

THE SOCIAL HEALTH INSURANCE BILL, 2023

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THE SOCIAL HEALTH INSURANCE BILL, 2023

A Bill for

AN ACT of Parliament to establish the framework for the management of social health insurance; to provide for the establishment of the Social Health Authority; to give effect to Article 43(1)(a) of the Constitution; and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title. **1.** This Act may be cited as the Social Health Insurance Act, 2023.

Interpretation. **2.** In this Act, unless the context otherwise requires—

“Authority” means the Social Health Authority established under section 4;

“beneficiary” means a person who—

(a) is a contributor;

(b) has not attained the age of twenty-one years, has no income of his own and is living with the contributor;

(c) has not attained the age of twenty-five years, is undergoing a full-time course of education at a university, college, school or other educational establishment or serving under articles or an indenture with a view to qualifying in a trade or profession and is not in receipt of any income other than a scholarship, bursary or other similar grant or award;

(d) is a person with disability and is wholly dependent on and living with the contributor; or

(e) is a spouse of the contributor;

“Board” means the Board of the National Social Health Authority constituted under section 7;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to health;

“Chronic illness” means a condition that lasts one year or more and require ongoing medical attention or limit activities of daily living or both;

“claims office” means the Claims Management Office established under section 35;

“critical illness” means a serious and potentially life threatening condition that demands urgent medical intervention and can have a substantial impact on a person’s health, well-being and quality of life;

“contracting” means the entering into a formal agreement with an empaneled health care provider or healthcare facility for purposes of provision of services;

“contributor” means a person liable to contribute to the Fund as provided under section 27;

“Dispute Resolution Committee” means the Committee established under section 46;

“Emergency, Chronic and Critical Illness Fund” means the fund established under section 28;

“emergency treatment” means the necessary immediate health care that must be administered to prevent death or worsening of a medical situation;

“empanelment” means enrolment of a health care provider into the list of health care service facilities approved by the Board;

No.11 of 2007. “employer” has the meaning assigned under the Employment Act, 2007;

“Funds” means the Primary Healthcare Fund established under section 20, the Social Health Insurance Fund established under section 25 and the Emergency, Chronic and Critical Illness Fund established under section 28;

No. 21 of 2017. “health care provider” has the meaning assigned to it under the Health Act, 2017;

No. 21 of 2017. “healthcare services” has the meaning assigned to it under the Health Act, 2017;

“household” means a social unit comprising of an eligible contributor, whether contributing by self or paid for, and their beneficiaries, or who share the same social-economic needs

associated with consumption and production;

“indigent” means a person who is poor and needy to the extent that the person cannot meet their basic necessities of life;

“means testing” means a method that uses the Means Testing Instrument to determine whether an individual or a household has the ability to pay for their social health insurance premium;

“Means Testing Instrument” means a set of indicators that capture various socio-economic aspects of an individual or a household for purposes of conducting a means testing;

“Primary Healthcare Fund” means the Fund established under section 20;

“primary health care” means essential health care based on practical, scientifically sound and socially acceptable methods and technology that is made universally accessible to individuals and families in the community at every stage of their development, through their full participation and at an affordable cost to the community and country, in the spirit of self-reliance and self-determination;

"risk spreading" means the 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 hereby referred as a loss for special, enhanced or negotiated scheme;

“spouse” means the wife or husband of a contributor who is for the time being named as such by the contributor for that financial year;

“tariff” means the rates or fees that are paid to healthcare facilities or healthcare providers for services covered under this Act to deliver the most efficient and cost-effective care to patients; and

“Universal Health Coverage” means that all individuals and communities receive the health services they need including the full spectrum of essential, quality health services from health promotion to prevention, treatment, rehabilitation, and palliative care without suffering financial hardship;

“vulnerable person” means a person who needs special care, support or protection, including the orphaned and vulnerable children, widows or widowers, person with disability, elderly persons or indigent due to a risk of abuse or neglect and who has

been identified as such by the relevant government body.

Objects of the Act.

3. The objects of this Act shall be to—

- (a) provide a framework for improved health outcomes and financial protection in line with the right to health and universal health coverage;
- (b) realign healthcare systems, processes and programs for responsiveness, reliability and sustainability of health care in Kenya;
- (c) enhance the pooling of resources and risks based on the principles of solidarity, equity and efficiency so as to guarantee access to health care services to all; and
- (d) promote strategic purchasing of healthcare services.

PART II—ESTABLISHMENT OF THE SOCIAL HEALTH AUTHORITY

Establishment of the Social Health Authority.

4. (1) There is established an Authority to be known as the Social Health Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) receiving, investing, borrowing money; and
- (d) doing or performing such other things or acts necessary for the proper performance of its functions under this Act.

(3) The provisions of the First Schedule shall have effect with respect to the Authority.

Functions of the Authority.

