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THE NATIONAL HEALTH INSURANCE FUND ACT

CHAPTER 255

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CHAPTER 255

NATIONAL HEALTH INSURANCE FUND ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title
2. Interpretation

PART II – ESTABLISHMENT AND MANAGEMENT OF THE FUND

3. Establishment of the Fund
4. Establishment of Board
5. Objects and functions of the Board
6. Powers of Board
7. Conduct of business and affairs of the Board
8. Delegation by the Board
9. Remuneration of members of the Board.
10. Chief Executive Officer
- 10A. Corporation Secretary
11. Staff of the Board
12. Common seal of the Board
13. Protection from personal liability
14. Liability of the Board for damages

PART III – CONTRIBUTIONS AND BENEFITS

- 14A. Registration as a member of the Fund.
15. Contributions to the Fund
16. Standard and matching contributions
17. Persons to be treated as employers
18. Penalty for late payment of standard and matching contributions
19. Special contributions
20. Voluntary contributions
21. Mode of identification of beneficiaries and payment of contributions.
- 21A. Establishment of a centralized healthcare provider management system
22. Payment of benefits
- 22A. Non-withdrawal of benefits
23. Statements of account.
24. *[Repealed by Act No. 1 of 2022, s. 26.]*
25. Offences relating to benefits
26. Regulations on contributions.
27. Regulations relating to benefits
28. Modification of Act in special cases
29. General provision as to regulations
30. Empanelment of Healthcare Providers
31. Determination of claims and questions

32. Inspection

PART IV – FINANCIAL PROVISIONS

33. Financial year

34. Investment funds

35. Annual estimates

36. Expenses of administering the Fund

37. Accounts and audit

PART V – MISCELLANEOUS PROVISIONS

38. Annual Reports

39. Administrative regulations

40. Exemption from stamp duty

41. *[Repealed by Act No. 1 of 2022, s. 38.]*

42. Proceedings to recover sums due to the Board

43. Recovery of compensation or damages

44. Evidence

45. General penalty

45A. Application of Cap. 487.

45B. Application of Cap. 197

46. *[Spent]*

SCHEDULES

TRANSITIONAL PROVISIONS

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

CHAPTER 255

NATIONAL HEALTH INSURANCE FUND ACT

[Date of assent: 31st December, 1998.]

[Date of commencement: 15th February, 1999.]

An Act of Parliament to provide for the establishment of the National Health Insurance Fund; to establish the National Health Insurance Fund Management Board; to provide for mechanisms of contributions to and the payment of benefits out of the Fund; and for connected purposes.

[Act No. 9 of 1998, Legal Notice 23 of 1999, Act No. 18 of 2014, Act No. 1 of 2021, Act No. 1 of 2022.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the National Health Insurance Fund Act.

[Act No. 1 of 2022, s. 4.]

2. Interpretation

In this Act, unless the context otherwise requires:

"accreditation" means the formal recognition of a health care provider by the Board;

"beneficiary" means a person who—

- (a) has not attained the age of twenty-one years, has no income of his own and is living with the contributor;
- (b) 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;
- (c) is a person with disability and is wholly dependent on and living with the contributor;
- (d) is a spouse; or
- (e) is a contributor;

"benefit" means a benefit payable under this Act;

"Board" means the National Health Insurance Fund Management Board established by section 4;

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

"card" *deleted by Act No. 1 of 2022, s. 5;*

"child" means a child of a contributor including a posthumous child, a stepchild, an adopted child and any child to whom the contributor stands in *loco parentis*, and who has not attained the age of eighteen years;

"contracting" means the entering into a formal agreement with an empaneled health care provider for purposes of provision of services;

"contributor" means a person liable to contribute to the Fund under section 15;

"empanelment" means enrolment of a health care provider into the list of health care service providers published in the *Gazette*;

"employer" means a person, national government or national government entity, county government or county government entity, firm, corporation or company who or which has entered into a contract of service with an individual;

"financial year" means a financial year within the meaning of section 33;

"Fund" means the National Health Insurance Fund established by section 3;

"health care provider" means the whole or part of a public or private institution, building or place, duly registered healthcare professional, whether for profit or not, that is operated or designed to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative, promotive or other health service;

"hospital" *deleted by Act No. 1 of 2022, s. 5*;

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

"inspector" means a person appointed to carry out an inspection under section 32;

"register" *deleted by Act No. 1 of 2022, s. 5*;

"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 and "named spouse" means, in any financial year, the spouse of the contributor who is for the time being named on the card issued to the contributor for that financial year;

"stamp" *deleted by Act No. 1 of 2022, s. 5*;

"vulnerable person" means a person who is in need of 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.

[Act No. 1 of 2022, s. 5.]

PART II – ESTABLISHMENT AND MANAGEMENT OF THE FUND

3. Establishment of the Fund

(1) There shall be established a Fund, to be known as the National Health Insurance Fund which shall vest in and be operated and managed by the Board.

