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**THE NATIONAL HOSPITAL INSURANCE FUND
(AMENDMENT) BILL, 2021**

A Bill for

**AN ACT of Parliament to amend the National Hospital
Insurance Fund Act, 1998**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the National Hospital Insurance Fund (Amendment) Act, 2021. Short title.

2. The long title of the National Hospital Insurance Fund Act, 1998, in this Act referred to as the “principal Act” is amended by inserting the words “to establish the National Health Scheme” immediately after the word “Board”. Amendment of the long title to No. 9 of 1998.

3. Section 2 of the principal Act is amended by— Amendment of section 2 of No. 9 of 1998.
 - (a) by deleting the definition of “card”;
 - (b) in the definition of child by deleting paragraphs (b), (c) and (d);
 - (c) by deleting the definition of “hospital”;
 - (d) by deleting the definition of “stamp”;
 - (e) deleting the definition of “inspector” and substituting therefor the following new definition;

“inspector” means a person appointed to carry out an inspection under section 32”;
 - (f) by inserting the following new definitions in proper alphabetical sequence;

“accreditation” means the formal recognition of a health care provider by the relevant body”;

“beneficiary” means a person who—

 - (a) has not attained the age of twenty-one years, has no income of his own and is living with the contributor;
 - (b) has not attained the age of twenty-five years, is undergoing a full-time course of education at a university, college, school or other educational

establishment or serving under articles or an indenture with a view to qualifying in a trade or profession and is not in receipt of any income other than a scholarship, bursary or other similar grant or award;

- (c) is either mentally or physically handicapped and is wholly dependent on and living with the contributor;
- (d) is a spouse; or
- (e) is a contributor;

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

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

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

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

“vulnerable person” means a person who is in need of special care, support or protection, including the orphaned and vulnerable children, widows or widowers, person living with disabilities, poor elderly persons or indigent due to a risk of abuse or neglect and who has been identified as such by the relevant government body;

4. Section 5(1) of the principal Act is amended—

Amendment of
section 5 of No. 9
of 1998.

- (a) in paragraph (b) by deleting the words “declared hospitals” and substituting therefor the words “empaneled health care providers”;
- (b) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) in consultation with the Minister, to set the criteria for the empanelment and contracting of health care providers for the purposes of this Act”;

(c) by deleting paragraph (g) and substituting therefor the following new paragraphs—

“(g) to facilitate attainment of Universal Health Coverage including communication and stakeholder engagement; and

(h) to perform such other functions as are conferred on it by this Act or by any other written law”.

5. The principal Act is amended by deleting section 9 and substituting therefor the following new section—

Repeal and replacement of section 9 of No. 9 of 1998.

Remuneration of members of the Board.

9. The chairman and members of the Board, other than the chief executive officer, shall be paid out of the funds of the state corporation such sitting allowances or other remuneration as the Board may, in consultation with the relevant government agencies, determine.

6. The principal Act is amended by deleting section 10 and substituting therefor the following new section—

Repeal and replacement of section 10 of No. 9 of 1998.

Chief Executive Officer.

10. (1) There shall be a chief executive officer whose terms and conditions of service shall be determined by the Board in consultation with the relevant government agencies.

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

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

(3) The chief executive officer shall, subject to the directions of the Board, be responsible for

the day to day management of the affairs and staff of the Board.

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

7. The Principal Act is amended by inserting the following new section immediately after section 10—

Insertion of new section 10A in No. 9 of 1998.

Corporation
Secretary

10A. (1) The Board shall competitively recruit a person qualified in terms of the law governing the practice of certified secretaries in Kenya, to serve as the Corporation Secretary of the Board.

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

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

8. Section 11 of the Principal Act is amended by deleting the words “officers, inspectors and servants” and substituting therefor the word “staff”.

Amendment of section 11 of No. 9 of 1998.

9. The Principal Act is amended by deleting section 12 and substituting therefor the following new section—

Repeal and replacement of section 12 of No.9 of 1998.