5. The functions of the Authority shall be to—

- (a) register the beneficiaries in accordance with this Act;
- (b) manage the Funds established under this Act;

- (c) receive all contributions and other payments required by this Act to be made to the Funds;
- (d) contract health care providers and healthcare facilities upon successful certification by the relevant body;
- (e) consider and make payments to contracted health care providers and healthcare facilities out of the Funds in accordance to the provisions of this Act;
- (f) develop guidelines for the operations and implementation of the Funds established under this Act;
- (g) establish sectoral linkages for effective management and growth of the Funds;
- (h) monitor and evaluate programs and activities under the Funds;
- (i) receive and address complaints that may arise from the implementation of this Act;
- (j) advise the Cabinet Secretary on matters of social health insurance including the formulation of policies;
- (k) implement all government policies on social health insurance and related functions; and
- (l) perform any other function conferred on it by this Act or any other written law.

Powers of the Authority.

6. (1) The Authority shall have all the powers necessary for the performance of its functions under this Act.

(2) Without prejudice to the generality of the foregoing, the Authority shall have power to—

- (a) manage, control and administer the assets of the

Authority in such manner and for such purpose as best promotes the objects for which the Authority is established in accordance with the Public Procurement and Assets Disposal Act, 2015:

No. 33 of 2015.

Provided that the Authority shall not charge or dispose of any immovable property without the prior approval of the Cabinet Secretary;

- (b) receive any gifts, grants, donations or endowments made to the Fund or any other monies in respect of the Fund and make disbursements therefrom in accordance with the provisions of this Act;
- (c) open a banking account or banking accounts for the Fund with authorization from the National Treasury;
- (d) enter into association with such other bodies or organizations, within or outside Kenya, as it may consider desirable or appropriate and in furtherance of the purpose for which the Fund is established; and
- (e) invest the funds of the Funds not immediately required for its purposes in the manner provided in this Act under section 39.

The Board of
the Authority.

7. (1) The Authority shall be managed by a Board which shall consist of—
- (a) a non-executive Chairperson, who shall be appointed by the President;
 - (b) the Principal Secretary in the ministry for the time being responsible for matters relating to health or a designated representative;
 - (c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance or a designated representative;
 - (d) the Director-General for Health;
 - (e) the Attorney-General or a designated representative;

- (f) one person, not being a Governor, nominated by the Council of Governors with knowledge in field of finance, accounting, health economics, law or business and management;
- (g) one person, not being a public officer with proven experience in matters of health insurance, health financing, financial management, health economics, healthcare administration.
- (h) four persons, not being public officers, nominated by—
 - (i) the Kenya Medical Association;
 - (ii) the informal sector association;
 - (iii) health care providers; and
 - (iv) the Central Organization of Trade Unions-Kenya.
- (i) the Chief Executive Officer of the Authority, who shall be an *ex-officio* member of the Board.

(2) The members of the Board nominated under subsection (1) (f), (g) and (h) shall be appointed by the Cabinet Secretary by Notice in the Gazette.

(3) The Chairperson and the members of the Board appointed under subsection (1) shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years.

(4) In appointing persons as members of the Board under subsection (1) (f), (g) and (h), the Cabinet Secretary shall ensure that the appointments afford equal opportunity to men and women, youth, persons with disabilities, minorities and marginalized groups and ensure regional balance.

Qualifications
for appointment.

8. (1) A person shall be eligible for appointment as a Chairperson or member of the Board under section 7(1)(a), (g) , (h)(i), (iii) and (iv) if that person—

- (a) is a citizen of Kenya;
- (b) holds a minimum of a bachelor's degree from a university recognized in Kenya;

(c) has knowledge and experience of not less than ten years in data science, information technology, health governance, health administration, health policy, finance or economics, five of which shall be at managerial level; and

(d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall not be eligible for appointment as a member of the Board under section 7 if that person—

(a) has at any time been convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;

(b) is declared to be of unsound mind;

(c) is an undischarged bankrupt;

(d) is a director, officer, employee or shareholder of any insurer, broker, insurance agent or any other member of the insurance industry, private health facility; or

(e) has been found in accordance with any law to have misused or abused a state office or public office or in a way to have contravened the provisions of Chapter Six of the Constitution.

Vacancy of office.

9. The office of the chairperson or member of the Board shall become vacant if the holder—

(a) resigns from office by notice in writing to the appointing authority;

(b) is absent from three consecutive meetings of the Board without permission from the appointing authority;

(c) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(d) is convicted of a criminal offense and sentenced to imprisonment for a term exceeding six months;

(e) is incapacitated by prolonged physical or mental illness;

(f) is otherwise unable or unfit to discharge his duties; or

(g) dies.

Conduct of
business and
affairs of the
Board.

10. The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule, but subject thereto, the Board may regulate its own procedure.

Delegation by
the Board.

11. The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

Remuneration of
members.

12. The chairperson and members of the Board shall be paid such remuneration, fees, allowances and such other reimbursements as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Appointment of
the Chief
Executive
Officer.

13. (1) There shall be a Chief Executive Officer of the Authority who shall be competitively recruited and appointed by the Board.

