



The National Health Insurance Authority Act, 2021



September 2022

Introduction

The National Health Insurance Authority Act (the “Act”) was passed by the National Assembly in 2021 and assented to by President Muhammadu Buhari in May 2022, thus, launching a drive for an inclusive health care system in Nigeria.

The Act repealed the National Health Insurance Scheme Act Cap N42, 2004, which was enacted in 1999. The Act's objective is to effectively implement a national health insurance policy that ensures the attainment of national health coverage. The overriding attribute of the Act is that it makes health insurance compulsory for all Nigerians and legal residents. In this article, we will highlight the Act's key provisions and our thoughts on the implications of the Act for employers, employees, and government agencies.

Administration

The Act establishes the National Health Insurance Authority (the “Authority”), as the body corporate saddled with the responsibility (i) to promote, integrate, and regulate all health insurance schemes that operate in Nigeria; (ii) to ensure that health insurance is mandatory for every Nigerian and legal resident and that every Nigerian enjoys the basic minimum package of health services; (iii) to grant accreditation and re-accreditation to Health Maintenance Organisations (HMOs), Mutual Health Associations (MHAs), Third Party Administrators, and Healthcare Facilities amongst others.

The Act establishes a Governing Council (the “Council”) which is responsible for (among other functions) approving licenses, regulating, and supervising HMOs, MHAs and other institutions as the Authority may determine; and for regulating and supervising the various health insurance schemes established under the Act. The members of the Council are appointed by the President on the recommendation of the Minister of Health.

Health Insurance Scheme

The Act mandates every State in Nigeria and the Federal Capital Territory to establish and implement a State Health Insurance and Contributory Scheme to provide health care for their residents. The Act also requires every resident of Nigeria to obtain health insurance. Under the Act, “residents” is defined to include a) all employers and employees in the public and private sectors with five staff and above; b) informal sector employees; and c) all other residents of Nigeria.

The Authority is tasked with establishing a health insurance scheme for public sector workers in the Federal Civil Service and other relevant groups. Private Health Insurance Schemes are required by the Act to be registered as limited liability companies or limited by guarantee. The Act further requires, as a precondition for registration and licensing by the Authority, that a Private Health Insurance Scheme keeps a security deposit (in an amount to be determined by the Authority from time to time) in an interest-yielding account with an accredited bank as security for the duration of their operations.

The Act establishes the role of Third-Party Administrators (TPAs) which will be registered by the Authority to ensure patient satisfaction through relevant mechanisms and perform other administrative functions that will facilitate the implementation of the State Health Insurance Schemes. TPAs are defined by the Act as “any organisation with expertise and capability to

administer all or a portion of the insurance claims process, including administration of claims, collection of premiums, enrolment and other administrative activities....”.

Basic Health Care Provision Fund and Vulnerable Group Fund

The Act provides that the Authority in conjunction with the States shall provide a basic minimum package of care to all residents in Nigeria through the implementation of the Basic Health Care Provision Fund (the “BHCPF”). The Authority is empowered by the Act to provide general guidance for the operation of the BHCPF. The State Health Insurance Scheme will be responsible for the disbursement, management, monitoring, and evaluation of the BHCPF in the States in line with the guidelines provided by the Authority.

The BHCPF was first created by the repealed National Health Act 2014 further to which the Guidelines for the Administration, Disbursement and Monitoring of the Basic Health Care Provision Fund (the “Guidelines”) was developed in 2020 by the National Primary Health Care Development Agency (NPHCDA), the National Health Insurance Scheme (NHIS) and the National Emergency Medical Treatment Committee (NEMTC) under the Federal Ministry of Health. Under the Guidelines, the BHCPF is funded by; (a) not less than one per cent of the Consolidated Revenue Fund (CRF); (b) grants from international partners; and (c) funds from other sources including the private sector. The BHCPF is disbursed through three gateways under the Guidelines: the NHIS, the NPHCDA, and the NEMTC.