Common seal of
the Board.

12. (1) There shall be a common seal of the Board which shall be kept in the custody of

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

(2) The affixing of the common seal shall be authenticated by the signature of the Chairperson or the Chief Executive Officer or any other person authorised in that behalf by a resolution of the Board.

10. Section 15 of the Principal Act is amended—

Amendment of section 15 of No. 9 of 1998.

- (a) by inserting the following new subsections immediately after subsection (1)—

“(1A) Subject to this Act an employer whose employee is liable as a contributor to the Fund under subsection (1), shall be liable as a contributor to the Fund.

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

- (b) in subsection (2) by inserting the following new paragraphs immediately after paragraph (b)—

“(c) in the case of an employer under subsection (1A), a matching contribution, equal to that which their employee is liable to contribute under subsection (1)(c);

(d) in the case of the national government under subsection (1B), a special contribution, as the Board, in consultation with the Minister, may determine”.

- (c) in subsection (3) by deleting the expression “subsection (2)” and substituting therefor the expression “subsection 2(a) and (b)”.

- (d) by inserting the following new subsection immediately after subsection (3)—

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

(e) by deleting subsection (5) and substituting therefor the following new subsection—

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

(f) by inserting the following new subsection immediately after subsection (5)—

“(6) The Minister may, in consultation with the Board, make regulations for the better carrying out of this section”.

11. The principal Act is amended by inserting the following new section immediately after section 15—

Insertion of new section 15A in No. 9 of 1998.

Registration as a member of the Fund.

15A. (1) A person who has attained the age of eighteen years and is not a beneficiary shall register as a member of the Fund.

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

12. Section 16 of the principal Act is amended—

Amendment of section 16 of No. 9 of 1998.

(a) in the marginal note by inserting the word “and matching” immediately after the word “standard”;

(b) by inserting a new subsection immediately after subsection (1) —

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

(c) in subsection (2) by—

(i) inserting the words “and matching” immediately after the word “standard”;

(ii) deleting paragraph (c);

(d) in subsection (3) by—

(i) deleting paragraph (b);

(ii) deleting paragraph (c);

- (e) by deleting subsection (4) and substituting with the following new subsection—

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

- (f) in subsection (6)—

(i) by inserting the words “or matching” immediately after the word “standard” appearing in paragraph (a);

(ii) by deleting the words “fifty thousand” and substituting therefor the words “one million” in the closing statement;

13. Section 18 of the principal Act is amended—

Amendment of
section 18 of No. 9
of 1998.

- (a) in the marginal note by inserting the words “and matching” immediately after the word “standard”;

- (b) by deleting subsection (1) and substituting therefor the following new subsection—

“(1) If a standard or matching contribution which a person is liable to remit under section 16, has not been remitted by the day on which the payment of the standard or matching contribution is due, the person shall be liable to pay a penalty equal to twenty-five percent of that contribution”;

- (c) in subsection (2) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) that employer shall be liable to pay the penalty prescribed in subsection (1) and pay the costs incurred by the employee when seeking treatment from a contracted health care provider during the period when the contribution is due”;

- (d) in subsection (3), by inserting the words “and matching” immediately after the word “standard”.

14. Section 19(2) of the principal Act is amended by deleting the word “five times” appearing immediately after

Amendment of
section 19 of No. 9
of 1998.

the words “penalty equal to” and substituting therefor the words “fifty percent of”.

15. The principal Act is amended by repealing section 20. Repeal of section 20 of No. 9 of 1998.

16. The principal Act is amended by deleting section 21 and substituting therefor the following new section— Repeal and replacement of section 21 of No. 9 of 1998.

Mode of identification of beneficiaries and payment of contributions.

