

The New Practice (TNP)

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Highlights of the NHIA Act 2022

Health, they say, is wealth, and we couldn't agree more. It is therefore commendable that the President has signed into law, the National Health Insurance Authority Act (the "Act") which repeals the National Health Insurance Scheme Act, Cap. N42, LFN, 2004 (the "Old Act"). The Act seeks to promote, regulate, and integrate health insurance schemes and establish universal health coverage for all Nigerians.

Due to current economic circumstances, ordinary citizens who barely have enough to feed and are just trying to survive the week are usually not interested in paying a premium for an insurance policy (even though they would have loved to). The same is the story of every other indigent, the aged, physically and mentally challenged persons, and a lot more who are defined as the "Vulnerable Group" in the Act.

Though the Act seeks to improve access to healthcare for ordinary citizens, we note that the Act is not devoid of lapses which we will discuss below. Let us take you through our thoughts on the Act.

Highlights of the Act

Establishment of the National Health Insurance Authority

The Act establishes the National Health Insurance Authority (the "Authority") as a body corporate charged with the responsibility of regulating, promoting, and integrating health insurance schemes operating in Nigeria, mandating health insurance for residents in the country, and implementing policies on health schemes, amongst others.

The Old Act provided for a Scheme but the Act has introduced the Authority charged with the responsibilities stated above.

The Act also establishes the Governing Council (the "Council") which will consist of members from various spheres of government. Unlike the Old Act, it excludes a representative from the Health Maintenance Organisations (HMO). This change encourages transparency and accountability and eliminates the seemingly conflict of interest in the Old Act which allowed the HMOs to have a

representative on the Governing Council, even though they were regulated by the Governing Council. On the other hand, not having a representative of the HMO in the Council seems unfair as it reduces their chances of being represented properly.

Unlike the Old Act, the Act contains several provisions designed to make the activities of the Council transparent. For instance, *Section 4(3)* of the Act mandates all members of the Council to make a written representation about their personal interest in any "Organisation" under the Act (presumably HMOs), within one month of appointment. Also, *Section 8* of the Act provides that any member of the Council who is interested in any contract or transaction proposed to be entered into with the Authority must disclose his interest and be excluded from deliberating on such contract. Failure to declare one's interest leads to disqualification from being a member of the Council.

Mandatory Health Insurance

Prior to the enactment of the Act, subscribing to a health insurance policy was optional. However, *Section 14(1)* of the Act now requires every resident in Nigeria to obtain a health insurance policy. The Act went further to define residents to include all employers and employees in the private and public sectors with at least 5 staff; informal sector employees and all other residents. It should be noted that where a State sets up a mandatory health insurance scheme, then residents in such State will be required to participate in such a State mandated health scheme. However, nothing precludes a person in such state from participating in a complimentary private health insurance scheme.

We believe that the participation in a mandatory State health insurance scheme may create some sort of wastage on the side of citizens and take away their right to choose.

Vulnerable Group Fund & Basic Health Care Provision Fund

The Act establishes the Vulnerable Group Fund which shall be used to provide for the "Vulnerable Group" defined to include:

"...children under 5, pregnant women, the aged, the physically and mentally challenged and the indigent; as may be defined from time to time".

Section 23 of the Act provides that the Commission will work with the States to provide a basic minimum package of care to all residents in Nigeria. While the Act does not define the "Commission" referred to in Part III, we assume that it refers to the "Authority". The Act also retains the Basic Health Care

Provision Fund established by the National Health Act 2014 whose funds are now to be applied towards the Vulnerable Group.

Contributions

Sections 30 and 31 of the Act provide for contributions to a State's Social Health Scheme fund payable by employers and employees in the formal sector as well as individuals, groups and families in the informal sector, at the rate to be determined by the council of State Health Insurance Schemes. The three tiers of government, non-governmental organisations, and development partners are required to make contributions for the "vulnerable person" not covered by any

other schemes while contributions from the Federal Government for vulnerable persons shall be made from the Basic Health Care Provision Fund.

The Act is silent on how to ensure that the informal sector, being a large sector, contributes to a State's Social Health Scheme fund. The question of "how would the Authority go after these sets of people or even account for their contributions?" remains unanswered.

Similarly, leaving the rate of contributions to be made in the hands of the council of each State Health Insurance Scheme may lead to unintended arbitrariness. What happens where the rate set by the council of each State is steep and does not reflect the current economic situations of the citizens the Act intends to protect? We suggest that the Act ought to have set the rate and perhaps, provide that the Council may review it based on prevailing circumstances.

Third Party Administrators (TPAs), Health Maintenance Organisations (HMOs) and Mutual Health Associations (MHAs)

The Authority is responsible for accrediting, and issuing licences to HMOs, MHAs and TPAs which allows them to perform their functions under the Act. A license can be withdrawn if the TPA, HMO or MHA breaches any operational guideline.

TPAs were introduced under the Act. TPAs are organisations (which must be a body corporate) that provide insurance services such as insurance claims, premium, enrolment etc.

Penalties

The Act penalizes failure to do any of the following: pay contributions on time, remit contributions after deduction from an employees' salary, pay health care providers after receiving services from them, provide care to an enrollee etc. The Act also stipulates the punishment for these wrongdoing upon conviction.

Conclusion

The objectives of the Act are laudable. However, it takes away the liberty of a resident to opt for their preferred insurance cover where the state establishes a mandatory State Health Insurance Scheme. In addition, the Act is silent on compliance mechanisms for monitoring contributions from the informal sector. It is important that the Act defines a structure for the implementation of recovering contributions from the informal sector.

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