

CHAPTER 395

THE NATIONAL HEALTH INSURANCE FUND ACT

[PRINCIPAL LEGISLATION]

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SCHEDULE

CHAPTER 395

THE NATIONAL HEALTH INSURANCE FUND ACT

An Act to establish the National Health Insurance Fund and to provide for contributions to and payment of health care benefits to certain Government employees and to provide for related matters.

[1st December, 1999]
[G.N. No. 320 of 1999]

Acts Nos.	2 of 2010
8 of 1999	17 of 2010
25 of 2002	5 of 2012
11 of 2005	6 of 2021
1 of 2008	13 of 2023
3 of 2009	

PART I

PRELIMINARY PROVISIONS

Short title

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

Application
Acts Nos.
25 of 2002 Sch.
3 of 2009 s. 25
2 of 2010 s. 23
13 of 2023 s. 46

2.-(1) This Act shall apply to public servants, Councillors, person under formal private sector, students and retirees who were previous members and any other category or group of persons other than the following categories:

- (a) a judge;
- (b) a member of defence forces;
- (c) a member of intelligence services;
- (d) a member of a council, board, panel or committee; and
- (e) a person holding office the emolument of which is payable at an hourly rate or daily rate.

(2) The Minister may, after consultation with the Board and by notice published in the *Gazette*, determine any other category of public servants, a person or group of persons to be a member of the Fund and the types of benefit package which may be granted to the beneficiary of the Fund.

Interpretation
Acts Nos.
25 of 2002 Sch.
3 of 2009 s. 26
5 of 2012 s. 30
6 of 2021 s. 37

Cap. 135

Cap. 161

Cap. 197

3. In this Act, unless the context requires otherwise—
“accreditation” means a process whereby the qualification and capabilities of health care providers are verified for the purpose of conferring the privilege of participation in the scheme;

“actuary” means a person trained to understand risks and probabilities and to apply skills to the financial problem especially those involving uncertain future events as human mortality and mobility and is a member of an institute, society or association of actuaries approved by the Authority;

“actuarial valuation” has the meaning ascribed to it under the Social Security Act;

“actuarial report” means a report prepared by an actuary who undertakes actuarial valuation under this Act;

“Authority” has the meaning ascribed to it under the Universal Health Insurance Act;

“Bank” means the Bank of Tanzania established by the Bank of Tanzania Act;

“beneficiary” means a person entitled to health care benefits under this Act;

“benefit package” means the services offered to a beneficiary;

“Board” means the Board of Directors of the Fund;

“capitation” means a payment mechanism where a fixed rate is negotiated by the Fund for a specified period with a health care provider for delivery of health services due to a beneficiary;

“child” includes a step child, a child born out of wedlock and any child to whom the member stands in *loco parentis*, who has not attained the age of twenty one years;

“Councillors” as used in this Act means Councillors of the local government authorities other than Members of Parliament;

“contribution” means the amount from salary or wages paid to the Fund by or on behalf of a member;

“dependant” means a member of a family or a member who is wholly or in part dependent upon the member’s earning;

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“diagnostic procedure” means a procedure of analysis and examination for the identification of a disease or health condition;

Cap. 300

“employee” means an individual who-

- (a) has entered into a contract of employment;
- (b) has entered into any other contract in which the individual undertakes to work personally for the other party to the contract the other party is not a client or customer of any profession, business, or undertaking carried on by the individual;
- (c) is deemed to be an employee by the Minister under section 98(3) of the Employment and Labour Relations Act; or
- (d) is deemed to be an employee in accordance with section 61 of the Labour Institutions Act;

“employer” means the Government employing the services of an employee;

“enrolment” means the process of listing individuals who are members or dependants covered by the scheme;

“Essential Drug List” means the list of drugs for Tanzania which is prepared by the Ministry;

“fee for service” means a fee charged by a health care provider to the Fund for past services offered to a beneficiary;

“essential drug list” means the list of drugs for Tanzania which is prepared by the Ministry;

“formal sector” means the sector which includes employers and employees who have entered into a contract of employment apprenticeship or any other contract contemplated in the definition of the term “employee”;

“Fund” means the National Health Insurance Fund;

“health care institution” includes a dispensary, health centre, hospital and any other medical clinic;

“health care providers” means a health care institution;

“informal sector” means the sector which include workers who work informally and who do not work in terms of an employment contract or any other contract;

