Commentaries on the National Health Insurance Authority Act, 2021

KPMG in Nigeria
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The National Health Insurance Authority Act, 2021 ("the Act") was recently enacted by the National Assembly. The Act repeals the National Health Insurance Scheme (NHIS) Act, Cap. N42, LFN, 2004 and aims to facilitate health coverage for all Nigerian residents by overseeing the promotion, regulation, integration of health insurance schemes and other related matters in Nigeria.

Below is a summary of some of the significant provisions of the Act:

1. Administration of the National Health Insurance Authority

The Act establishes the National Health Insurance Authority (NHIA or "the Authority") which will be overseen by a Governing Council ("the Governing Council") consisting of a chairman, the director-general of the NHIA, who will serve as the secretary, one representative each of the six geo-political zones, two (2) representatives of organised labour, one representative of a civil society organisation focused on health activities and one representative from Federal Ministry of Health, Federal Ministry of Finance, Nigeria Employers Consultative Association and the Armed Forces, respectively.

The objectives of the NHIA include:

i. promotion, regulation, and integration of health insurance schemes;

ii. improving and harnessing private sector participation in the provision of health care services; and

iii. assisting the authority in achieving universal health coverage for all Nigerians.

The Authority shall among its other functions:

- secure mandatory health insurance for every Nigerian and legal resident.
- establish a basic minimum package of health service across all health insurance providers in the country.
- provide general guidelines for the implementation and utilisation of the Basic Health Care Provision Fund (BHCPF).
- regulate the activities of Healthcare Facilities, Health Maintenance Organisations (HMOs), Mutual Health Associations (MHAs), and Third-Party Administrators.
- establish mechanisms for receiving and resolving complaints by members of the schemes and Healthcare Facilities, HMOs, MHAs, and Third-Party Administrators.

2. Health Insurance Schemes

Section 13 of the Act provides for States of the Federation and the Federal Capital Territory to establish and implement a State health insurance and contributory scheme for the purpose of providing access to health services to all its residents. The Act defines residents to include "*employers and employees in the private and public sectors with 5 employees and above, informal sector employees, and other residents of Nigeria*". The scope of the coverage for the health insurance and contributory scheme shall be the minimum prescribed in Basic Minimum Package of the National Health Act, 2014. Consequently, every person resident in Nigeria is required under Section 14 of the Act to obtain health insurance.

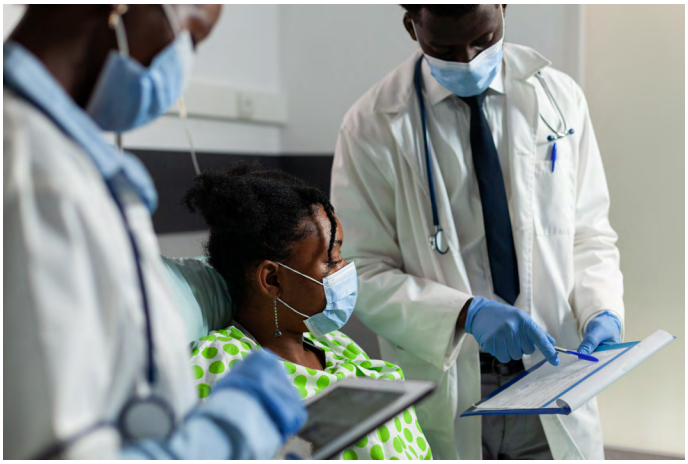
The Authority will also establish a similar scheme for employees of Ministries, Departments and Agencies in the Federal Civil Service.

The Act further provides that individuals may subscribe to complementary private insurance schemes provided they participate in any State-mandated health scheme. However, such individuals will not be eligible to receive free coverage as a vulnerable person under the provisions of the Act.

Private health insurance schemes are required to make a security deposit into an interest yielding account of an accredited bank of the NHIA's choice as a condition for registration and licensing by the NHIA. The Act stipulates a fine of at least ₦2,000,000 and/ or jail term of at least 5 years as penalty for a non-licensed and/ or non-registered person who falsely operates as a registered health insurance scheme.

3. Basic Health Care Provision Fund

Section 24 of the Act provides that the NHIA will work with the States to provide a basic minimum health care package to all residents in Nigeria as defined in the guidelines provided by the Authority for the implementation of the BHCPF. To achieve this objective, the Act requires the NHIA to:



i. make regulations on accreditation, quality of care and complaints handling,

ii. collaborate with State Health Schemes and State-owned Institutions to accredit and enlist primary and secondary health care facilities in line with the criteria stated in the relevant regulations, and

iii. provide for the administration of an ombudsman to handle enrollees' complaints.

The State Health Schemes shall be responsible for disbursement, management, evaluation, monitoring, and implementation of the BHCPF in the State. However, States that are yet to establish a Health Scheme may temporally contract a Third-Party Administrator to assist with the duties.

4. Vulnerable Group Fund

Section 25 of the Act provides for the establishment of the Vulnerable Group Fund (VGF) to subsidize the cost of providing healthcare services to vulnerable persons in Nigeria.

