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**THE NATIONAL HOSPITAL INSURANCE FUND
(AMENDMENT) BILL, 2015**

A Bill for

**AN ACT of Parliament to make amendments to the National
Insurance Fund Act**

ENACTED by the Parliament of Kenya, as follows—

Short Title

1. This Act may be cited as the National Hospital Insurance Fund (Amendment) Act, 2015.

Amendment of Section 4 of Cap. 255

2. The National Hospital Insurance Fund Act, in this Act referred to as the “principal Act”, is amended in section 4 subsection (1) by inserting the following new paragraph immediately after paragraph (l)—

(m) one person nominated by the Council of County Governors.

Amendment of Section 18 of Cap. 255

3. Section 18 of the principal Act is amended in subsection (1) by deleting the words “five times” appearing immediately after the words “a penalty equal to” and inserting therefor the word “twice”.

Amendment of Section 19 of Cap. 255

4. Section 19 of the principal Act is amended in subsection (2) by deleting the words “five times” appearing immediately after the words “a penalty equal to” and inserting therefor the words “twice”.

Amendment of Section 43 of Cap. 255

5. Section 43 of the principal Act is amended by deleting the words “Workmen’s Compensation Act (Cap. 236)” appearing immediately after the words “whether under the” and inserting therefor the words “Work Injury Benefits Act (Cap. 236)”.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The purpose of this Bill is to make amendments to the National Hospital Insurance Fund Act, to reduce the penalties imposed by the Act for late payment of standard contributions and special contributions. The penalty as imposed by the Act has been a deterrent to defaulters who may wish to continue remitting payments to the Fund.

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

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of County Governments as set out under part 2, paragraph 2 of the Fourth Schedule to the Constitution, which provides for county health services.

County health services are a devolved function and therefore the National Hospital Insurance Fund affects the running of most hospitals which are managed by County Governments, as patients who are members of the fund, rely on a rebate from the fund upon discharge from the hospitals.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated 19th February, 2015.

MARTHA WANGARI,
Senator.

Section 4 of Cap. 255 which it is intended to amend—

4. Establishment of Board

(1) There shall be established a Board to be known as the National Hospital Insurance Fund Board of Management which shall consist of—

- (a) a chairman to be appointed by the President by virtue of his knowledge and experience in matters relating to insurance, financial management, economics, health or business administration;
- (b) the Permanent Secretary in the Ministry for the time being responsible for matters relating to Health or his representative;
- (c) the Permanent Secretary to the Treasury or his representative;
- (d) the Permanent Secretary/Director of Personnel Management or his representative;
- (e) the Director of Medical Services;
- (f) one person nominated by the Federation of Kenya Employers;
- (g) one person nominated by the Central Organisation of Trade Unions;
- (h) one person nominated by the Kenya National Union of Teachers;
- (i) one person nominated by the Kenya National Farmers Union;
- (j) two members appointed by the Minister as follows—
 - (i) one person nominated by the Association of Kenya Insurers;
 - (ii) one person nominated by non-profit making health-care providers;
- (k) the chairman of the Kenya Medical Association; and
- (l) one member representing non-governmental organisations involved in the provision of health care services, nominated by the Non- Governmental Organizations Council established under the Non-Governmental Organizations Co-ordination Act, 1990 (No. 19 of 1990).

(2) For purposes of subsection (1) “non-profit making health-care providers” means hospitals managed on a charitable basis by religious organisations.

(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.

Section 18 of Cap. 255 which it is intended to amend—

18. Penalty for late payment of standard contributions

(1) Subject to the provisions of this section and without prejudice to any other penalty imposed under this Act, if any contribution which any person is liable to pay under this Act in respect of any month, is not paid on or before the day on which payment is due, a penalty equal to five times the amount of that 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.

(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);
- (b) that employee shall not be liable to any penalty under this section for so long as he is employed by that employer.

(3) Where a contributor is outside Kenya on the day when a standard 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.

Section 19 of Cap. 255 which it is intended to amend—

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 five times 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) Any contributor who, without lawful excuse, fails to pay, within the time and in the manner prescribed by this Act, any special contribution which he is liable to pay, commits an offence and is liable on conviction to a fine equal to four times the amount of that contribution but the imposition of any such fine shall not affect the liability of such person to pay the penalty prescribed by subsection (2).

Section 43 of Cap. 255 which it is intended to amend—

43. Recovery of compensation or damages

Where a contributor to the Fund is entitled, whether under the Workmen's Compensation 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.