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

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

(3) A person who—

- (a) knowingly makes any false statement relating to a matter affecting his or her liability to remit a standard or matching contribution under section 16; or
- (b) being required under subsection (2) to furnish information or particulars, or produce a document, refuses or neglects to do so without reasonable cause,

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

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

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

17. Section 22 of the principal Act is amended by—

Amendment of
section 22 of No.
9 of 1998.

(a) deleting subsection (1) and substituting therefor the following new subsection—

“(1) The Board shall pay from the Fund, a benefit to an empaneled and contracted health care provider for an expense incurred by the provider, for the provision of health care services to the number of beneficiaries determined by the Board”.

(b) deleting subsection (2);

(c) deleting subsection (3) and substituting therefor the following new subsection—

“(3) The benefits payable from the Fund shall be subject to such limits, regulations and conditions as the Board may prescribe and in consultation with the Cabinet Secretary”.

(d) deleting subsection (4);

(e) adding the following new subsection immediately after subsection (4)—

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

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

18. The principal Act is amended by deleting section 23 and substituting therefor the following section—

Repeal and replacement of section 23 of No. 9 of 1998.

Statements of account.

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

19. The principal Act is amended by repealing section 24.

Repeal of section 24 of No. 9 of 1998.

20. Section 25 of the principal Act is amended—

Amendment of section 25 of No. 9 of 1998.

- (a) in subsection (1) by deleting the words “a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twenty-four months, or to both” and substituting therefor the words a fine not exceeding ten million shillings or to imprisonment for a term not exceeding sixty-months, or to both”.
- (b) in subsection (2)—
 - (i) by deleting paragraph (b); and
 - (ii) by deleting paragraph (c);
 - (iii) by deleting the words “a fine not exceeding five hundred thousand shillings” appearing in the closing statement and substituting therefor the words “a fine not exceeding ten million shillings”.
- (c) by deleting subsection (3);
- (d) in subsection (4)—
 - (i) by deleting the words “five hundred thousand” appearing in paragraph (i) and substituting therefor the words “ten million”;
 - (ii) by deleting paragraph (ii) and substituting therefor the following new paragraph—
 - “(ii) removal from the register of empaneled and contracted health care providers”.
- (e) by deleting subsection (5) and substituting with the following new subsections—

“(5) The Board shall cause the name of every health care provider removed from the register under subsection (4)(ii) to be notified in the *Gazette* and at least three newspapers with nationwide circulation.

(5A) A health care provider who has been removed from the register under section (4)(ii) shall not be entitled to receive any benefit from the Fund”.

21. Section 26 of the principal Act is amended—

Amendment of section 26 of No. 9 of 1998.

- (a) in the marginal note by deleting the words “and stamps”;
- (b) in paragraph (a) by deleting the expression “under this Act, or to the issue of any stamps or to the issue or replacement of any cards under this Act”; and
- (c) in paragraph (d) by deleting the words “who have no dependants or who fulfill such other conditions or requirements as may be prescribed in cases of voluntary contributions”.

22. Section 30 of the principal Act is amended by—

Amendment of section 30 of No. 9 of 1998.

- (a) deleting the marginal note and substituting therefor the following new marginal note—
“Empanelment of Healthcare Providers.”
- (b) deleting subsection (1) and substituting therefor the following new subsection—
“(1) The Board shall, in consultation with the relevant accreditation bodies, publish in the *Gazette*, the list of empaneled healthcare care providers for the purposes of this Act”.
- (c) deleting subsection (2) substituting therefor the following new subsection—

“(2) A notice in the *Gazette* under subsection (1) may be made subject to such conditions

relating to the fees which may be charged by the health care provider to any contributor under this Act (including conditions as to the amount of such fees and the requirement of the Board's consent to any variation thereof) as the Board considers fit and where any such conditions are made—

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

- (d) deleting subsection (3) and substituting therefor the following new subsection—

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

- (e) adding the following new subsection immediately after subsection (3) —

“(4) The Board shall make regulations for the better carrying out of this section”.