Section 59 of the Act defines "vulnerable group" to include "*children under five, pregnant women, the aged, physically and mentally challenged and the indigent as may be defined from time to time*". The sources of funding for the VGF include:

i. the BHCPF;

ii. health insurance levy;

iii. telecommunications tax, of at least one kobo per second of GSM calls;

iv. money allocated to the VGF by the Government;

v. money that accrues to the VGF from investments made by the Governing Council; and

vi. grants, donations, gifts, and any other voluntary contributions made to the VGF.

The Act further empowers the Governing Council to review the sources of funding for the VGF through regulations, to keep up with changes in the health insurance industry. The Governing Council will also be responsible for managing the VGF, determining the criteria for disbursement of subsidy payments for the health care of the vulnerable, and providing for the needs of indigents, including the methods for determining who is indigents in Nigeria.

5. Contributions Under the Health Insurance Schemes

Based on Section 31 of the Act, the Councils of the various State Health Insurance Schemes will determine the rates of contributions to be paid by employers and employees in the formal sector, and individuals, groups, and families in the informal sector. However, contributions for vulnerable individuals not covered by other schemes will be borne by the three levels of government, development partners and/ or non-governmental organizations.

Employers are also required to register themselves and their employees with the State Health Insurance Schemes and remit the required contributions in the manner and time specified by the State Health Insurance Scheme laws and guidelines issued by the States. This is notwithstanding any arrangements made for supplementary or complementary private premiums with private insurers for themselves and their employees.

6. HMOs, MHAs, and Third-party Administrators

The NHIA is empowered by the Act to accredit HMOs, MHAs, and Third-party Administrators to perform functions outlined in the Act, including collection and prompt remittance of contributions. Such accreditations shall be in a manner determined by the Operational Guidelines of the Authority and can be withdrawn upon breach of the provisions of the Operational Guidelines.

The Authority may also refuse to register and issue a license to HMOs, MHAs and third-party organizations, but must notify the applicant of its decision in writing.

7. Offences, Penalties and Legal Proceedings

Section 48 of the Act outlines the offences under the Act and prescribes a fine of ₦1,000,000 and/ or imprisonment for a maximum of 2 years for first time offenders, while repeat offenders will be liable to a fine of ₦2,000,000 and/or imprisonment for a maximum of 5 years. The Act also empowers the NHIA to sanction erring HMOs, Health Care Providers, MHAs, insurance brokers, insurance companies, banks, or any other licensed or accredited persons in line with the operational guidelines issued by the Authority.

The Act further outlines the modalities for instituting legal action against the Authority, such as the requirement to issue a written notice informing the Authority of intention to commence suit, one month before instituting the suit.

Commentary

We commend the Federal Government (FG) for its commitment towards achieving universal health coverage (UHC) in Nigeria and ensuring that Nigerians have access to the quality health care they need without any financial hardship. There is no doubt that access to health care, which is an essential part of the United Nation's Sustainable Development Goals, is a foundational investment in human capital and economic development. This is particularly relevant given the current economic climate and its effect on access to healthcare by indigent citizens.

However, there are concerns with some of the provisions of the Act which need to be addressed to ensure its smooth implementation. For instance, there are no transitional provisions in the Act to address the management and administration of contributions by employers and employees under the erstwhile NHIS Act. Based on Section 32 of the Act, while participation in the State Health Insurance Scheme is mandatory, private health insurance is only optional as a supplementary scheme. There is simply no room in the Act for individuals who currently have health insurance with HMOs to opt out of the State Health Insurance Scheme and stick to their legacy policy.

Another concern is the State governments' ability to enforce compliance by the informal sector with the provisions of the Act, considering the difficulty of policing the sector. It is hoped that the regulations will provide guidelines that will engender the interest of informal sector players and their voluntary participation in the Scheme.

Further, the introduction of telecommunications tax to fund the VGF may be untimely as Nigerians are already burdened with multiple taxation, which has been made worse by the prevailing severe economic conditions. The tax represents a 9% levy on calls of 11kobo per second, which will result in a corresponding increase in GSM tariffs. With telecommunication companies advocating for increase in call tariffs due to their increasing operating costs, the impact of the tax alongside an increase in call tariffs will be considerable on the citizens. While healthcare needs significant funding to reach the 15% budgetary allocation benchmark recommended by the World Health Organisation and approved by the leaders of African Union in April 2001 in Abuja, the government's default position should not be another earmarked tax. Rather, focus should be on launching and implementing policies that will make businesses to thrive and foster economic growth, which will effectively translate to significant revenues for the government to fund its annual budgets.

While the government's goal of ensuring access by all and sundry to healthcare is laudable, the erstwhile private health insurance scheme should have been preserved for employers and employees who wish to opt out of the State health insurance scheme introduced by the Act. The capacity of the government to manage such scheme remains to be seen and will be tested with time. For employers, staff costs on health insurance will rise if they elect to subscribe to supplementary private health insurance schemes for their employees.

Health care sector will for a long time remain a priority sector for reform and investment by the government in collaboration with the private sector. Demand for healthcare and pressure on existing facilities will continue to rise as the population increases. Therefore, government at all levels must continue to invest in the public health system and mobilize the private sector to complement their efforts through an enabling framework for public-private partnership.