(2) The Chief Executive Officer shall hold office on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.

Qualification for
appointment as
a Chief
Executive
Officer.

14. (1) A person shall be qualified for appointment as the Chief Executive Officer of the Authority if that person—

(a) has a minimum of a bachelor's degree from a university recognized in Kenya;

(b) has at least ten years' knowledge and experience in health insurance, health financing, health economics, healthcare administration or any other relevant field;

(c) has served in a management level for a period of at least five years;

(d) has not been convicted of an offence and is not serving a term of imprisonment; and

(e) meets the requirements of Chapter Six of the

Constitution.

(2) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day to day management of the affairs and staff of the Board.

(3) The Chief Executive Officer shall be administrator of the Funds established under this Act.

(4) In administering the Funds referred to in subsection (3), the Administrator of the Funds shall—

- (a) open and operate such banks with the approval of the Board and the National Treasury;
- (b) supervise and control the day-to-day administration of the Funds established under this Act;
- (c) in consultation with the Board, develop such policies as may be necessary for the attainment of the objects of the Funds established under this Act;
- (d) consult with the Board on matters relating to the administration of the Funds established under this Act;
- (e) cause to be kept books of accounts and other books and records in relation to the Funds established under this Act of all activities and undertakings financed from the Funds;
- (f) with the approval of the Board, outsource services and enter into and sign commercial contracts or agreements in furtherance of the objects of the Funds established under this Act;
- (g) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Funds established under this Act and showing the expenditure incurred from the Funds, and such details as the Public Sector Accounting Standards Board may prescribe from time to time, in accordance with the provisions of the Public Finance Management Act and the Public Audit Act;

- (h) prepare quarterly and annual financial and non-financial reports in a format prescribed by the Public Sector Accounting Standards Board and submit the same to the National Treasury with copies to the Controller of Budget and the Commission on Revenue Allocation; and
- (i) implement any recommendations from the Board for policy guidance in furtherance of the objects and purpose of the Funds established under this Act.

No. 18 of 2012.

- (5) The existing government financial and procurement regulations shall, to the extent they relate to the administration of public funds established under the Public Finance Management Act, apply in the administration of the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund.

Tenure of office of the Chief Executive Officer.

15. The Chief Executive Officer shall hold office for a period of three years and shall be eligible for re-appointment for one further term of three years.

Corporation Secretary.

16. (1) There shall be a Corporation Secretary who shall be competitively recruited and appointed by the Board on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.

(2) A person qualifies for appointment as the Corporation Secretary if that person—

- (a) holds a bachelor's degree in law from a university recognized in Kenya;
- (b) has at least five years' experience as a corporation secretary or a similar governance role;
- (c) is a member in good standing of the Institute of Certified Public Secretaries of Kenya; and
- (d) meets the requirements of Chapter Six of the

Constitution.

(6) The Corporation Secretary shall be the Secretary to the Board and shall—

- (a) in consultation with the Chairperson of the Board, issue notices for meetings of the Board;
- (b) keep, in custody, the records of the deliberations, decisions and resolutions of the Board;
- (c) transmit decisions and resolutions of the Board to the Chief Executive Officer for execution, implementation and other relevant action;
- (d) provide guidance to the Board on their duties and responsibilities on matters relating to governance; and
- (e) perform such other duties as the Board may direct.

Staff.

17. The Board may appoint such staff as may be necessary for the proper discharge of the functions of the Authority under this Act, upon such terms and conditions of service as the Board may determine.

Protection from personal liability.

18. (1) No matter or thing done by a member of the Board or an officer, employee or agent of the Authority shall, if the matter or thing was done in good faith in the execution of the functions or powers of the Authority, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

(2) Notwithstanding subsection (1), nothing in this section shall exempt a member of the Board, officer, employee or agent of the Authority from individual responsibility for unlawful or criminal act committed by the member of the Board, officer, employee or agent of the Authority.

Common seal of the Authority.

19. (1) There shall be a common seal of the Authority which shall be kept in the custody of the Corporation Secretary

and shall not be used except on the direction of the Board.

(2) The affixing of the common seal of the Authority shall be authenticated by the signatures of the Chairperson and the Chief Executive Officer and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson and the Chief Executive Officer.

(3) The Board shall, in the absence of either the Chairperson or the Chief Executive Officer, in any particular matter, nominate one member to authenticate the seal of the Authority on behalf of either the Chairperson or the Chief Executive Officer.

PART III-PRIMARY HEALTHCARE FUND

Establishment of the Primary Healthcare Fund.

20. There is established a Fund to be known as the Primary Healthcare Fund whose object shall be to purchase primary health care services from health facilities.

Sources of Funds.

- 21.** There shall be paid into the Primary Healthcare Fund—
- (a) monies appropriated by the National Assembly;
 - (b) any grants, gifts, donations or bequests;
 - (c) monies allocated for that purposes from fees or levies administered; and
 - (d) monies accruing to or received by the Fund from any other source.