(2) There shall be paid—

(a) into the Fund—

(i) contributions under section 15;

-
- (ii) such monies as may be appropriated by the National Assembly, for indigent and vulnerable persons;
 - (iii) gifts, grants or donations;
 - (iv) funds from the national government, county governments and their respective entities for the administration of the compulsory public service employee's insurance benefit scheme or an employer who is not a national government, a county government or their respective entities, for the administration of employee benefits; and
 - (v) contributions from post retirement funds for provision of medical cover to retired employees, where the contributor has elected to do so.
- (b) out of the Fund, all benefits and other payments required by this Act to be paid out of the Fund.
- (3) The provisions of the First Schedule shall have effect with respect to the Fund.

[Act No. 1 of 2022, s. 6.]

4. Establishment of Board

- (1) The management of the Fund shall vest in a Board which shall consist of—
- (a) a Chairperson appointed by the President by virtue of his or her knowledge and experience in matters relating to insurance, financial management, economics, health or business administration;
 - (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to health or a representative appointed in writing;
 - (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to finance or a representative appointed in writing;
 - (d) one person nominated by the Kenya Medical Association;
 - (e) one person nominated by the Federation of Kenya Employers;
 - (f) one person nominated by the Central Organization of Trade Unions;
 - (g) two persons, not being Governors, nominated by the Council of County Governors;
 - (h) two persons, not being public officers, appointed by the Cabinet Secretary; and
 - (i) the Chief Executive Officer, who shall be an *ex officio* member of the Board.
- (1A) The persons nominated or appointed under paragraphs (e), (f), (g) and (h) shall have knowledge and experience in matters relating to finance, insurance, information, communication and technology, law, public health, business management, audit, economics or any other relevant field;
- (1B) The nominating body under paragraph (f) shall afford equal opportunity to men and women, youth, persons with disabilities and minorities and marginalized groups and ensure regional balance.
- (1C) The Cabinet Secretary responsible for matters relating to health shall publish the names of the persons nominated under paragraphs (d), (e), (f) and (g) in the *Gazette*.
- (2) Deleted by Act No. 18 of 2014, Sch.

(3) The Board 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) borrowing or lending money; and
- (d) doing or performing all such other things or acts for the proper performance of its functions in the furtherance of the provisions of this Act, which may lawfully be done or performed by a body corporate.

[Act No. 18 of 2014, Sch., Act No. 1 of 2022, s. 7.]

5. Objects and functions of the Board

(1) The objects and functions of the Board shall be—

- (a) to receive all contributions and other payments required by this Act to be made to the Fund;
- (b) to make payments out of the Fund to empaneled health care providers in accordance with the provisions of this Act;
- (c) in consultation with the respective regulatory bodies specified under section 60 of the Health Act (Cap. 241), to set the criteria for the empanelment and contracting of health care providers for the purposes of this Act;
- (d) to regulate the contributions payable to the Fund and the benefits and other payments to be made out of the Fund;
- (e) to protect the interests of contributors to the Fund;
- (f) to advise the Cabinet Secretary on the national policy to be followed with regard to national health insurance and to implement all Government policies relating thereto;
- (g) to facilitate attainment of Universal Health Coverage with respect to health insurance;
- (h) to administer employee benefits as provided under this Act on behalf of employers in respect of their employees; and
- (i) to perform such other functions as are conferred on it by this Act or any other written law.

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

[Act No. 1 of 2022, s. 8.]

6. Powers of Board

The Board shall have all the powers necessary for the the performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) manage, control and administer the assets of the Fund in such manner and for such purpose as best promotes the objects for which the Fund is established:

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

- (aa) to determine the contributions to be made by contributors to the Fund;

- (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) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Board;
- (d) open a banking account or banking accounts for the Fund; and
- (e) invest any monies of the Fund not immediately required for the purposes of this Act in the manner provided in section 34.

[Act No. 1 of 2022, s. 9.]

7. Conduct of business and affairs of the Board

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

8. Delegation by the Board

The Board may, by resolution either generally or in the 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.

9. Remuneration of members of the Board.

The Chairperson and members of the Board, other than the chief executive officer, shall be paid out of the moneys of the Fund such sitting allowances or other remuneration as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

[Act No. 1 of 2022, s. 10.]

10. Chief Executive Officer

(1) There shall be a chief executive officer of the Fund who shall be appointed by the Board, through a competitive process, on such terms and conditions as the Board may, with the advice of the Salaries and Remuneration Commission, determine.

(2) A person is qualified for appointment as a chief executive officer if the person

- (a) has at least a Master's degree from a university recognized in Kenya;
- (b) has at least ten years' experience at a senior management level with skills in health insurance, health financing, financial management, health economics, healthcare, administration, law or business administration; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) 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.

(4) The chief executive officer shall serve for a term of three years and shall be eligible for re-appointment for a further and final term of three years.

