



THE UNITED REPUBLIC OF TANZANIA

CHAPTER 395

THE NATIONAL HEALTH INSURANCE FUND ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION OF 2015

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Dar es Salaam,
30th March 2016

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Attorney General

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]

Act Nos.
8 of 1999
25 of 2002
11 of 2005
1 of 2008
3 of 2009
2 of 2010
17 of 2010
5 of 2012

**PART I
PRELIMINARY PROVISIONS**

- 1.** This Act may be cited as the National Health Insurance Fund Act. Short title
- 2.**-(1) This Act shall apply to all public servants, Councillors, retirees who were previous members and any other category or group of persons other than the following categories- Application
- (a) a judge; Act Nos. 25 of 2002 Sch. 3 of 2009 s. 25
 - (b) a member of defence forces; 2 of 2010 S.23
 - (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.
- 3.** In this Act, unless the context requires otherwise- Interpretation
- “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; Act Nos. 25 of 2002 Sch. 3 of 2009 s. 26 5 of 2012 s.30

- “actuary” means a person trained to understand risks and probabilities and to apply such skills to the financial problem especially those involving uncertain future events such 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 (Regulatory Authority) Act;
- “actuarial report” means a report prepared by an actuary who undertakes actuarial valuation under this Act;
- Cap. 135 “Authority” means the Social Security Regulatory Authority established under the Social Security (Regulatory Authority) Act;
- Cap. 197 “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 eighteen 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 of a member who is wholly or in part dependent upon the member’s earning;
- “diagnostic procedure” means a procedure of analysis and examination for the identification of a disease or health condition;
- “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;
 - Cap. 366 (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; Cap.300
- “enrolment” means the process of listing individuals who are members or dependants covered by the scheme;
- “fee for service” means a fee charged by a health care provider to the Fund for past services offered to a beneficiary;
- “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 any 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;
- “National Essential Medicine List” means the list of drugs for Tanzania which is prepared by the Ministry;
- “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 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 from being 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; Cap 135
- “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 a part from statutory contributions of any person wishing to access supplementary services.

PART II NATIONAL HEALTH INSURANCE FUND

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

Establishment of the Fund and its objectives

Act No. 5 of 2012
S. 31

(2) The Fund shall be a body corporate with perpetual succession and a common seal and, shall 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 (Regulatory Authority) Act.

Cap.135

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

Management and administration

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

6.-(1) There shall be a Director-General of the Fund who shall be appointed by the Board and shall 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 from time to time.

(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 reappointment.

Cap 135

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

Directors

PART III REGISTRATION AND CONTRIBUTIONS

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

Registration with the Fund

9.-(1) Each employer shall make a monthly contribution to the Fund of an equivalency of three *per centum* of his employee's salary.

Rate of contribution

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

Act No. 2 of 2010 s.44

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

(4) For the purpose of subsection (3), the Treasury shall, in respect of every 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) Every 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.

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

Review of contribution rates

Act No. 5 of 2012 s. 33

PART IV HEALTH CARE BENEFITS

11.-(1) The Scheme shall cover-

- (a) all public servants;
- (b) their spouses;
- (c) their children or dependants not exceeding four in number;
- (d) retirees who were previously members of the Fund; and
- (e) Councillors during the time when any of such councillors is in office.

Coverage Act Nos: 25 of 2002 s.2 3 of 2009 s. 25

(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
by Act No.
3 of 2009
s. 28

12. [Repealed]

Authority
may
exempt
certain
conditions

12A.-(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.

Act No.
5 of 2012
s. 34

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

Cap. 135

(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 38A of the Social Security (Regulatory Authority) Act.

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

Potability
of
benefits

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

Member-
ship

14.-(1) Every public servant shall be a member of the Fund.

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

Cessation
of member-
ship

14A. Membership of a member shall cease where one of the following circumstances occurs-

Act Nos.
25 of 2002
3 of 2009
s.29
2 of 2010
s.25

- (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.

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

Identity card Act No. 25 of 2002 s. 2

(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 all 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 such member or employer, as the case may be, all expenses incurred by the Fund as a result of using identity cards after cessation of membership.

16.-(1) Subject to the provisions of this Act personal health services benefits granted to a beneficiary shall be-

Benefit package Act No. 5 of 2012 s.35

- (a) the inpatient's hospital care fee consisting of a fixed sum determined by the Board; and
- (b) the outpatient care consisting of medicine in generic prescription in accordance with the National Essential Medicine List unless an explicit exception is granted by the Fund.