Expenditure of the Fund.

22. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.

(2) The expenditure incurred on the Fund shall be limited to annual budget estimates prepared by the Authority at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates shall be referred to the Board for approval.

Capital of the Fund.

23. The capital of the Fund shall be as appropriated by the National Assembly or from any other source provided for under this Act.

Implementation
of the Primary
Healthcare
Fund.

24. The Cabinet Secretary may make regulations for the implementation of the Primary Healthcare Fund.

PART IV—THE SOCIAL HEALTH INSURANCE FUND

Establishment
of the Social
Health
Insurance Fund.

25. (1) There is established a Fund be known as the Social Health Insurance Fund.

(2) There shall be paid into the Fund—

- (a) contributions under the Act;
- (b) monies appropriated by the National Assembly for indigent and vulnerable persons;
- (c) gifts, grants, innovative financing mechanisms or donations;
- (d) funds from the national government, county governments and their respective entities for the administration of the compulsory public service employee’s insurance benefit scheme; and
- (e) funds from an employer who is not a national government, a county government or their respective entities, for the administration of employee benefits.

Registration.

26. (1) Every Kenyan shall register as be a member of the Social Health Insurance Fund.

(2) A person who, being a non-Kenyan, and is ordinarily resident in Kenya, shall be eligible for registration as a member of the Social Health Insurance Fund.

(3) A child born after commencement of this Act shall be registered at birth as a member of the Social Health Insurance Fund.

(4) Registration shall be conducted continuously at various points in such manner as shall be prescribed by the

Cabinet Secretary.

(5) Any person who is registerable as a member under this Act shall produce proof of registration with the Social Health Insurance Fund as a precondition of dealing with or accessing public services from the national government, county government or a national or county government entities.

Contributions.

27. (1) The following persons shall be liable to contribute to the Fund under this Act—

- (a) every Kenyan household;
- (b) a non-Kenyan resident, ordinarily residing in Kenya for a period exceeding twelve months;
- (c) the national government;
- (d) the county government; and
- (e) any other employer.

(2) Contributions under this Act shall be paid as follows—

- (a) in the case of a household whose income is derived from salaried employment, by a monthly statutory deduction from the wages or salary by the employer at a rate prescribed under this Act;
- (b) in the case of a household whose income is not derived from salaried employment, by an annual contribution of a proportion of household income as determined by the means testing instrument in the manner prescribed under this Act;
- (c) in the case of households in need of financial assistance as determined by the means testing instrument, by the government at a rate apportioned from funds appropriated by Parliament and County Assemblies for that purpose as prescribed under this Act;
- (d) in the case of persons under lawful custody, by the Government from funds appropriated by Parliament for that purpose at a rate prescribed under this Act;
- (e) in case of a person who is a permanent resident in Kenya, by such person at a rate as may be prescribed under this Act; and
- (f) in the case of any other person, by the person himself out of his own funds in the manner prescribed under this Act.

Provided that the Contributions under this section shall be

paid at the time of Registration.

(3) A person referred to in subsection (2)(b) shall pay their contributions on an annual basis.

(4) A person shall only access healthcare services under this Act where their contributions to the Social Health Insurance Fund are up to date and active.

(5) The government shall ensure that premium financing products are provided for non-salaried persons for the payment of social health insurance.

(6) Any person who fails to pay any contribution in respect of any period on or before the day on which payment is due shall be liable to a penalty equal to ten percent of the amount due for contribution for the period which the contribution remains unpaid and the total annual contributions.

(7) A person shall pay all outstanding contributions and penalties accrued before resuming access to the healthcare services provided under this Act.

PART V—THE EMERGENCY, CHRONIC AND CRITICAL ILLNESS FUND

Establishment
of the
Emergency,
Chronic and
Critical Illness
Fund.

28. There is established a Fund be known as the Emergency, Chronic and Critical Illness Fund to—

- (a) defray the costs of management of chronic illnesses after depletion of the social health insurance cover; and
- (b) to cover the costs of emergency treatment.

Sources of
funds.

29. The sources of funds for the Emergency, Chronic and Critical Illness Fund shall be—

- (a) monies appropriated by the National Assembly;
- (b) gifts, grants, donations or endowments; and
- (c) such monies from any other lawful source.

Implementation of Emergency, Chronic and Critical Illness Fund.

30. The Cabinet Secretary may make regulations for the implementation of the Emergency, Chronic and Critical Illness Fund.

**PART VI—BENEFITS, TARRIFS, EMPANELMENT,
CONTRACTING AND CLAIMS**

Benefits.

31. (1) Every beneficiary shall be entitled to an essential healthcare benefits package prescribed by the Cabinet Secretary in consultation with the Board.

(2) Notwithstanding the provisions of this Act, nothing shall be construed to preclude any beneficiary from taking private health insurance cover.

Tariffs.

32. (1) The benefits payable under this Act shall be based on a tariff.