23. Section 32 of the Principal Act is amended—

Amendment of
section 32 of
No. 9 of 1998.

- (a) in subsection (1) by deleting the word “declared hospital” appearing in paragraph (b) and substituting therefor the words “empaneled and contracted health care provider”;

- (b) in subsection (2) by—

- (i) inserting the words “and matching” immediately after the word “standard” appearing in paragraph (a);

- (ii) deleting paragraph (c) and substituting therefor with the following new paragraph—

“(c) in the case of an empaneled health care provider, whether the conditions, if any, attached to the empanelment or contracting have been met”.

- (c) in subsection (3) by deleting the words “ten thousand” and substituting therefor the words “one

million or to imprisonment for a term not exceeding twenty-four months” appearing in the closing statement;

- (d) in subsection (6) by deleting the words “ten thousand shillings, or to imprisonment for a term not exceeding twelve months or to both” and substituting therefor the words “ten million shillings, or to imprisonment for a term not exceeding sixty months or to both”.

24. Section 34(1) of the principal Act is amended by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of section 34 of No. 9 of 1998.

“(b) in the procurement and acquisition of essential medical equipment and supportive infrastructure for provision to empaneled and contracted healthcare providers, on such terms and conditions as the Board may, from time to time, prescribe:

Provided that the Board may advance money to any empaneled and contracted health care provider for improvement of medical and health care services, subject to the Board being satisfied that such health care provider is financially viable and in any underserved area”.

25. The principal Act is amended by repealing section 41.

Repeal of section 41 of No. 9 of 1998.

26. Section 43 of the principal Act by deleting the expression “Workmen’s Compensation Act (Cap. 236) or otherwise” and substituting therefor the expression “Work Injury Benefits Act, 2007”.

Amendment of section 43 of No. 9 of 1998.

27. Section 45 of the principal Act is amended by deleting the words “fifty thousand” and substituting therefor the words “one million”.

Amendment of section 45 of No. 9 of 1998.

28. The Second Schedule to the principal Act is amended in paragraph 3 by deleting the word “nine” appearing in sub-paragraph (4) and substituting therefor the expression “two-thirds of the”.

Amendment of the Second Schedule to No. 9 of 1998.

MEMORANDUM OF OBJECTS AND REASONS

This is a Bill to amend the National Hospital Insurance Fund Act, 1998, to establish the National Health Scheme and to enhance the mandate and capacity of the National Hospital Insurance Fund to facilitate and deliver the Universal Health Coverage.

The structure of the Bill is as follows—

Clause 1 of the Bill sets out the short title of the proposed Act.

Clause 2 of the Bill proposes to amend the long title of the Act in order to include the establishment of the National Health Scheme in the long title of the Act.

Clause 3 of the Bill proposes to amend section 2 of the Act by inserting definitions of new terms and phrases and deleting terms that have become obsolete or no longer appear in the body of the Act.

Clause 4 of the Bill proposes to amend section 5 of the Act to define the role of the Minister in the setting of the criteria for the empanelment and contracting of health care providers for the purposes of this Act and the Board's mandate in facilitating attainment of Universal Health Coverage including communication and stakeholder engagement.

Clauses 5 and 6 of the Bill propose to amend sections 9 and 10 of the Act to provide for the manner of determining the benefits payable to the members of the Board and define the qualifications for appointment as the Chief Executive Officer of the Board.

Clause 7 of the Bill proposes to insert a new section 10A in the Act to provide for the appointment of the Corporation Secretary to comply with the "Mwongozo"-Code of Conduct for State Corporations.

Clause 8 of the Bill proposes to amend section 11 of the Act by removing superfluous words from the section.

Clause 9 of the Bill defines the role of the Corporation Secretary in the handling of the Board's Common Seal.

Clause 10 of the Bill proposes to amend section 15 of the Act to provide for the liability of employers to make a matching contribution to the Fund equal to that which the employee is liable and make it mandatory for Kenyan residents to contribute to the Fund.