(5) The chief executive officer shall be an *ex officio* member of the Board.

[Act No. 18 of 2014, Sch., Act No. 1 of 2022, s. 11.]

10A. Corporation Secretary

(1) The Board shall competitively recruit a person qualified in terms of the law governing the practice of certified secretaries in Kenya, to serve as the Corporation Secretary of the Board.

(2) A person is qualified for appointment as a corporation secretary under subsection (1) if the person has been a member of the Institute of Certified Public Secretaries for at least ten years and the person is in good standing with the Institute.

(3) 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.

[Act No. 1 of 2022, s. 12.]

11. Staff of the Board

The Board may appoint such staff as are necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Board may determine.

[Act No. 1 of 2022, s. 13.]

12. Common seal of the Board

(1) There shall be a common seal of the Board 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 Board 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 Board on behalf of either the Chairperson or the Chief Executive Officer.

[Act No. 1 of 2022, s. 14.]

13. Protection from personal liability

Subject to section 14, no matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Board under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

14. Liability of the Board for damages

The provisions of section 13 shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

PART III – CONTRIBUTIONS AND BENEFITS

14A. Registration as a member of the Fund.

(1) A person who has attained the age of eighteen years and is not a beneficiary shall register as a member of the Fund.

(2) The Cabinet Secretary may, in consultation with the Board, make regulations for the better carrying out of subsection (1).

[Act No. 1 of 2022, s. 15.]

15. Contributions to the Fund

(1) Subject to this Act, any person—

- (a) who is ordinarily resident in Kenya; and
- (b) who has attained the age of 18 years; and
- (c) whose total income, whether derived from salaried or self-employment, in the immediately preceding month, was not less than such amount as the Board, in consultation with the Cabinet Secretary, may prescribe,

shall be liable as a contributor to the Fund.

(1A) Subject to this Act—

- (a) the national government shall be liable as a contributor to the Fund in respect of all public officers, state officers and employees working in the national government and national government entities;
- (b) each county government shall be liable as a contributor to the Fund in respect of all public officers, state officers and employees working in the county government and county government entities; and
- (c) any other employer shall be liable as a contributor to the Fund in respect of its employees, subject to paragraph (2)(e).

(1B) Subject to this Act, the national government shall be liable as a contributor to the Fund on behalf of the indigent and vulnerable persons identified as such by the relevant government body.

(2) A person liable as a contributor under this section shall pay to the Board—

- (a) in the case of a person whose income is derived from salaried employment, a standard contribution; or
- (b) for persons whose income is derived from self-employment—
 - (i) in the case of a contributor who is a sole beneficiary; and
 - (ii) in the case of a contributor who is not a sole beneficiary,

a special contribution at such respective rates as may be determined by the Board;

- (c) in the case of an employer who is the national government or national government entity, a matching contribution, equal to that which their employee is liable to contribute under subsection (1)(c);

- (d) in the case of an employer who is the or county county governments or county government entity, a matching contribution, equal to that which their employee is liable to contribute under subsection (1)(c);
- (e) in the case of any other employer under subsection (1A)(c), a matching contribution equal to that which their employee is liable to contribute under subsection (1)(c), subject to subsection(2A) ; and
- (f) in the case of the national government under subsection (1B), a special contribution, as the Board, in consultation with the Cabinet Secretary, may determine.

(2A) An employer other than the national government or county governments or their entities liable to pay a matching contribution under section 15 may be exempted from paying such matching contribution, if that employer has procured a private health insurance cover for its employees and the benefits are equal to or better than the benefits that the employees are entitled to under this Act.

(2B) An employer who intends to be exempted under subsection (2A) shall submit an application to the Board in writing together with a certificate issued by the Insurance Regulatory Authority to that employer—

- (a) certifying that the respective employees have been insured by a private health insurer;
- (b) specifying the details of the cover and the benefits; and
- (c) specifying the validity period of the private health insurance cover.

(2C) The Board—

- (a) shall determine an application under subsection (2B) within thirty days of receipt; and
- (b) may grant the exemption if the Board is satisfied that the private health insurance is adequate.

(3) A contribution under subsection (2)(a) and (b) shall be at such rate, depending on the person's total income, as the Board, in consultation with the Cabinet Secretary may determine.

(3A) Subject to such guidelines as the Board may, from time to time issue, a person who wishes to receive an enhanced benefit under section 22(3) may make additional voluntary contributions to the Scheme.

(4) A person to whom this section applies shall pay the contribution to the Board on the ninth day of each month or on such later date as the Board, in consultation with the Cabinet Secretary, may prescribe.

(5) The contributions made to the Fund under subsection (2) shall be mandatory.

(6) The Cabinet Secretary shall, in consultation with the Board, make regulations for the better carrying out of this section.

[Act No. 1 of 2021, Sch., Act No. 1 of 2022, s. 16.]