“member” means a person or employee employed in the formal or informal sector or self employed within Mainland Tanzania, registered or insured under this Act;

“Minister” means the Minister responsible for health matters;

“Ministry” means the Ministry of Health;

“peer review” means a review of the treatment of a patient or the performance of a health care provider by a professional colleague;

“public servant” for purposes of this Act, extends to and includes every person holding a public office invested with or performing duties of public nature, whether under the immediate control of the President or not, and includes an officer under control of a Local Government Authority, public institution, public corporation or parastatal but does not include a person holding such office only on part time basis;

“quality assurance” means review and assurance of quality of health care service, quality assessment and corrective action to a deficiency;

“Retiree” means a member who has ceased to be a Public Servant;

“salary” means gross salary of the member payable to an employee in consideration of the service rendered under the contract of service or apprenticeship or any other form of office of call, excluding bonus, commission, cost of living allowance, overtime payment, director’s fees or any other additional emoluments;

“Scheme” means the National Health Insurance Scheme;

“Tribunal” means the National Health Insurance Fund Tribunal;

“utilisation review” means the evaluation of patient utilisation or of the appropriateness of health care services; and

“voluntary contribution” means any other form of contribution apart from statutory contributions of any person wishing to access supplementary services.

PART II

NATIONAL HEALTH INSURANCE FUND

Establishment
of Fund and its
objectives
Act No.
5 of 2012 s. 31

Cap. 135

Management and
administration

Director-General
Acts Nos.
2 of 2010 s. 24
5 of 2012 s. 32

4.-(1) There is hereby established an autonomous institution to be known as the National Health Insurance Fund.

(2) The Fund shall be a body corporate with perpetual succession and a common seal and in its own name be capable of-

- (a) suing and being sued; and
- (b) acquiring and holding movable and immovable property, to disposing of property and entering into any contract or other transaction which may be performed by a body corporate lawfully.

(3) The objectives of the Fund shall be-

- (a) to administer the Scheme; and
- (b) to formulate and promulgate policies for sound administration of the Scheme.

(4) Operations of the Fund established under this section shall be subject to the provisions of the Social Security Act.

5. The management and administration of the Fund shall vest in the Board.

6.-(1) There shall be a Director-General of the Fund who shall be appointed by the Board and be responsible for the general conduct of the operations and management functions of the Fund and for other duties assigned to him by the Board.

(2) A person shall not be qualified for appointment to be the Director-General unless he-

- (a) has the necessary training and experience in the field of health insurance, health financing or corporate management; and
- (b) is not an interested party in any health care institution.

(3) The Director-General shall be the Secretary to the Board.

(4) The post of the Director-General shall be advertised and confirmed by the Board for appointment after consultation with the Minister.

(5) The Director-General shall hold an office for a term of five years and may, subject to satisfactory performance, be eligible for re-appointment.

Directors 7. There shall be other Directors of the Fund whose posts shall be advertised and confirmed by the Board for appointment.

PART III REGISTRATION AND CONTRIBUTIONS

Registration with Fund 8. The contributing employers and employees shall be registered with the Fund.

Rate of contribution
Acts Nos.
25 of 2002 Sch.
17 of 2010 s. 44 9.-(1) An employer shall make a monthly contribution to the Fund of an equivalency of three *per centum* of his employee's salary.

(2) Treasury shall deposit the monthly contribution of the employee together with another three *per centum* contribution from the employer to the Fund.

(3) The provisions of subsections (1) and (2) shall not apply to members of the Police Force, Prison Services, Immigration Services and Fire and Rescue Services.

(4) For the purposes of subsection (3), the Treasury shall, in respect of a member of the Police Force, Prison Services, Immigration Services and Fire and Rescue Services deposit contributions to the Fund at the rate equivalent to six and a quarter *per centum* of each member's monthly salary.

(5) A contribution due under this section shall be paid to the Fund within one month after the last day of contribution period to which it relates.

Review of contribution rates
Act No. 5 of 2012 s. 33

10. The Board may review the rate of contribution to the Fund subject to regulations, guidelines or directives issued by the Authority.

PART IV

HEALTH CARE BENEFITS

Coverage
Acts. Nos.
3 of 2009 s. 27
13 of 2023 s. 47

11.-(1) The Scheme shall cover-

- (a) public servants;
- (b) their spouses;
- (c) their children or dependants not exceeding four in number;
- (d) retirees who were previously members of the Fund;
- (e) councilors, during the time when any of councilors, is in office; and
- (f) persons under formal private sector, student and children.