(2) The Cabinet Secretary shall, in consultation with the Board, prescribe the tariffs applicable to the benefits package under this Act.

(3) The tariffs referred to under subsection (1), may be reviewed from time to time.

Empanelment.

33. (1) The Authority shall make payments out of the Funds to health care providers or health care facilities that are empaneled and contracted in accordance with the provisions of this Act.

(2) A health care provider or healthcare facility seeking to be empanelled under the Act shall make an application to the body responsible for accreditation for quality of care in the manner prescribed by the Cabinet Secretary.

(3) Upon the publication of the list of empanelled health care providers and healthcare facilities on the website, the Authority may contract the healthcare providers or healthcare facilities within thirty days of the date of the publication of the list.

(4) The body under subsection (2) may, at any time, revoke any accreditation under this section.

(5) A healthcare provider or healthcare facility aggrieved by the decision of the body under subsection (2) may appeal to the Dispute Resolution Committee within 30 days of the decision of the Board.

Contracting.

34. (1) The Authority may from time to time negotiate and enter into contracts with healthcare service providers and healthcare facilities who qualify under section 31(3) for the provision of health services to the beneficiaries.

(2) The Authority shall publish on its website and in such other manner as the Authority may deem appropriate, the health service providers and healthcare facilities referred to in subsection (1) to be contracted health service providers for purposes of this Act.

(3) A declaration under this section shall be subject to fulfillment by the healthcare service provider and healthcare facility of such criteria, including meeting quality standards set by the Cabinet Secretary in accordance with section 31(2).

(4) Every contracted health care provider and healthcare facility shall be issued with such identification as may be prescribed by the Authority and such identification shall be displayed in a conspicuous position.

(5) The Authority shall terminate the contract with any health care provider and healthcare facility where such health care provider or healthcare facility fails to meet the criteria prescribed by the Cabinet Secretary under subsection (3).

(6) Upon termination of a contract under subsection (5) the Authority shall, by notice in the Gazette, revoke the declaration made under subsection (3).

(7) Any health care provider who, or health facility which displays the identification referred to in subsection (4) without permission of the Authority commits an offence.

Claims
Management.

35. (1) There is established within the Authority an office to be known as the Claims Management Office which shall review and process the claims made under this Act.

(2) The Office shall be responsible for—

- (a) reviewing, processing and validating medical claims from healthcare providers and healthcare facilities;
- (b) appraising medical claims based on the benefit package;
- (c) issuing pre-authorizations for access to healthcare services based on the benefit package;
- (d) developing an e-claims management system;
- (e) undertaking quality assurance surveillance in respect of claims;
- (f) establishing systems and controls for detecting and identifying fraud appropriate to the Fund's exposure and vulnerability;
- (g) sensitizing claimants on the consequences of submitting false and fraudulent claims;
- (h) collecting and analyzing data for purposes of claim management;
- (i) preparing quarterly reports on claims for submission to the to the Board and the Cabinet Secretary; and
- (j) performing any other functions as may be necessary for the better carrying out of its functions under this Act.

(3) The Claims Management Office shall delegate the performance of its functions under subsection (1)(a), (b) and (c) to a suitable entity.

(3) The entity referred to under subsection (2) shall be a medical insurance provider or a broker licensed by the Insurance Regulatory Authority under the Insurance Act:

Cap. 487.

Provided that not more than five entities shall be contracted

to manage the claims from the zones identified in the manner prescribed in the Regulations.

(4) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section.

Settlement of claims.

36. (1) The Authority shall make payments to a contracted healthcare provider or healthcare facility upon submission of a claim by the Claims Management Office.

(2) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section.

PART VII—FINANCIAL PROVISIONS

Financial year.

37. The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in each year.

Investment of Funds.

38. (1) All monies in the Authority which are not immediately required to be applied for the purposes of this Act shall be invested—

(a) in such investment in a reputable bank on the advice of the Central Bank of Kenya, being an investment in which trust funds, or part thereof, are authorized by law to be invested; and

(b) in government securities as may be approved by the National Treasury.

(2) All investments made under this section shall be held in the name of the Authority.

Retention of receipts and earnings.

39. All receipts, earnings and accruals to the Authority and the balance of the Funds at the close of each financial year shall be retained by the Authority for the purposes of the Funds.

Annual estimates.

40. (1) The Authority shall, within three months after the end of the financial year, cause to be prepared estimates of its revenue and expenditure for that financial year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year concerned, and in particular shall provide for—

- (a) the payment of all the claims and benefits of the contributors in respect of medical and healthcare expenses incurred by them or their named beneficiaries pursuant to the provisions of this Act;
- (b) the payment of salaries, allowances and other charges in respect of the staff of the Authority;
- (c) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Authority;
- (d) the proper maintenance of buildings and grounds of the Authority;
- (e) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; or
- (f) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Authority may consider appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and after the approval, the annual estimates shall not be increased without prior consent of the Board.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorization of the Board.

Expenses of
administering the
Funds.