16. Standard and matching contributions

(1) A person liable to pay a standard contribution under section 15 shall pay such contribution through monthly deductions from his salary or other remuneration and the employer of such person shall be liable to deduct and to pay the contribution to the Board on behalf of and to the exclusion of that person.

(1A) A person liable to pay a matching contribution under section 15 shall pay such contribution in their capacity as an employer and shall not deduct such contribution from the salary or other remuneration of the employee.

(2) An employer shall not be liable under this section to pay the standard and matching contribution in respect of any person employed by him for any month:—

- (a) in which he was not at any time the employer of that person (except where the employment is terminated in the month immediately preceding that month); or
- (b) in which he was not the employer on the first day of that month, unless that contribution has not been paid before the day in that month when he becomes the employer, in which case he shall only become liable seven days after that day;
- (c) *deleted by Act No. 1 of 2022, s. 17.*

(3) An employer shall be entitled subject to and in accordance with any regulations—

- (a) to deduct from the salary or other remuneration of any person employed by him, notwithstanding anything to the contrary in any other law, the amount of any standard contribution paid by him or to be paid by him within one month of such deduction, on behalf of that person.
- (b) *deleted by Act No. 1 of 2022, s. 17.*
- (c) *deleted by Act No. 1 of 2022, s. 17.*

(4) No sum deducted from the salary or other remuneration of an employee by his or her employer in accordance with the provisions of this Act shall be recoverable from the employer by that person once the contribution has been remitted to the Fund.

(5) If for any reason an employer is unable to ascertain whether any person employed by him is liable to pay the standard contribution for any month, he may apply to the Board for a decision, and, subject to the provisions of section 31, any decision given by the Board thereon shall be final and binding on that employer.

(6) Any person who—

- (a) fails without lawful excuse to pay, within the time and in the manner prescribed by this Act in relation to him, any standard or matching contribution which he is liable as an employer to pay under this Act; or
- (b) knowingly makes any deductions from the salary or other remuneration of any person employed by him, purporting to be a deduction in respect of any standard contribution, other than a deduction which he is authorised to make by this Act,

commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings.

[Act No. 1 of 2022, s. 17.]

17. Persons to be treated as employers

In relation to contributors who work under the general control or management of a person other their employer, immediate and in relation to any other case of employment for which it appears to the Board that special provision is needed, the Board may, in regulations, provide that for the purposes of this Act, the prescribed person shall be treated as their employer; and such regulations may provide for

adjusting the rights between themselves of employers, persons prescribed as employers and employed persons.

18. Penalty for late payment of standard and matching contributions

(1) If a standard or matching contribution which a person is liable to remit under section 16, has not been remitted by the day on which the payment of the standard or matching contribution is due, the person shall be liable to pay a penalty equal to the lending rate of interest, of the amount of the contribution, as may published by the Central Bank of Kenya from time to time.

(2) If an employer fails to pay a standard contribution in respect of any person employed by him—

- (a) that employer shall be liable to pay the penalty prescribed in subsection (1) and pay the costs incurred by the employee that would have been covered by the Fund when seeking treatment from a contracted health care provider during the period when the contribution is due;
- (b) that employee shall not be liable to any penalty under this section for so long as he is employed by that employer;
- (c) where an employer is a national government, county government or a national or county government entity, the respective accounting officer shall be personally liable for the costs that would have been covered by the Fund and incurred by the employee when seeking treatment from a contracted health care provider during the period when the contribution is due.

(3) Where a contributor is outside Kenya on the day when a standard and matching contribution becomes payable by him, that contribution shall, for the purposes of this section, be deemed to become payable on the day of his return to Kenya.

(4) In this section, the expressions "micro enterprise" and "small enterprise" have the meanings assigned thereto respectively in the Micro and Small Enterprises Act (Cap. 499C).

[Act No. 18 of 2014, Sch. Act No. 1 of 2022, s. 18.]

19. Special contributions

(1) Every person liable to pay a special contribution under this Act shall pay the contribution to the Board on the first day of each month or on such later date as the Board may specify, in such manner and at such rate as may be prescribed.

(2) If a special contribution which any person is liable to pay under this section is not paid on or before the day on which the payment is due, a penalty equal to ten percent of the amount of the contribution shall be payable by that person for each month or part thereof during which the contribution remains unpaid, and any such penalty shall be recoverable as a sum due to the Fund and when recovered shall be paid into the Fund.

(3) *Deleted by Act No. 1 of 2022, s. 19.*

[Act No. 1 of 2022, s. 19.]

20. Voluntary contributions

The Board may make regulations in respect of voluntary contributions by unemployed persons, prescribing the manner of making such contributions, the procedure to be followed and the forms to be used.

[Act No. 1 of 2022, s. 20.]

21. Mode of identification of beneficiaries and payment of contributions.

(1) The Board shall prescribe the mode of identification of a beneficiary, taking into account the existing legal framework for national registration.