(2) In the event of both spouses being public servants, the Board may set criteria for enrolment of more than four children or dependants as beneficiaries under this Act.

Repealed

12. [Repealed by Act No. 3 of 2009 s. 28]

Authority may exempt certain conditions
Act No. 5 of 2012 s. 34

13.-(1) A member may, by application to the Authority, supported by an affidavit and on the recommendation of a specified authority, apply for exemption from the application to him of any condition under this Act.

(2) For the purposes of subsection (1), the expression "specified authority" means-

- (a) in relation to a public officer serving under a district or regional administration, the Regional Administrative Secretary;
- (b) in relation to a public officer serving in a Ministry, the Permanent Secretary;
- (c) in relation to a public officer serving in an extra-ministerial department or public institution, the head of the department or the public institution; and

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(d) in relation to a public officer serving in the Local Government Authority, the City, Municipal or District Executive Director.

(3) Upon recommendation by the specified authority, the application shall be submitted by the specified authority to the Authority for determination in terms of section 40 of the Social Security Act.

(4) Authority may grant the exemption where it is satisfied that, the application of condition under the Act to a member would unfairly disqualify that member from benefit package.

[s. 12A]

Potability of benefits

14. The Fund shall develop and enforce a mechanism and procedure that shall assure benefits are portable across the areas of work within Mainland Tanzania.

[s. 13]

Membership

15.-(1) A public servant shall be a member of the Fund.

(2) The Fund shall enrol the beneficiaries under this Act by identifying and issuing to them the appropriate documents specifying the entitlement to the benefit.

[s. 14]

Cessation of membership
Acts Nos.
25 of 2002 Sch.
3 of 2009 s. 29
2 of 2010 Sch.

16. Membership of a member shall cease where one of the following circumstances occurs-

- (a) death;
- (b) termination from employment;
- (c) failure to contribute to the Fund for three consecutive months; and
- (d) any other circumstance which in the opinion of the Board shall be considered as a factor for cessation of membership.

[s. 14A]

Identity card
Act No.
25 of 2002 Sch.

17.-(1) The Board shall issue a health insurance identity card to any beneficiary for identification, verification and utilisation recording purposes.

(2) The issuance of the identity card shall be accompanied by an explanation to the enrolled member of his rights, privileges and obligations and a list of health care providers accredited by the Board shall be likewise attached thereto.

(3) The member shall collect identity card from his children, who have attained the age of eighteen years, or dependants who cease from being lawful beneficiaries of the Fund and surrender them to the employer.

(4) The employer shall collect the identity cards from the employees who cease from being members of the Fund together with those of the children and dependants submitted to him by a member, and submit them to the Director-General.

(5) The Fund shall, where a member or employer fails to execute his duties under subsections (3) and (4), recover from a member or employer, expenses incurred by the Fund as a result of using identity cards after cessation of membership.

[s. 15]

Benefit package
Acts Nos.
5 of 2012 s. 35
13 of 2023 s.48

18.-(1) The Fund shall provide the standard benefit package in accordance with the Universal Health Insurance Act.

(2) Without prejudice to the provisions of subsection (1), the Fund may provide supplementary benefit packages in accordance with the Universal Health Insurance Act.

[s. 16]

Health care
services not
covered under
Scheme
Acts Nos.
25 of 2002 Sch.
11 of 2005 s. 56

19. The Minister may, upon recommendation of the Board, prepare a list of health care services that may not be granted under this Act.

[s. 17]

Disapplication
Act No.
25 of 2002 Sch.
Cap. 366
Cap. 263

20. The provisions of paragraph 6 of the Third Schedule to the Employment and Labour Relation Act, which relates to provision of medicine and medical treatment, and section 31 of the Workers' Compensation Act, which relates to medical expenses, shall not apply to employers registered with the Fund:

Provided that the Fund shall provide medicine and medical treatment in accordance with the provisions of this Act and the provisions of regulations made thereunder.

[s. 18]

PART V

HEALTH CARE PROVIDERS

Certification of accreditation **21.** The authority to grant certification to a health care provider is vested in the Board.