41. (1) There shall be paid out of the finances of the Authority such administrative expenses as may be incurred by the Board in the exercise of its powers or the performance of its functions under this Act.

(2) The administrative expenses referred to under subsection (1) shall not exceed five percent of the annual expenditure of the Fund:

Provided that the administrative expenses shall not at any time exceed the cost of benefits payable under this Act.

Accounts and
audit.

42. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and

liabilities of the Authority.

(2) Within three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Authority together with—

(a) a statement of income and expenditure of the Authority during the year; and

(b) statement of the assets and liabilities of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Finance Management Act, 2012 and the Public Audit Act, 2015.

No. 18 of 2012.

No. 34 of 2015.

Annual report.

43. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Authority for the immediately preceding year.

(2) The Cabinet Secretary shall, within three months of submission of the report under subsection (1), transmit the report to Parliament.

PART VIII-DISPUTE RESOLUTION COMMITTEE

Dispute
Resolution
Committee.

44. (1) A person aggrieved by a decision made under this Act may, within one month from the date of the decision, appeal to the Dispute Resolution Committee for a review of such decision.

(2) The Committee may uphold, reverse, revoke or vary the decision of the Board appealed under subsection (1).

Establishment
of Dispute
Resolution
Committee.

45. (1) There is established a Committee to be known as the Dispute Resolution Committee for the purpose of hearing and determining complaints, disputes and appeals in accordance with this Act or any other written law.

(2) The Committee shall consist of—

- (a) a Chairperson who shall be appointed by the Cabinet Secretary from among persons qualified to be judges of the High Court; and
- (b) four other persons who shall be appointed by the Cabinet Secretary and shall possess knowledge and experience in health, health economics, business administration, insurance and who are not in the employment of the Government or the Board and are not health service providers.

(3) The members of the Committee shall hold office for a period of three years and shall be eligible for reappointment for one further term of three years.

(4) The quorum for a meeting of the Committee shall be the Chairperson and two other members.

(5) The members of the Committee shall be entitled to receive such allowances as the Cabinet Secretary, in consultation with the Salaries and Remuneration Commission, may determine.

(6) The Cabinet Secretary shall prescribe procedures for the operationalization of the Committee.

Vacancy in the
Dispute
Resolution
Committee.

46. The office of a member of the Committee shall become vacant if the member—

- (a) dies;
- (b) resigns;
- (c) is unfit by reason of mental or physical infirmity to perform the duties of his office;
- (d) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (e) has failed to attend at least three consecutive meetings of the Committee; or
- (f) is removed from office on any of the following

grounds—

- (i) gross violation of the Constitution or any other written law; or
- (ii) gross misconduct or misbehaviour.

PART IX- MISCELLANEOUS PROVISIONS

Stakeholder engagement.

47. (1) The Authority shall facilitate public participation and stakeholder engagement in the carrying out of its functions under this Act.

(2) The Cabinet Secretary shall prescribe regulations on the modalities of engaging stakeholders at the national and county level.

Digitization.

48. (1) All processes and services under this Act shall be digitized using appropriate, reliable, secure, interoperable, verifiable and responsive technology through an information system developed pursuant to the relevant written law.

(2) The processes and services referred to in subsection (1) shall include—

- (a) registration of members;
- (b) member identification;
- (c) contributions to the Fund;
- (d) empanelment of facilities;
- (e) execution of contracts;
- (f) member identification;
- (g) notification and preauthorization;
- (h) claims management; and
- (i) settlement of claims.

(3) Every Kenyan shall be uniquely identified for purposes of provision of health services under this Act.

(4) The digitization of processes and services under this Act shall conform to the provisions of the Data Protection Act, 2019 and all other relevant laws.

No. 24 of 2019.

(5) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section.

Offences and penalties.

49. (1) Any person who—

- (a) fails without lawful excuse to pay to the Social Health Insurance Fund within the period prescribed by this Act any contribution which he is liable as a contributing employer to pay under this Act; or
- (b) knowingly makes any deduction from the wages of the employee in respect of any contribution which he is liable as a contributing employer to pay under this Act, other than a deduction which he is authorized to make by this Act; or
- (c) for the purpose of obtaining any benefit for himself or for any other person, knowingly makes any false statement or representation, or produces or furnishes, or causes to be produced or furnished, any document or information which he knows to be false in any material particular,

commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.

(2) A person who misappropriates any of the funds or assets of the Fund, or assists or causes any person to misappropriate or apply funds, otherwise than in the manner provided in the Act, commits an offence and shall upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

(3) Any person who, for the purpose of obtaining the payment of any benefit under this Act, knowingly makes any false statement, whether orally or in writing, commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding sixty months, or to both.

(7) Any person who with intent to obtain the payment of any benefit under this Act, impersonates any person whether living or dead, commits an offence and is liable on conviction to a fine not exceeding one million

shillings or to imprisonment for a term not exceeding three years, or to both.