The Vulnerable Group Fund (the “VGF”) is created under the Act with the objective of providing finance to subsidize the cost of health care services to vulnerable persons in Nigeria and payment of health insurance premiums for indigent citizens. The funding sources for the VGF include the BHCPF, health insurance levy, money allocated by the Government, money accruing to the VGF from investments made by the Council and gifts, grants and donations made to the Fund. The Act empowers the Council to manage the VGF and approve the collection methods for payments to be made to the VGF and to provide a formula for the disbursement by the VGF. Vulnerable groups in the Act include children under five, pregnant women, the aged, physically and mentally challenged persons and indigent persons as may be defined from time to time.

Financial Provisions

The Act empowers the Authority to establish and maintain a Fund from which all its expenses shall be settled. The Fund will be used for the administration of the Authority, payment of allowances and benefits of members of the Council amongst other uses. The Fund shall consist of (amongst other things) annual subvention from the Federal Government; fees, fines, and commissions charged by the Authority etc. The Act mandates the Governing Council of the Authority to submit to the Minister of Health a report of the activities and administration of the Authority, not later than six months immediately after the end of the year. The Authority’s income is tax-exempt.

Dispute Resolution

Any dispute must first be referred to the Authority for mediation and conciliation and if that fails, parties may resort to arbitration. The Act also requires a one-month written pre-action notice before any suit against the Authority.

Offenses and Penalties

The Act criminalizes (amongst other things) failure of an individual or an HMO to pay mandated amounts to the Authority or State Health Insurance Schemes; withholding deducted employees' contributions or failure to remit deductions to the appropriate fund; failure to provide care to a duly registered enrollee.

The Act prescribes a fine of at least N2,000,000 or imprisonment for a term of at least five years or both for the offence of false representation as a health insurance scheme or operating an unlicensed health insurance scheme.

Conclusion

It has been reported that just about 19 states have commenced the implementation of the State Health Insurance Scheme. The Act signals a positive development in the health sector in Nigeria, which will certainly see increased investment in the sector and wider healthcare coverage for residents of Nigeria. We note that there is no timeline provided by the Act for the creation of the State Health Insurance Scheme. However, the Act empowers State Governments to temporarily contract TPAs pending the formal establishment of States' Health Insurance Schemes. The constitutionality of a federal legislation creating a mandatory legal framework for states to comply may need to be examined by constitutional scholars. We note that health is a residual matter in the Nigerian Constitution. It is however commendable that Nigerian governments at federal and state levels have committed to achieving universal health coverage for all Nigerians.

Nigeria has a huge informal sector and there is a risk that such an important segment may not get the benefit of the Act. It is yet to be seen how effective the State Health Insurance Scheme will be in bringing in the informal sector within the ambit of the Scheme.

Key takeaways for Employers and Employees under the Act

- Employers must ascertain whether the States where they operate have implemented the State Health Insurance Scheme.
- Where there is a State Health Insurance Scheme in place, employers should comply with the mandatory registration requirements and pay the stipulated contribution into the State's Health Insurance Scheme.



- Employers who have registered with the State Health Insurance Scheme may still maintain a plan with a private health insurance scheme for supplementary or complementary services.
- Employers who operate in States that have not implemented the State Health Insurance Scheme may continue with their existing health insurance plans until the relevant State implements its State Health Insurance Scheme.
- Failure to comply with the Act attracts sanctions which include fines and/or custodial sentences for defaulters.



Contact Details



Oghogho Makinde
Partner

M + 234 803 402 8360
E Makinde.Oghogho@aluko-oyebode.com



Olagoke Kuye
Senior Associate

M + 234 703 171 4946
E Olagoke.Olutoye@aluko-oyebode.com



Kolapo Saka
Associate

M + 234 906 298 1754
E Kolapo.Saka@aluko-oyebode.com



Zainab Akintola
Associate

M + 234 906 298 1759
E Zainab.Akintola@aluko-oyebode.com

Further information about the firm, its practice areas, client briefing notes and details of seminars/events are available at www.aluko-oyebode.com. This is a publication of Aluko & Oyeboode and is for general information only. It should not be construed as legal advice under any circumstances. For further information, please contact us at ao@aluko-oyebode.com.