[s. 19]

Requirements for certification **22.** The requirements for accreditation of a health facility shall be-

- (a) the availability of human resources, equipments and physical structure that is in conformity with the standard of the relevant facility as determined by the Ministry;
- (b) the acceptance of a formal programme of quality assurance and utilisation review;
- (c) the acceptance of the payment mechanism specified by the Board;
- (d) adoption of referral protocols and health resources sharing arrangements;
- (e) the recognition of rights of patients; and
- (f) the acceptance of information system requirements and regular transfer of information.

[s. 20]

Accreditation eligibility **23.**-(1) A health facility shall be eligible for accreditation if it is in operation for at least three years

(2) The Board may vary the condition specified under subsection (1) in relation to any specific health facility taking into account the circumstances of the geographical area.

[s. 21]

Categorisation of health facilities **24.** A health facility shall be categorised into different levels of accredited health facilities regardless of whether it is private or public.

[s. 22]

Choice of health care provider **25.** A beneficiary requiring treatment or confinement shall be free to choose the accredited health care provider subject to the area of jurisdiction and in the case of confinement, the ceiling of the health care provider.

[s. 23]

Accreditation of pharmacies **26.** In case of non-availability of drugs from a health care provider specified under the Essential Drugs List, the Board may devise a mechanism for accreditation of pharmacies.

[s. 24]

Payment mechanism **27.** (1) The payment mechanism to a health care provider at the beginning shall be a fee for service which may be changed to capitation or other form of payment mechanism as the Board may determine.

Cap. 348 (2) A money paid to a public health facility shall be deposited into the Health Services Fund Account established under section 12 of the Public Finance Act.

(3) For the purposes of this section “public health facility” means any Government health facility and any other health facility in which the Government and the health care providers have entered into service agreement.

[s. 25]

Quality assurance **28.** A health care provider shall take part in programmes of quality assurance utilisation review and technology assessment to ensure that-

- (a) the quality of health care services is delivered in accordance with the standards specified by the Ministry; and
- (b) acquisition and use of scarce and expensive medical technology and equipment are in consonance with

the actual needs and standards of the medical practice and that the performance of medical procedure and administration of drugs are appropriate and consistent with accepted standards of medical practice and ethics and are respectful of the Tanzania Standard Guidelines for Treatment.

[s. 26]

Monitoring mechanism

29.—(1) The Fund shall enter into a contract with health care provider to ensure that, there are monitoring mechanisms to safeguard against—

- (a) over-utilisation of health care services;
- (b) under-utilisation of health care services;
- (c) unnecessary diagnostic and therapeutic procedures and intervention;
- (d) irrational medication and prescription; and
- (e) inappropriate referral practices.

(2) The Fund may deny or reduce the payment of claims which are false or incorrect or when the claimant fails without justifiable cause to comply with the rules or regulations pertaining to payment of claims made under this Act.

[s. 27]

Payment of claims

30. A claim of money by a health care provider shall be paid within sixty days of presentation to the Fund for the claim.

[s. 28]

PART VI

THE NATIONAL HEALTH INSURANCE BOARD

Establishment of Board

31.—(1) There is hereby established a Board to be known as the National Health Insurance Board.

(2) The provisions of the Schedule to this Act shall have effect as to the composition of the Board, the appointment and tenure of its members, the proceedings of the Board and other matters in relation to the Board.

(3) The Minister may by Order in the *Gazette*, amend, vary or replace any of the provisions of the Schedule to this Act.

[s. 29]

Functions and
duties of Board

32. The functions and duties of the Board shall be to-

- (a) set up requisite procedures for the registration and enrolment of beneficiaries under this Act;
- (b) devise control measures to prevent abuses of services;
- (c) submit to the Ministry an annual report which shall contain the status of the Fund, its total disbursements, reserves, average costing beneficiaries and any other data pertinent to the implementation of the Scheme;
- (d) organise its office, appoint personnel or fix their salary and other remuneration as may be deemed necessary and upon recommendation by the Director-General;
- (e) supervise the provision of health benefits and to inspect medical and financial records pertaining to the Fund of the health care providers and beneficiaries;
- (f) determine the requirements and issue guidelines for the certification of health care providers for the Scheme in accordance with this Act;
- (g) ensure the collection or recovery of indebtedness and liabilities, including unpaid contributions in favour of the Fund;
- (h) enter into, make, perform and carry out contracts of every kind and description with any person, firm, association, corporation, domestic or foreign for the better carrying out of this Act;
- (i) enter and inspect accredited health facilities subject to rules and regulations promulgated by the Fund;
- (j) formulate and implement guidelines on contributions and benefits, portability of benefits, cost containment and quality assurance and health care provider arrangements, payment methods and referral systems;
- (k) receive and manage goods, donations, and other forms of assistance;

- (l) collect, deposit, invest, administer, and disburse the funds of the Scheme in accordance with the provision of the Act; and
- (m) perform any other acts which are necessary for attainment of the objectives of the Fund and for proper enforcement of the provisions of this Act.