(2) If the actual fees for inpatient hospital care exceed the fixed sum determined by the Board under paragraph (a) of subsection (1), the difference of that amount shall be paid by the beneficiary.

(3) All costs not included in associated costs other than the costs referred to in paragraph (b) of subsection (1) shall be paid by the beneficiary.

(4) Notwithstanding the subsections (1) and (2), the benefit package may be reviewed by the scheme subject to regulations guidelines or directives issued by the Authority.

Health care services not covered under the Scheme

Act No. 11 of 2005
s. 56

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

Disapplication
Cap.366
Cap. 263

18. 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.

PART V HEALTH CARE PROVIDERS

Accreditation of health facility

19. The authority to grant accreditation to a health care provider is vested in the Board.

Requirements for accreditation

- 20.** 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.

Accreditation eligibility

21.-(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.

22. Any health facility shall be categorised into different levels of accredited health facilities regardless of whether it is private or public.

Categori-
sation of
health
facilities

23. 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 such health care provider.

Choice of
health
care
provider

24. In case of non-availability of medicine from a health care provider specified under the National Essential Medicine List, the Board may devise a mechanism for accreditation of pharmacies.

Accreditation of
pharmacies

25.-(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 from time to time.

Payment
mechanism

(2) Any 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.

Cap.348

(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.

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

Quality
assurance

- (a) the quality of health care services is delivered in accordance with the standards specified by the Ministry from time to time; 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 medicine are appropriate and consistent with accepted standards of medical practice and ethics and are respectful of the Tanzania Standard Guidelines for Treatment.

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

Monito-
ring
mechani-
sm

- (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.

Payment
of
claims

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

PART VI THE NATIONAL HEALTH INSURANCE FUND BOARD

Establish-
ment of
the Board

29.-(1) There is established a Board to be known as the National Health Insurance Fund 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 such other matters in relation to the Board.

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

Functions
and
duties of
the
Board

30. 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 accreditation of health care providers for the scheme in accordance

with this Act;

- (g) ensure the collection or recovery of all 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.

31. In the performance of its functions and duties the Board shall have power to-

Powers
of the
Board

- (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 accomplishment of the 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;

- conditions as may be specified by the Board;
- (h) establish any committee of the Board whenever it may deem necessary; and
 - (i) perform such other acts as it may deem appropriate for the attainment of the objectives of the Fund and for proper enforcement of the provisions of this Act.

PART VII FINANCIAL PROVISIONS

Financial
resources

- 32.** 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) such sums as may be received by way of donations and grants in aid;
 - (d) fines and penalties payable under this Act;
 - (e) such 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.

Manage-
ment of
funds
Act. No.
2 of 2010
s.26
5 of 2012
s.37

33.-(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 all 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;
- (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 such investment shall be made subject to guidelines, issued by the Bank.

(2) Where an investment is made in breach of subsection (1) 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 of as prescribed under the Social Security (Regulatory Authority) Act.

Cap. 135

(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.

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

Annual and supplementary budget

(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 if 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 any supplementary budget approve or disapprove the same or may approve subject to such amendments as he may deem fit.

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

Power to borrow

36.-(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.

Reserve Fund

(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.

- (g) delegate some of its powers to any committee of the Board or to the Director-General or any employee of the Board on such

Accounts
and Audit
Act Nos.
2 of 2010
s. 27
5 of 2012
s. 37A

37.-(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 all 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 from time to time.

(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.

Cap. 135

(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 (Regulatory Authority) 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 all 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) such information as may be required by the Authority.

Fund
Account

38. 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.

Accounts
of the
Board

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

Actuarial
report
Act No.
5 of 2012
s. 36

39A.-(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.

**PART VIII
CLAIMS AND APPEALS**

40. A member or a health care provider who has been aggrieved by any decision made by the officers of the Scheme may appeal to the Tribunal in accordance with the provisions of this Act.

Claims

41. The following acts shall constitute valid grounds for an appeal, namely-

Grounds for appeal

- (a) any violation of the rights of patient;
- (b) a wilful neglect of duties by the implementors of the Scheme that results in the loss or non-enjoyment of benefits by beneficiaries;
- (c) unjustifiable delay in actions on claims;
- (d) delay in the processing of claims that extends beyond the period agreed upon; and
- (e) any other act or neglect that tends to undermine or defeat the purpose of this Act.

42.-(1) There is established a National Health Insurance Fund Tribunal which shall have jurisdiction to adjudicate appeals on the grounds specified in section 41.