Clause 11 of the Bill proposes to insert a new section 15A to make it mandatory for any person who has attained the age of eighteen years and is not a beneficiary to register as a member of the Fund.

Clause 12 of the Bill proposes to amend section 16 of the Act to provide for the liability of employers to pay a matching contribution under section 15 and not deduct such contributions from the salary or other remuneration of the employee.

Clause 13 of the Bill proposes to amend section 18 of the Act to prescribe a penalty for late payment of standard and matching contributions.

Clause 14 of the Bill proposes to amend section 19 of the Act to harmonize the penalties in all classes of enterprises.

Clause 15 of the Bill proposes to repeal section 20 of the Act to remove the voluntarily contribution provision since contributions towards the Fund shall be mandatory.

Clause 16 of the Bill proposes to amend section 21 of the Act to eliminate the outdated identification through cards and mandates the Board to prescribe means by which a beneficiary of the Fund may be identified.

Clause 17 of the Bill proposes to amend section 22 of the Act to mandate the Board to pay from the Fund, a benefit to an empaneled and contracted health care provider for an expense incurred by the provider, for the provision of health care services to the number of beneficiaries determined by the Board and to provide for an element of first charge where a beneficiary has a private health insurance cover.

Clause 18 of the Bill proposes to amend section 23 of the Act by deleting obsolete provisions relating to cards and receipts and provide for statement of account for contributors.

Clause 19 of the Bill proposes to repeal section 24 of the Act which provides for stamps that would no longer be used as evidence of contribution.

Clause 20 of the Bill proposes to amend the Act in section 25 to enhance the penalty for those found culpable for the commission of an offence under the Act.

Clause 21 of the Bill proposes to amend section 26 of the Act to remove the reference to stamps as stamps would no longer be used as evidence of contribution.

Clause 22 of the Bill proposes to amend section 30 of the Act to mandate the Board, in consultation with the relevant accreditation bodies, to publish the list of empanelled health care providers for purposes of the Act.

Clause 23 of the Bill proposes to amend section 32 of the Act to provide for inspection of empanelled and contracted health care providers and to

enhance the penalty for those found culpable for the commission of an offence under the Act.

Clause 24 of the Bill proposes to amend section 34 of the Act to mandate the Board to invest in the procurement and acquisition of essential medical equipment and supportive infrastructure to empanelled and contracted healthcare providers.

Clause 25 of the Bill proposes to repeal section 41 of the Act as the mandate to prosecute is vested in the Director of Public Prosecutions.

Clause 26 of the Bill proposes to amend section 43 of the Act to make reference to the Work Injury Benefits Act, 2007.

Clause 27 of the Bill proposes to amend section 45 of the Act to enhance the penalty for those found culpable for the commission of an offence under the Act.

Clause 28 proposes to amend the Second Schedule to the Act to change the quorum for meetings from the current nine members to two thirds of its number.

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

The Bill confers on the Minister the powers to make Regulations. It does not limit any fundamental rights or freedoms.

Statement on 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.

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

The Bill is a Money Bill within Article 114 of the Constitution.

Dated the 29th April, 2021.

AMOS KIMUNYA,
Leader of Majority Party.

Long title on No. 9 of 1998 which it is proposed to amend—

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

Definitions in section 2 of No. 9 of 1998 which it is proposed to amend—

“card” means a National Hospital Insurance Card issued under section 21;

“child” means a child of a contributor including a posthumous child, a stepchild, an adopted child and any child to whom the contributor stands in loco parentis, who—

- (a) has not attained the age of eighteen years; or
- (b) having attained the age of eighteen years, but not the age of twenty-one years has no income of his own and is living with the contributor;
- (c) having attained the age of eighteen years, is undergoing a full-time course of education at a university, college, school or other educational establishment or serving under articles or an indenture with a view to qualifying in a trade or profession and is not in receipt of any income other than a scholarship, bursary or other similar grant or award; or
- (d) having attained the age of eighteen years, is either mentally or physically handicapped and is wholly dependent on and living with the contributor;

“inspector” means a person appointed as an inspector under section 11.