[s. 30]

Powers of Board **33.** In the performance of its functions and duties the Board shall have power to-

- (a) negotiate and enter into contracts with health care institutions, professionals, and other persons, juridical or natural, regarding the pricing, payment mechanisms, design and implementation of administrative and operating systems and procedures for financing and delivery of health services;
- (b) acquire property, movable and immovable, which may be necessary or expedient for the attainment of the purposes of this Act;
- (c) set standards, rules and regulations necessary to ensure quality of care, appropriate utilisation of services, viability of the Fund, satisfaction of members and overall objectives of the Scheme;
- (d) establish branch offices when necessary;
- (e) authorise actuarial studies for the purpose of determining and fixing, the necessary contributions and the extent and scope of benefits of the beneficiaries of the scheme as its resources may permit in order to ensure adequate financing and disbursement of funds to participants of the Scheme;
- (f) hire and fire staff of the Fund;
- (g) delegate some of its powers to any Committee of the Board or to the Director-General or any employee of the Board on conditions as may be specified by the Board;
- (h) establish any committee of the Board whenever it may deem necessary; and

(i) perform other acts as it may deem appropriate for the attainment of the objectives of the Fund and proper enforcement of the provisions of this Act.

[s. 31]

PART VII

FINANCIAL PROVISIONS

Financial resources

34. The resources of the Fund shall consist of-

- (a) the employer's and employee's contributions to the Fund;
- (b) any income generated from investments of the Fund approved under this Act;
- (c) sums as may be received by way of donations and grants in aid;
- (d) fines and penalties payable under this Act;
- (e) sums as may be appropriated by Parliament for the purposes of the Fund; and
- (f) any sum which may in any manner become payable to or vested in the Board as a result of the performance by the Board of its functions and duties under this Act.

[s. 32]

Management of funds
Acts. Nos.
2 of 2010 s. 26
5 of 2012 s. 37

35.-(1) The use, disposition, investment, disbursement, administration and management of funds shall be governed by resolution of the Board subject to the following limitations, namely-

- (a) that funds under the management and control of the Fund shall be subject to rules and regulations applicable to public funds;
- (b) that the administrative costs shall not exceed fifteen *per centum* of the total income of the Fund;
- (c) that reserve funds shall be set aside in the Reserve Account;

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(d) any investment of the Fund shall be short or long term investment aimed at improving the provision of health services to its members or to general public; and

(e) any investment shall be made subject to guidelines, issued by the Bank.

(2) Where an investment is made in breach of subsection (1) and (2), the Member of Board, Director, manager or any officer of the Fund who took part in the decision to invest shall be personally liable to a penalty or fine as prescribed under the Social Security Act.

(3) Notwithstanding the penalty imposed under subsection (2), the Bank shall have power to-

- (a) require the Fund to comply with the procedures for investment;
- (b) discontinue the investment; or
- (c) take other measures as may be appropriate.

[s. 33]

Annual and supplementary budget

36.-(1) In this Act “financial year” means any period not exceeding twelve consecutive months designated in that behalf by the Board.

(2) The Board shall at its meeting before the beginning of any financial year pass an annual budget of the amounts respectively-

- (a) expected to be received; and
- (b) expected to be disbursed, by the Board during that financial year.

(3) The Board may pass a supplementary budget detailing the disbursement in any financial year where it requires to make any disbursement not provided for or of an amount in excess of the amount provided for in the annual budget for that financial year.

(4) The Board shall submit to the Minister for approval, the annual budget and every supplementary budget.

(5) The Minister shall, upon receipt of the annual budget or supplementary budget approve or disapprove the same or may approve subject to amendments as he may deem fit.

[s. 34]

Power to borrow 37. The Board may borrow moneys for the purposes of the Fund by way of loan or overdraft and upon security and terms relating to the repayment of the principal and the payment of interest as the Board may deem fit.

[s. 35]

Reserve Fund 38.-(1) The Fund shall subject to subsections (2) and (3) set aside a portion of its accumulated revenues not needed to meet the costs of the current year's expenditures as Reserve Funds.