Appeals Tribunal

(2) The Tribunal shall consist of a lawyer who shall be the chairman, a medical practitioner and one other person with experience in health insurance, all of whom shall be appointed by the Minister.

(3) Regulations made under this Act shall prescribe the powers, rules, procedures and fees for the Tribunal and provide for the tenure and remuneration of members of the Tribunal.

**PART IX
LEGAL PROCEEDINGS, OFFENCES AND PENALTIES**

43.-(1) Any person who-

- (a) for the purpose 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

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5 of 2012
s.38

- or furnished any document or information which he knows to be false in a material particular;
- (b) for the purpose 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 is liable on conviction 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 such fine and imprisonment.

(2) Any action for the recovery of contributions and all criminal proceedings under subsection (1) may be instituted in court by the Director-General, Inspector or any principal officer of the Fund appointed by the Board:

Provided that the Director General, the Inspector or such 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.

Proce-
dure to
recover
sums due
to Fund

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

(2) All 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.

45.-(1) If any 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:

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

Provided that the Fund may, if it thinks fit, 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.

46. 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 all contributions claimed to be due.

Joinder in cases of non-payment of contribution

47. 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.

Protection of contribution

48. Notwithstanding anything to the contrary contained in any other written law, no execution or attachment or process of any like nature shall be issued against the contributions of any member, except in accordance with the terms of the Fund, and such contributions shall not form part of the assets of the member in the event of bankruptcy or insolvency.

Protection of attachment

PART X GENERAL PROVISIONS

49. No act done or omitted to be done by any officer of the Fund shall, when done or omitted *bona fide* in execution or purported execution of his duties as such, subject any officer to any action, liability or demand.

Exemption from liability

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

Power to make regulations

- (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 so incurred in such circumstances and subject to such 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 accreditation 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.

Inspectors **51.**-(1) The Board may appoint inspectors for the purposes of this Act.

(2) Any inspector on production of a certificate under the hand of the Director-General of his appointment as an inspector, may enter at all 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) Any 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 is liable to a fine not exceeding five hundred thousand shillings.

52. [Repealed]

Repealed
Act No.
3 of 2009
s. 31

53. Notwithstanding any other written law-

Exemp-
tions

- (a) no income tax shall be payable on the contributions and benefits under this Act; and
- (b) no stamp duty shall 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.

54. In the event of any provision under this Act or the application of such 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.

Separability
declaration

55. The Minister may, subject to relevant Government procedures, give to the Board directions 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 such directions.

Directions

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

Remune-
ration

SCHEDULE

COMPOSITION AND PROCEEDINGS OF THE BOARD

(Section 29(2))

- Interpretation **1.** In this Schedule “member” means a member of the Board and includes the Chairman.
- Composition
Act No. 5 of 2012
Cap 39 **2.** The members of the Board shall be-
- (a) two representatives from the Ministry responsible for health matters;
 - (b) one representative from the Attorney-General’s Chambers;
 - (c) one member representing the organisation of employees 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 of tenure **3.** Members of the Board shall be appointed by the Minister and 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) if he without sufficient cause fails to attend three consecutive meetings of the Board; or
 - (d) if he becomes in any manner disqualified from membership of the Board.
- Filling of vacancies **5.** If a member dies, resigns or has his appointment terminated 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 any 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, such member as may be elected by members amongst themselves for the purpose of that meeting.
- 10.**-(1) At any 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. Voting
- (2) In the event of equality of votes the Chairman of that meeting shall have a casting vote in addition to his deliberative vote.
- 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 all members and the expression in writing of their views to all members but a member may require that any such decision shall be deferred until the matter is considered at a meeting of the Board. Decision by circulation of papers
- 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. Minutes
- 13.** The Board may act notwithstanding any vacancy in its membership. Vacancy
- 14.** The validity of any proceedings of the Board shall not be affected by any defect in the appointment of any member. Validity of proceedings
- 15.** All orders, directions, notices or other documents made or issued on behalf of the Board shall be signed by- Orders and directions
- (a) the Chairman of the Board; or
 - (b) the Secretary or any officer authorised in writing in that behalf by the Secretary.
- 16.** The seal of the Board shall not be affixed to any instrument except in the presence of the Director-General or such other officer of the Board as the Board may appoint in that behalf. Seal
- 17.** Subject to the provisions of this Schedule the Board shall have power to regulate its own proceedings. Proceedings

CHAPTER 395

THE NATIONAL HEALTH INSURANCE FUND ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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SCHEDULE