(2) The Board may require a person who is liable to remit a payment for a standard and matching contribution under section 16 to furnish such information or particulars, or to produce such documents, as the Board deems necessary for that purpose.

(3) A person who—

(a) knowingly makes any false statement relating to a matter affecting his or her liability to remit a standard or matching contribution under section 16; or

(b) being required under subsection (2) to furnish information or particulars, or produce a document, refuses or neglects to do so without reasonable cause,

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 twelve months, or to both.

(4) Evidence of the payment of contribution shall be deemed conclusive if the person liable to pay the contribution has —

(a) a record of remittance of the contributions; or

(b) in the case of a standard contribution, a record of the contributor's monthly pay-slip that the contribution has been deducted from his or her salary.

[Act No. 1 of 2022, s. 21.]

21A. Establishment of a centralized healthcare provider management system

(1) The Board shall cause to be developed a centralized healthcare provider management system.

(2) The centralized healthcare provider management system shall be installed and used by all empaneled providers for the purpose of management of claims, payments and data collection.

(3) The Board may publish guidelines on the use of the centralized healthcare provider management system by empaneled and contracted health care providers.

[Act No. 1 of 2022, s. 22.]

22. Payment of benefits

(1) The Board shall pay from the Fund, a benefit to an empaneled or contracted health care provider for an expense incurred by the provider, for the provision of health care services through the centralized healthcare provider management, to the number of beneficiaries determined by the Board.

(2) Deleted by Act No. 1 of 2022, s. 23.

(3) The Board shall, in consultation with the Cabinet Secretary prescribe benefits payable from the Fund including benefits available with respect to emergency treatment for—

- (a) primary angioplasty;
- (b) thrombolysis;
- (c) thrombolysis and rescue angioplasty; or
- (d) such other treatment as the Board may determine.

(3A) The benefits payable from the Fund shall be subject to such limits, and conditions as the Board may prescribe in regulations.

(3B) The Board shall determine and approve the applicable tariffs payable to the Fund under section 15(3A) and payable out of the Fund under subsection (1), to empaneled contracted health care providers for an expense incurred by the provider for the provision of healthcare services to the number of beneficiaries determined by the Board.

(3C) The Board shall, every two years, carry out a review of the applicable tariffs payable to the Fund under section 15 and payable out of the Fund to empaneled contracted health care providers.

(3D) The Board shall use the approved risk spreading mechanism, approved claims administration services on benefits of outpatient, inpatient and on employees' benefits scheme as provided for under sections 3(2)(a)(iv) and (v), 15, 22 and 43.

(4) *Deleted by Act No. 1 of 2022, s. 23.*

(5) Where a beneficiary has a private health insurance cover—

- (a) the private health insurance shall be liable for payment up to the limits the beneficiary is covered;
- (b) the Fund shall pay the daily rebate, for inpatient; and
- (c) the Fund shall cover the outstanding bill where private insurance cover's limits for various benefits have been exhausted subject to the Fund's applicable limits with respect to each benefit.

[Act No. 1 of 2022, s. 23.]

22A. Non-withdrawal of benefits

(1) The Board shall not withdraw the benefits of a person undergoing treatment for a chronic illness.

(2) The Board shall, in making regulations for determining benefits under the Fund ensure that the Fund shall meet the costs of a contributor accessing inpatient services at any empaneled health care provider.

[Act No. 1 of 2022, s. 24.]

23. Statements of account.

(1) The Board shall upon request avail a statement of accounts to a contributor, or a person who is liable to remit under section 16, with regard to their contributions.

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

[Act No. 1 of 2022, s. 25.]

24.

[Repealed by Act No. 1 of 2022, s. 26.]

25. Offences relating to benefits

(1) 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.

(2) Any person who—

(a) with intent to obtain the payment of any benefit under this Act, impersonates any person whether living or dead;

(b) *deleted by Act No. 1 of 2022, s. 27;*

(c) *deleted by Act No. 1 of 2022, s. 27;*

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.

(3) *Deleted by Act No. 1 of 2022, s. 27;*

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

(i) a fine not exceeding five hundred thousand shillings;

(ii) removal from the register of empaneled and contracted health care providers.

(5) The Board shall cause the name of every hospital suspended under subsection (3)(ii) of this section to be notified in the *Gazette* and such institution shall not, during the suspension, be entitled to any benefit from the Fund.

(6) The Board shall cause the name of every health care provider removed from the register under subsection (4)(ii) to be notified in the *Gazette*, at least two newspapers of national circulation and at the official website of the Fund.

(7) A health care provider which has been removed from the register under section (4)(ii) shall not be entitled to receive any benefit from the Fund.

[Act No. 1 of 2022, s. 27.]

26. Regulations on contributions.

The Board may, in consultation with the Cabinet Secretary make regulations providing for—

(a) any matters incidental to the payment and collection of any contributions under this Act;

(aa) the amount and rates of contributions payable by contributors into the Fund;

(b) the refund of any contributions paid in error;

(c) the remission in whole or in part of penalties incurred under this Act, in such circumstances and subject to such conditions as may be prescribed;

(d) the giving of such rebates as may be prescribed to contributors.