(2) The total amount of reserves set aside under subsection (1) shall not exceed a ceiling equivalent to the amount estimated for one year's projected Scheme's expenditures.

(3) Whenever actual reserves exceed the required ceiling at the end of the Fund's fiscal year, the Scheme's benefits shall be increased or member contributions decreased respectively in order to adjust expenditures or revenues to meet the required ceiling for reserve funds.

[s. 36]

Accounts and Audit Act Nos. 39.-(1) The Board shall cause to be provided and kept proper books of accounts and records with respect to-

- (a) the receipt and expenditure of moneys by, and other financial transactions of, the Fund; and
- (b) the assets and liabilities of the Fund, and shall cause to be made out for every financial year a balance sheet and a statement of account showing details of the income and expenditure of the Fund and its assets and liabilities.

(2) Not later than six months after the close of every financial year, the accounts including the balance sheet of the Fund relating to the financial year shall be audited by the auditors appointed by the Controller and Auditor-General.

(3) As soon as practicable after receipt by the Minister of the copy of the statement of account together with a copy of the report submitted under subsection (2), the Minister shall lay a copy of the report together with the statement of account before the National Assembly.

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(4) The Board shall submit annually to the Authority financial report and other reports on the activities of the Fund as required by the Social Security Act.

(5) The financial reports referred to under subsection (4) shall contain-

- (a) financial position of the Fund at that time;
- (b) day to day entries of sums of money received and expended by the Fund and matters in respect of which receipt and expenditure took place;
- (c) the assets and liabilities of the Fund; and
- (d) other information as may be required by the Authority.

[s. 37]

Monies of Fund

40. The monies of the Fund shall be deemed to be funds held by the Board in trust for the members and the Government and shall be administered by the Board in accordance with the provisions of this Act.

[s. 38]

Accounts of Board

41. The Board shall cause to be kept, maintained and audited the accounts of the Fund and the Reserve Account.

[s. 39]

Actuarial report
Act No.
5 of 2012 s. 36

42.-(1) The Board shall, at intervals of three years or at any other intervals as the Authority may direct, cause the assets and liabilities of the Fund to be evaluated by an actuary.

(2) A report of the evaluation carried out in accordance with subsection (1), shall be submitted to the Authority and the Minister.

(3) Based on the report, the Authority may direct the Fund to take measures as may be necessary to rectify an anomaly revealed by the report.

[s. 39A]

PART VIII

CLAIMS AND APPEALS

Appeals
Act No.
13 of 2023 s. 49
Cap. 394

43. A member or health care provider who is aggrieved by any decision of an officer of a scheme may appeal to the Ombudsman through the Authority in accordance with section 124(5) of the Insurance Act.

[s. 40]

Repealed

44-45. [Repealed by Act No. 13 of 2023 s. 50]

[s. 41-42]

PART IX

LEGAL PROCEEDINGS, OFFENCES AND PENALTIES

Criminal
proceedings
Acts Nos.
1 of 2008 s. 50
5 of 2012 s. 38

46.-(1) A person who-

- (a) for the purposes of evading payment of any contribution by him or some 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 a material particular;
- (b) for the purposes of obtaining any benefit or refund for himself or some other person, knowingly makes any false statement or representation or produces or causes to be produced any document or information which he knows to be false in a material particular;
- (c) misrepresents or fails to disclose any material fact;
- (d) fails to pay the required contribution under this Act;

- (e) fails without lawful excuse to produce documents required to be produced under this Act;
- (f) fails to comply with any rules or regulations made under this Act as a result of which there is loss to the Fund or the records of the contribution by the member cannot be maintained;
- (g) knowingly deducts from an employee's salary in respect of a contribution to the Fund a sum greater than the employee's share of the statutory contribution; or
- (h) misrepresents or fails to disclose any material fact as a result of which he obtains the benefits which he is not entitled, commits an offence and on conviction shall be liable to a fine of not less than two hundred thousand shillings but not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.

(2) Where the Director General is of the opinion that an offence has been committed or is about to be committed against this Act, he shall commence investigation and on completion of such an investigation submit the report to the Director of Public Prosecutions.

Provided that, the Director-General, the Inspector or principal officer is a public prosecutor appointed by the Director of Public Prosecutions.

(3) For the purposes of this section, "court" means the district or resident magistrates' court.