“hospital” means any medical institution or premises in which persons are received and treated as out-patients or in-patients, and includes a maternity home, a nursing home and a health clinic and “declared hospital” means a hospital declared as such under section 30;

“stamp” means a National Hospital Insurance stamp sold under section 24.

Section 5 of No. 9 of 1998 which it is proposed to amend—

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

Objects and
functions of the
Board.

- (a) to receive all contributions and other payments required by this Act to be made to the Fund;
- (b) to make payments out of the Fund to declared hospitals in accordance with the provisions of this Act;
- (c) in consultation with the Minister, to set the criteria for the declaration of hospitals and to declare such hospitals in accordance thereto for the purposes of this Act;
- (d) to regulate the contributions payable to the Fund and the benefits and other payments to be made out of the Fund;
- (e) to protect the interests of contributors to the Fund;
- (f) to advise the Minister on the national policy to be followed with regard to national health insurance and to implement all Government policies relating thereto; and
- (g) to perform such other functions as are conferred on it by this Act or by any other written law.

Section 9 of No. 9 of 1998 which it is proposed to amend—

9. The Board, in consultation with the Minister, shall pay members of the Board such remuneration, fees or allowances for expenses as the Board may determine.

Remuneration of Board members.

Section 10 of No. 9 of 1998 which it is proposed to amend—

10. (1) There shall be a chief executive officer of the Board who shall be recruited competitively by the Board on such terms and conditions as the Board may, with the advice of the Salaries and Remuneration Commission determine.

The Chief Executive Officer.

(1A) The chief executive officer shall, subject to the directions of the Board, be responsible for the day-to-day management of the Fund and shall be the Secretary of the Board.

(2) The Chief Executive Officer shall be an ex-officio member of the Board but shall have no right to vote at any meeting of the Board.

Section 11 of No. 9 of 1998 which it is proposed to amend—

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

Staff of the Board.

Section 12 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

12. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

The common seal of the Board.

(2) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

Section 15 of No. 9 of 1998 which it is proposed to amend—

15. (1) Subject to this Act, any person—

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

Contributions to the Fund.

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

- (a) in the case of a person whose income is derived from salaried employment, a standard contribution; or
- (b) in the case of a person whose income is derived from self-employment, a special contribution, in accordance with this section.

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

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

(5) In this section, "income" means such income as the Board, in consultation with the Minister and the Minister for Finance may prescribe for the purposes of this Act.

Section 16 of No. 9 of 1998 which it is proposed to amend—

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

Standard
contributions.

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

- (a) in which he was not at any time the employer of that person (except where the employment is terminated in the month immediately preceding that month);
- (b) in which he was not the employer on the first day of that month, unless that contribution has not been paid before the day in that month when he becomes the employer, in which case he shall only become liable seven days after that day; or
- (c) in respect of which the salary or other remuneration payable by him after all other statutory deductions have been made therefrom, are not sufficient to pay that contribution.

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

- (a) to deduct from the salary or other remuneration of any person employed by him, notwithstanding anything to the contrary in any other law, the amount of any standard contribution paid by him or

to be paid by him within one month of such deduction, on behalf of that person;

- (b) to obtain a card for any person employed by him where that person does not provide him with a card issued to that person, or where that person's card has been lost or destroyed;
- (c) to retain possession of the card issued to a person employed by him, except when that person requires the card for the purpose of obtaining any benefit or making a claim under this Act until that card is required for surrender upon the issue of a new card for the next financial year.

(4) No sum deducted from the salary or other remuneration of an employee by his employer in accordance with the provisions of this Act shall be recoverable from the employer by that person after a stamp to the value of that sum has been affixed to a card issued to that person and duly cancelled:

Provided that nothing in this subsection shall affect the responsibility of the employer for the safe custody of that employee's card.