[Act No. 1 of 2022, s. 28.]

27. Regulations relating to benefits

Subject to the provisions of this Act, the Board, in consultation with the Cabinet Secretary, may make regulations prescribing the amount of any benefits and the period within which any benefits shall be payable out of the Fund for the time being and such regulations may provide for:—

- (a) any conditions or limitations subject to which any benefit shall be paid;
- (b) the manner of the making and determination of any claim to any benefit;
- (c) the postponement of any payment of benefit pending any relevant inquiry;
- (d) the authorisation of any person to claim a benefit on behalf of a contributor where such contributor is unable, for the time being, to do so.
- (e) the settlement of valid claims, which shall be within a period of one month from the date of submission of the claim.

[Act No. 1 of 2022, s. 29.]

28. Modification of Act in special cases

Regulations made by the Board may modify in such manner as the Board may deem proper, the provisions of this Act in their application—

- (a) to persons who are or have been outside Kenya while contributors to the Fund;
- (b) to persons who are employed on board any ship or aircraft.

29. General provision as to regulations

(1) Without prejudice to any specific power conferred by any provision of this Act, the Board may, in consultation with the Cabinet Secretary, make regulations facilitating the implementation of this Act, including in particular, regulations—

- (a) prescribing anything required to be prescribed under this Act;
- (b) prescribing the particulars, information, proof or evidence to be furnished as to any question or matter arising under this Act, including any question or matter relevant to the payment of contributions by or in respect of any person, or the making or validity of any claim or application for the payment of any benefit under this Act.
- (c) prescribing, in respect of any action required or permitted to be taken under this Act, the time and manner of taking that action, the procedure to be followed and the forms to be used.

(2) Any regulations made under this Act may make different provisions in respect of different cases or classes of cases and for different purposes of this Act, may impose conditions and make exceptions, and may contain such incidental or supplementary provisions as appear to the Board to be expedient for the purposes of the regulations.

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

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

- (b) the authority of the Board to make regulations under this Act will 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 —

- (a) the Statutory Instruments Act (Cap. 2A);
(b) the Interpretation and General Provisions Act (Cap. 2);
(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.

[Act No. 1 of 2022, s. 30.]

30. Empanelment of Healthcare Providers

(1) The Board shall, in consultation with the relevant regulatory bodies specified under section 60 of the Health Act (Cap. 241), publish in the *Gazette*, the list of empaneled health care providers for the purposes of this Act.

(2) A notice in the *Gazette* under subsection (1) may be made subject to such conditions relating to the fees which may be charged by the health care provider to any contributor under this Act, including conditions as to the amount of such fees and the requirement of the Board's consent to any variation thereof, as the Board considers it necessary and where any such conditions are made—

- (a) the Board may publish such conditions in the *Gazette* or in such other manner considers it necessary; and
(b) a health care provider shall not charge any fees to any contributor under this Act which is contrary to such condition.

(3) The Board may, at any time, revoke any empanelment under this section.

(4) Where the Board intends to revoke the empanelment of a health care provider under subsection (3), the Board shall notify the health care provider of the intended revocation, in writing, setting out the reasons for revocation of empanelment.

(5) A health care provider may, upon receiving a notification under subsection (4) submit a written response to the notification within seven days.

(6) A health care provider whose empanelment has been revoked under this section may apply to the Board for the review of the revocation in the first instance and, if dissatisfied by the decision of the Board upon review, appeal to the High Court against the revocation.

(7) The Board shall cause the name of every health care provider whose empanelment is revoked to be published in the *Gazette* and in at least three newspapers with nationwide circulation.

[Act No. 1 of 2022, s. 31.]

31. Determination of claims and questions

(1) Subject to the provisions of this Act, the Board, in consultation with the Cabinet Secretary, may make regulations for the determination by the Board or by any officer thereof, or by a person or body of persons appointed or constituted in accordance with the regulations, of any question arising under or in connection

with this Act, including any claim for a benefit, and subject to the provisions of the regulations, a decision in accordance therewith shall be final.

(2) Regulations under subsection (1) may provide—

- (a) for enabling appeals to be brought from the decisions of any officer, person or body of persons to any other person or body appointed or constituted in accordance with the regulations to hear such appeals;
- (b) for the reference to the High Court for decision on any question of law arising in connection with the determination of any question by any officer, person or body of persons and for appeals to the High Court from the decision of any such officer, person or body on any such question of law; and the Chief Justice shall have power to make rules of court for regulating such references and appeals, for empowering the court to make orders as to the costs of such references and appeals, and for limiting the time within which such appeals may be brought.

[Act No. 1 of 2022, s. 32.]