[s. 43]

Procedure to
recover sums due
to Fund

47.—(1) The Court before whom a person is convicted of an offence under this Act may, without prejudice to any civil remedy, order the person to pay to the Fund the amount of the contribution due together with any penalty thereon or any other sum, and any sum ordered shall be recoverable as a fine and paid into the Fund.

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

[s. 44]

Penalty for delay
in payment of
contribution
Act No.
3 of 2009 s. 30

48.-(1) Where a contribution which any employer is liable to pay under this Act in respect of any employee is not paid on or before the day on which payment is due, a penalty equal to five per centum of the amount of that contribution shall be payable by that employer for each month or part of a month that the contribution remains unpaid:

Provided that, the Fund may, waive in whole or in part any penalty imposed pursuant to this section.

(2) The penalty provided for under subsection (1) shall be recoverable as a sum due to the Fund, and when recovered shall be paid into the Fund.

[s. 45]

Joinder - in cases
of nonpayment of
contribution

49. Notwithstanding anything to the contrary contained in any other written law, in any proceedings against an employer in respect of contributions due for more than one of his employees, the magistrate may permit one plaint or one charge sheet to be made or filed in respect of contributions claimed to be due.

[s. 46]

Protection of
contribution

50. The sum standing to the credit of a member shall, until paid out in accordance with the provisions of this Act, remain the property of the Fund and shall not form part of the assets of that person in the event of his bankruptcy or insolvency or be liable to attachment in satisfaction of his debts.

[s. 47]

Protection of
attachment

51. Notwithstanding anything to the contrary contained in any other written law, an execution or attachment or process of any like nature shall not be issued against the contributions of any member, except in accordance with the terms of the Fund,

and the contributions shall not form part of the assets of the member in the event of bankruptcy or insolvency.

[s. 48]

PART X

GENERAL PROVISIONS

Exemption from liability

52. An act done or omitted to be done by any officer of the Fund shall not subject any officer to any action, liability or demand if done or omitted *bona fide* in execution or purported execution of his duties as such.

[s. 49]

Regulations

53. The Minister may upon recommendations from the Board make regulations prescribing-

- (a) the amount of benefit and the period for which the benefit shall be payable;
- (b) conditions or limitations to the benefit;
- (c) the manner of making and the manner of determination of any claim to the benefit;
- (d) the grades of members' entitlement;
- (e) the period for postponement of any payment of benefit pending the relevant inquiry;
- (f) for any matters incidental to the payment and collection of any contribution or to the issue or replacement of any cards used under this Act;
- (g) for the remission in whole or in part of penalties incurred in circumstances and subject to conditions as may be provided;
- (h) 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;

- (i) 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;
- (j) fees, powers, rules and procedures for the Tribunal;
- (k) conditions for registration of members and procedure for enrolment of beneficiaries under this Act;
- (l) the mode of payment of claims;
- (m) the procedure for dealing with unclaimed money in the Fund;
- (n) the duties of employers respecting registration of employees;
- (o) the period for submission of annual and any other report as may be provided under this Act;
- (p) the procedure for appointment of the Director-General, other directors and other senior staffs of the Fund;
- (q) the rights of patients;
- (r) conditions for certification of health care providers;
- (s) the performance monitoring of health care providers;
- (t) the quality assurance of health care providers;
- (u) the procedure of filing complaints before the Tribunal;
 - (v) for offences and penalties;
- (w) status and operations of inspectors; and
- (x) any other matter for purposes of effective implementation of the Act.

[s. 50]

Inspectors

54.—(1) The Board may appoint inspectors for the purposes of this Act.

(2) An inspector on production of a certificate under the hand of the Director-General of his appointment as an inspector, may enter at reasonable times on the premises or place and make any examination or inquiry necessary to obtain information for the purposes of this Act.

(3) An inspector may, in the performance of his duties require any person to produce any documents relating to contributions to the Fund for inspection by him.

(4) For the purposes of this section “premises” means any building or erection used for the purposes of business, but does not include a dwelling used exclusively for residential purposes.

(5) A person who-

- (a) wilfully delays or obstruct an inspector in the exercise of any power 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 on conviction shall be liable to a fine not exceeding five hundred thousand shillings.

[s. 51]

Repealed

55. [Repealed by Act No. 3 of 2009 s. 31].