(5) A health care provider or health facility which knowingly or fraudulently alters or falsifies any information with intent to defraud the Authority or to obtain any benefit that it is not entitled to under this Act, commits an offence and is liable on conviction to—

- (a) a fine not exceeding five hundred thousand shillings;
- (b) suspension; or
- (c) removal from the register of empaneled and contracted health care providers.

(6) The Authority shall cause the name of every health care provider or health facility suspended under subsection (5) (b) to be notified in the *Gazette* and such institution shall not, during the suspension, be entitled to any benefit from the Fund.

(7) The Board shall cause the name of every health care provider or health facility removed from the register under subsection (5)(c) to be notified in the *Gazette*, at least two newspapers of national circulation and at the official website of the Authority.

(8) A health care provider or health facility which has been removed from the register under section (5) (c) shall not be entitled to receive any benefit from the Authority.

Regulations.

50. (1) The Cabinet Secretary shall, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.

(2) Despite the generality of subsection (1), the Cabinet Secretary may make Regulations prescribing—

- (a) any matters incidental to the payment and collection of any contributions under this Act;
- (b) the amount and rates of contributions payable by contributors into the Fund;
- (c) the manner of the making and determination of the healthcare benefits package;
- (d) the manner of the making and determination of any

claim to any benefit;

(e) the settlement of valid claims, which shall be within a period of one month from the date of submission of the claim; and

(f) the process of enrolment of healthcare providers and healthcare facilities on the list of approved healthcare providers and healthcare facilities;

(g) anything which is required to be prescribed for the better giving effect of the provisions of this Act.

(3) For the purposes of Article 94 (6) of the Constitution—

(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act; and

(b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.

(4) The principles and standards applicable to the delegated power referred to under this Act are those found in—

No. 23 of 2013.

(a) the Statutory Instruments Act;

Cap. 2.

(b) the Interpretation and General Provisions Act;

(c) the general rules of international law as specified under Article 2(5) of the Constitution; and

(d) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

Conflict with other laws.

51. This Act shall prevail in the case of any inconsistency between this Act and any other legislation on matters related to provision of social health insurance.

Application of

52. The provisions of the Insurance Act shall apply to the

- Cap. 487. Authority only in respect to risk spreading and claims administration services.
- General penalty. **53.** A person convicted of an offence under this Act for which no other penalty is prescribed shall be liable to a fine not exceeding one million shillings or, in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.
- Repeal of No. 9 of 1998. **54.** The National Health Insurance Fund Act, 1998 is repealed.
- Winding up. **55.** In the event of winding up of any of the Funds established under this Act, the cash balances shall be transferred to the Exchequer while other assets shall be transferred to the National Treasury.

1. In this Schedule—

"appointed day" means the day appointed for the coming into operation of the Social Health Insurance Act, 2023;

"Fund" means the National Health Insurance Fund existing immediately before the appointed day.

2.(1) On the appointed day, all the funds, assets and other property movable and immovable which immediately before that day, were held for and on behalf of the Fund in the name of the National Health Insurance Fund Board shall, by virtue of this paragraph and without further assurance, vest in the Authority.

(2) Despite subparagraph (1), the Authority may within one year from the appointed day dispose any of the assets vested in the Authority under subparagraph (1).

(3) Every public officer having the power or duty to effect or amend any entry in a register relating to property or to issue or amend any certificate or other document effecting or evidencing title to property, shall, without payment of a fee or other charge and upon request made by or on behalf of the Authority, do all such things as are by law necessary to give final effect to the transfer of the property mentioned in sub-paragraph (1).

3. On the appointed day, all rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the appointed day were vested in, imposed on or enforceable by or against the Government for and on behalf of the Fund shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the Authority.

4. On and after the appointed day, all actions, suits or legal proceedings pending by or against the Government for and on behalf of the Fund shall be carried on or prosecuted by or against the Authority.

5. (1) On the appointed day, the Fund shall not provide enhanced benefits schemes and packages.

(2) Notwithstanding the provisions of subparagraph (1), all enhanced benefits schemes and packages which immediately before the appointed day, were being provided by the National Health Insurance Fund shall, by virtue of this paragraph and without further assurance, vest in the Authority until the lapse of the existing contracts.

6.(1) Notwithstanding the provisions of paragraph (2), the National Health Insurance Fund Board shall wind up the Fund within one year from the appointed day and the cash balances and all other assets shall be transferred to the Authority.

(2) Despite subparagraph (1), the Board of the Social Health Authority established under section 4 of the Act shall competitively recruit and appoint its staff under section 17 of the Act subject to the approved staff establishment and on such terms and conditions of service as may be determined by the Board.

(3) Notwithstanding the provisions of subparagraph (1), the staff of the Fund are eligible to apply for the positions advertised by the Authority and may be considered for appointment where they are suitably qualified for the positions advertised.

(4) A staff of the Fund not appointed by the Authority under subparagraph (2) may exercise his or her option to either—

- (a) retire from public service; or
- (b) be redeployed within the public service.