32. Inspection

(1) The Chief Executive Officer may, at any time and from time to time, and shall, if so directed by the Board cause an inspection to be made by an inspector authorised by him of—

- (a) any premises or places where an inspector reasonably believes that any persons are employed (excluding a private dwelling not used for the purpose of trade or business); or
- (b) any empaneled and contracted health care provider, for the purposes of ascertaining whether this Act is being or has been complied with, and the inspector shall, for the purposes of such inspection, have power to enter any such premises or place at all reasonable times, and to examine every person whom he finds therein.

(2) The occupier of any premises or place liable to inspection under this section and the servants and agents of the occupier or other person shall furnish to the inspector all such information and produce for inspection all such documents as the inspector reasonably requires for the purposes of ascertaining whether—

- (a) standard and matching contributions are or have been payable, or have been duly paid, by or in respect of any person; or
- (b) any benefit is or was payable to or in respect of any person; or
- (c) in the case of an empaneled health care provider, whether the conditions, if any, attached to the empanelment or contracting have been met.

(3) Any person who—

- (a) wilfully delays or obstructs an inspector in the exercise of his powers under this section; or
- (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required to do so under this section,

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months

and in the case of a conviction for making false claims or receiving illegal benefits shall be required to make good any moneys falsely received.

(4) Every inspector shall, before entering any premises or other place liable to inspection under this section, if so required by the occupier or other person authorised by him, produce a certificate of his appointment signed by or under the authority of the Board.

(5) Where any hospital is liable to be inspected by a public officer for the purposes of enforcing any law other than this Act, the Board may make arrangements for any of the powers and duties of inspectors under this section to be exercised or performed by the public officer and where such arrangement is made, that public officer shall have all the powers of an inspector under this section.

(6) Any inspector who, without any lawful excuse, gives false information in respect of the existence or non-existence of any fact in any hospital or other premises or places inspected under this section, commits an offence and is liable on conviction to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding sixty months or to both.

[Act No. 1 of 2022, s. 33.]

PART IV – FINANCIAL PROVISIONS

33. Financial year

The financial year of the Fund shall be the period of twelve months commencing on the 1st July in every year.

34. Investment funds

(1) All moneys in the Fund 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 authorised by law to be invested;
- (aa) in government securities as may be approved by the National Treasury.
- (b) *deleted by Act No. 1 of 2022, s. 34.*

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

[Act No. 1 of 2022, s. 34.]

35. Annual estimates

(1) At least four months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

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

- (a) for the payment of the salaries, allowances and other charges in respect of the staff of the Board;
- (b) for the payment of the pensions, gratuities and other charges in respect of retirement benefits to staff of the Board;

- (c) for the payment of all the claims and benefits of the contributors in respect of medical and health care expenses incurred by them or their named dependants pursuant to the provisions of this Act;
- (d) for the proper maintenance of the buildings and grounds of the Board;
- (e) for the proper maintenance, repair and replacement of the equipment and other movable property of the Board;
- (f) for 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 Board may deem fit.

(3) The annual estimates shall be submitted for approval by the Board before the commencement of the financial year to which they relate:

Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board. Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

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

36. Expenses of administering the Fund

There shall be paid out of the Fund and in such manner as the Board, in consultation with the Cabinet Secretary may determine, such sum as the Board may estimate to be its expenditure in respect of any financial year in accordance with the provisions of section 35.

[Act No. 1 of 2022, s. 35.]

37. Accounts and audit

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

(2) The accounts of the Board shall be audited and reported upon in accordance with the Public Finance Management Act (Cap. 412A) and the Public Audit Act (Cap. 412B).

[Act No. 1 of 2022, s. 36.]

PART V – MISCELLANEOUS PROVISIONS

38. Annual Reports

(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 Board 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.

[Act No. 1 of 2022, s. 37.]

39. Administrative regulations

(1) In the performance of its functions under this Act, the Board may, subject to this Act, make regulations generally for the governance, control and administration of the Board and in particular for—

- (a) the settlement of the terms and conditions of service, including the appointment, dismissal, remuneration and retirement benefits of the members of the staff of the Board; and
- (b) the constitution and procedure of meetings of the Board and the establishment, composition and terms of reference of committees of the Board.

(2) Regulations made by the Board under this section shall not be published in the *Gazette* but shall be brought to the attention of all persons affected thereby.

40. Exemption from stamp duty

No duty shall be chargeable under the Stamp Duty Act (Cap.480) in respect of any instrument executed by any person on behalf of or in favour of the Board or in respect of the payment of any benefit or in refunding any contribution under this Act in any case where, but for this exemption, the Board or any person acting on its behalf would be liable to pay such duty.

41.

[Repealed by Act No. 1 of 2022, s. 38.]

42. Proceedings to recover sums due to the Board

(1) The court before which any person is convicted of an offence under this Act may, without prejudice to any civil remedy, order such person to pay to the Board, as the case may be, the amount of any standard contribution or any other sum, together with any penalty found to be due from such person to the Board and any sum so ordered shall be recoverable as a fine and paid into the Fund.

