 3/4 board members to agree to a 14 days notice before scheduling of meetings repealed.
- XLIX. **Board Quorum :** Changed to 5 members of board from the previous 9 members. Board meeting guidelines to be established.
- L. **Current Board Members:** Transitional provision that members remain in office on commencement of these amendments until the expiry of current terms.

Conclusion:

NHIF regulations are under draft. The new act does at least theoretically by textual inference give a glimpse of hope in the pathways to achievement of universal healthcare coverage. Let's keep championing for healthy healthcare systems in Kenya, healthy people, and a healthy nation.

For further enquiry reach out on: kahuramundia.snr@gmail.com; www.kahuramundia.co.ke