7. The annual estimates for the Fund for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Authority for the remainder of that financial year:

Provided that such estimates may be varied by the Board of the Authority in such manner as the Cabinet Secretary may approve.

SECOND SCHEDULE (s.10)
CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings. **1.** (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The chairperson may call a special meeting of the Board at any time the chairperson deems fit for expedient transaction of the business of the Board.

(3) The notice for a meeting of the Board shall be given in writing to each member of the Board at least fourteen days before the day of the meeting.

(4) In the case of a special, or extra-ordinary meeting, a notice of less than fourteen days' notice shall be considered sufficient.

(5) Notwithstanding the provisions of subparagraph (2), the chairperson may, upon requisition in writing by at least two thirds of the members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(6) The notice to be given under paragraph (2) and (3) shall state—

(a) the venue and time of the meeting; and

(b) the agenda with sufficient details of business to be discussed at the meeting.

(7) The chairperson shall preside at every meeting of the Board at which the chairperson is present but in the chairperson's absence, the members present shall elect from among themselves a chairperson who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(8) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by majority votes of those

present and voting, excluding the Director-General, and in case of an equal vote, the chairperson or the person presiding shall have a casting vote.

(9) The Board may, with approval of the Cabinet Secretary, co-opt or invite any number of persons to act as advisors or consultants at any of its meetings or form such committees to perform such functions or duties of the Board as the Board shall determine.

(10) Subject to the provisions on quorum, no proceedings shall be invalid by reason only of a vacancy among the members of the Board.

(11) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board.

(12) The quorum for the meetings of the Board shall be five members. Co-opted or invited persons shall not be counted in the quorum of the meetings of the Board and shall not be eligible to vote.

Committees
of the
Board.

2. (1) The Board may establish such committees as it deems appropriate for the performance of its functions.

(2) A Committee established under sub-paragraph (1) shall elect a chairperson from amongst its members.

(3) The Board may where it deems appropriate, co-opt or invite any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subparagraph (1) shall be ratified by the Board.

Disclosure
of Interest.

3. (1) If a member of the Board is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable before the commencement of the

meeting, declare such interest.

(2) The person making the disclosure of interest under subsection (1) shall not, unless the Board or committee otherwise directs, take part in any consideration or, discussion of, or vote on any question touching on the matter.

(3) A person who contravenes subparagraph (1) commits an offence.

(4) No member of the Board or officer, employee or agent of the Board shall enter into a service contract or trade with the Board.

(5) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

Minutes

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons of the Bill

The Principal object of the Bill is to put in place a legislative framework to regulate the provision of social health insurance, promote the implementation of the Universal Health Coverage and to ensure that all Kenyans have access to affordable and comprehensive quality health services.

Part I (Clauses 1-3) of the Bill provides for the preliminary provisions and outlines the purpose and objects of the Bill.

Part II (Clauses 4-19) of the Bill Establishes the Social Health Authority and provides the Board, its functions, powers, qualification of members and appointment of the Chief Executive Officer among others.

Part III (Clauses 20-24) of the Bill provides for establishment of the Primary Healthcare Fund and the attendant sources of its funds.

Part IV (Clauses 25-27) of the Bill provides for establishment of the Social Health Insurance Fund and the attendant sources of its funds, registration and membership to the fund and contributions.

Part V (Clauses 28-30) of the Bill provides for the establishment of the Emergency, Chronic and Critical Illness Fund that will be defray the costs of management of chronic illness after the depletion of the social health insurance cover.

Part VI (Clauses 31-36) of the Bill provides for claims, benefits and empanelment and contracting of health service providers and health facilities and the establishment of the Claims Management Office.

Part VII (Clauses 37-43) of the Bill provides for financial provisions including reporting mechanism, audits and accounts, investment and management of funds by the Board.

PART VIII (Clause 44-46) of the Bill provides for the establishment of the dispute resolution Committee to hear, and determine complaints, disputes and appeals arising from decisions made under this Act.

Part IX (Clauses 47-54) of the Bill sets out the Miscellaneous Provisions contains provisions for stakeholder and community participation in the carrying out of this Act. It also provides for the mandatory requirement of

digitization of all process and services under this Act. This part of the Bill also provides for the power of the Cabinet Secretary to prescribe regulations, and sets out penalties under this Act, the repeal of the National Insurance Health Fund Act, 1998 and the handling of cash balances and assets of the Funds in the event of winding up of any of the Funds established under this Act.

The First Schedule to the Bill details the transitional provisions relating to the former Fund while the Second Schedule to the Bill details the provisions relating to the conduct of business and the affairs of the Board.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill confers on the Cabinet Secretary the powers to make regulations under the Act for the purposes of operationalizing the Act in order to implement the objectives. The Bill does not limit any fundamental rights or freedoms.

Statement of how the Bill concerns county governments

The Bill concerns county governments in terms of Article 109(4) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the....., 2023.

SUSAN NAKHUMICHA
Cabinet Secretary for Health.