[s. 52]

Exemptions

56. Notwithstanding any other written law-

- (a) income tax shall not be payable on the contributions and benefits under this Act; and
- (b) stamp duty shall not be payable on any receipt, instrument or document given or executed by the Board on behalf of the Fund or executed by any person in respect of the benefit or refund of contributions under this Act.

[s. 53]

Separability declaration

57. In the event of any provision under this Act or the application of that provision to any person or circumstances is declared invalid, the remainder of this Act or the application of the other remaining provisions to other persons or circumstances shall not be affected by the declaration.

[s. 54]

Directives

58. The Minister may, subject to relevant Government procedures, give to the Board directives of general or specific nature as to the performance of the Board of any of its

functions in relation to any matter appearing to the Minister to affect national interest, and the Board shall give effect to the directives.

[s. 55]

Remuneration **59.** The Board shall determine the remuneration of its members but subject to approval by the Minister.

[s. 56]

SCHEDEULE

(Made under section 31(2))

COMPOSITION AND PROCEEDINGS OF THE BOARD

Interpretation **1.** In this Schedule “member” means a member of the Board and includes the Chairman.

Composition **2.** The members of the Board shall be-

- (a) two representatives from the Ministry responsible for health;
- (b) one representative from the Office of the Attorney General;
- (c) one member representing the organisation of employees and the majority of whom are members to the Fund;
- (d) one representative from the Association of Private Hospitals;
- (e) one representative from the Ministry of Finance; and
- (f) two other members with expertise in business or insurance.

Appointment and **3.**-(1) Members of the Board shall be appointed by the Minister.
tenure (2) Members of the Board shall each hold office for a period of three years and may be reappointed for a further one term.

Vacation of office **4.** The office of a member shall become vacant-

- (a) on his death;
- (b) upon resignation;
- (c) where a member without sufficient cause fails to attend three consecutive meetings of the Board; or
- (d) where a member becomes in any manner disqualified from membership of the Board.

Filling of **5.** Where a member dies, resigns or has his appointment terminated vacancies or otherwise vacates his office before the expiry of the term for which he is appointed, the Minister may appoint a person to fill the vacancy during the remainder of the term for which the vacating member was appointed.

Chairman **6.** The Chairman shall be appointed by the Minister.

Vice-Chairman **7.** The Board shall elect one of its members to be the Vice-Chairman.

Secretary **8.** The Director-General shall act as the Secretary of the Board.

Meetings and quorum **9.** (1) An ordinary meeting shall be held once every four months and convened by the Chairman and the notice of the meeting shall be sent to each member not less than fourteen days before the date of the meeting. (2) The Chairman, or in his absence the Vice-Chairman, shall be bound to convene a special meeting of the Board upon receipt of request signed by not less than five members, and not less than fourteen days' notice of the meeting shall be given to the members. (3) One half of the total number of members shall form a quorum for any meeting of the Board. (4) There shall preside at the meeting of the Board- (a) the Chairman; (b) in the absence of the Chairman, the Vice-Chairman; and (c) in the absence of the Chairman and the Vice-Chairman, a member as may be elected by members amongst themselves for the purpose of that meeting.

Voting **10.** (1) At the meeting of the Board, a decision of the majority of the members present and voting shall be deemed to be a decision of the Board. (2) In the event of equality of votes, the Chairman of that meeting shall have a casting vote in addition to his deliberative vote.

Decision by circulation of papers **11.** Notwithstanding the provisions of paragraph 9(4), a decision may be made by the Board without a meeting, by circulation of the relevant papers to members and the expression in writing of their views to members but a member may require that any decision shall be deferred until the matter is considered at a meeting of the Board.

Minutes **12.** Minutes in proper form of each meeting shall be kept and shall be confirmed by the Board at the next meeting and signed by the Chairman and the Secretary of the meeting.

Vacancy **13.** The Board may act notwithstanding any vacancy in its membership.

Validity of proceedings **14.** The validity of any proceedings of the Board shall not be affected by any defect in the appointment of any member.

Orders and directions **15.** The orders, directions, notices or other documents made or issued on behalf of the Board shall be signed by- (a) the Chairman of the Board; (b) the Secretary; or (c) any officer authorised in writing in that behalf by the Secretary.

Seal

16. The seal of the Board shall not be affixed to any instrument except in the presence of the Director-General or other officer of the Board as the Board may appoint in that behalf.

Proceedings

17. Subject to the provisions of this Schedule the Board shall have power to regulate its own proceedings.

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