(2) All sums due to the Board shall be recoverable as debts due to the Board, and without prejudice to any other remedy, may be recovered by the Board summarily as a civil debt.

(3) All criminal and civil proceedings under this Act may, without prejudice to any other power in that behalf, be instituted by any inspector or other officer of the Board.

(4) All sums recovered by legal proceedings in respect of monies which should have been paid into the Fund shall, when recovered, be paid into the Fund.

(5) Despite any other written law, the assets of the Fund shall not be liable to attachment under any process of law.

[Act No. 1 of 2022, s. 39.]

43. Recovery of compensation or damages

Where a contributor to the Fund is entitled, whether under the Work Injury Benefits Act (Cap. 236) or otherwise, to recover compensation or damages in respect of any injury or illness, he shall not, to the extent to which such compensation or damages are recoverable, be entitled to any benefits in respect of any treatment undergone by him as a result of such injury or illness, and any benefits paid in respect of such treatment, shall to the extent to which such compensation or damages have been recovered, be repaid to the Board;

Provided that the payment of any benefits as aforesaid shall not preclude the right of the contributor to recover any compensation or damages.

[Act No. 1 of 2022, s. 40.]

44. Evidence

In any proceedings under this Act, a copy of any entry in the accounts of, or any extract from the records or register of the Fund, shall, if stated to be a true copy by a certificate purporting to be signed by the Chief Executive of the Board, or a person authorized in that behalf by him, be received in evidence as prima facie evidence of the truth of the contents thereof.

45. General penalty

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.

[Act No. 1 of 2022, s. 41.]

45A. Application of Cap. 487.

The provisions of the Insurance Act shall apply to the Fund only in respect to risk spreading and claims administration services.

[Act No. 1 of 2022, s. 42.]

45B. Application of Cap. 197

The provisions of the Retirement Benefits Act (Cap. 197) shall apply to the Fund only with respect to post-retirement medical contributions under section 3(2)(a)(v).

[Act No. 1 of 2022, s. 42.]

46.

[Spent]

FIRST SCHEDULE

[s. 3(3)]

TRANSITIONAL PROVISIONS

[Act No. 1 of 2022, s. 43]

1. In this Schedule—

"appointed day" means the day appointed for the coming into operation of the National Health Insurance Fund Act (Cap. 255);

"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 Cabinet Secretary to the Treasury shall, by virtue of this paragraph and without further assurance, vest in the Board.
- (2) 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 Board, 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 Board.

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 Board.

5.(1) Subject to subparagraph (2), the officers, inspectors and servants appointed for the administration of the Fund in office on the appointed day shall be deemed to be officers, inspectors and servants appointed by the Board under section 11 of the Act.

(2) Notwithstanding the provisions of subparagraph (1), within twelve months after the appointed day, the Board shall review the qualifications of all persons deemed to be employees of the Board under subparagraph (1) and may retain those found suitably qualified for employment by the Board subject to—

- (a) such persons opting to remain in the service of the Board; and
- (b) such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Board.

(3) Any employee not retained by the Board under subparagraph (2) may exercise his option to either—

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

(4) Where an employee enters into an agreement with the Board under subparagraph (2), his service with the Government shall be deemed to be terminated without the right to severance pay but without prejudice to all other remuneration and benefits payable upon the termination of his appointment with the Government.

6. 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 Board for the remainder of that financial year:

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

SECOND SCHEDULE

[s. 7]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

[Act No. 1 of 2022, s. 44.]

1. Tenure of office

(1) A member of the Board other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period not exceeding three years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for one more term of a period not exceeding three years.

- (2) The members of the Board shall be appointed at different times so that the respective expiry dates of the members' terms shall fall at different times.

2. Vacation of office

The office of a member of the Board, other than an *ex officio* member, shall become vacant if the member—

- (a) at any time resigns from office by notice in writing to the Cabinet Secretary;
- (b) has been absent from three consecutive meetings of the Board without the permission from the Chairperson;
- (c) is adjudged bankrupt enters into a composition scheme or arrangement with creditors;
- (d) is convicted of an offence involving dishonesty or fraud;
- (e) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
- (f) is incapacitated prolonged by physical or mental illness.

3. Meetings

- (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 members of the Board shall, at the first meeting of the Board, elect from amongst their number, a vice-Chairperson from among members of the Board except *ex officio* members of the Board.
- (3) *Deleted by Act No. 1 of 2022, s. 44.*
- (4) The quorum for the conduct of the business of the Board shall be five members excluding the Chief Executive Officer.
- (5) The Chairperson shall preside at every meeting of the Board at which he is present but in his absence, the vice-Chairperson shall preside and, in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
- (6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.
- (7) Subject to paragraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
- (8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make guidelines in respect thereof.

4. Disclosure of interest

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable

after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

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

5. *Deleted by Act No. 1 of 2022, s. 44.*

6. Minutes

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