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

(6) Any person who—

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

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

Section 18 of No. 9 of 1989 which it is proposed to amend—

18. (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—

Penalty for late payment of standard contributions.

- (a) in the case of micro and small enterprises, twenty-five percent of the amount of that contribution; and
- (b) in any other case, two 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.

(4) In this section, the expressions “micro enterprise” and “small enterprise” have the meanings assigned thereto respectively in the Micro and Small Enterprises Act, 2012

Section 19 of No. 9 of 1989 which it is proposed to amend—

19. (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.

Special contributions.

(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 20 of No. 9 of 1998 which it is proposed to amend—

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

Voluntary contributions.

Section 21 of No. 9 of 1998 which it is proposed to amend—

21. (1) Subject to the provisions of this section and to such other terms or conditions as the Board may prescribe, there shall, upon application, be issued to every person who is liable as a contributor to the Fund in any financial year, a National Hospital Insurance Card for that year, and there shall be inscribed on that card, at such time and in such manner as may be prescribed, the full name of the contributor and such other particulars as may be prescribed.

Cards and evidence of payment of contributions.

(2) Before a card is issued to any person under this section, the Board may require the person—

- (a) to produce evidence that he is likely to be liable as a contributor in that year;
- (b) to produce evidence that he has in that year and in the immediately preceding year paid every standard contribution that he was liable to pay; and
- (c) to surrender any card issued to or in respect of that person for the immediately preceding financial year.

(3) For the purposes of ascertaining whether the standard contribution for any month has been paid by any person, any

officer duly authorised by the Board may put such questions, whether orally or in writing, to that person, or require that person to furnish such information or particulars or to produce such documents or other papers as, in his opinion, are necessary for that purpose.

(4) Any person who—

- (a) knowingly makes any false statement, whether orally or in writing, relating to any matter affecting his liability to pay any standard contribution; or
- (b) being required under sub-section (3) to answer any question, furnish information or particulars or produce any document or paper, refuses or neglects to do so without reasonable cause, commits an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(5) For the purposes of this section, the following shall constitute conclusive evidence that a contribution for any month in any financial year has been paid by a person—

- (a) a stamp duly affixed to a card issued to that person for that month, and duly cancelled, in accordance with the provisions of this Act;
- (b) a receipt issued under section 23(2);
- (c) a record of payment in the register of contributors to the Fund kept in accordance with section 23(1) of this Act;
- (d) in the case of a standard contribution, a record in the contributor's monthly pay-slip that the contribution has been deducted from his salary for the month or months at issue.

(6) Any person who knowingly uses a card which does not belong to him, or which is not validly issued, to claim a benefit from the Fund, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding eighteen months, or to both.

Section 22 of No. 9 of 1989 which it is proposed to amend—

22. (1) The Board shall pay from the Fund, benefits to declared hospitals for expenses incurred at those hospitals by

Payment of
benefits.

any contributor, his named spouse, child or other named dependant.

(2) Subject to such limitations as may be imposed under sub-section (3), the medical or health care expenses referred to in subsection (1) shall cover both inpatient and out-patient medical health care.

(3) Without prejudice to the provisions of sub-section (1), the benefits payable from the Fund shall be limited to expenses incurred in respect of drugs, laboratory tests and diagnostic services, surgical, dental or medical procedures or equipment; physiotherapy care and doctors' fees, food and boarding costs, subject to such limits, regulations and conditions as the Board may, in consultation with the Minister, prescribe.

(4) Notwithstanding any provision to the contrary, no claim or benefit shall be payable under this Act in any financial year unless the contributor produces, at the time of making the claim, a card issued to him, showing payment for the last month in the year for which it became due and for every preceding month in that year, commencing with the first month in respect of which he became liable as a contributor that year, or such other evidence of those payments as the Board may prescribe:

Provided that no benefit shall be paid in respect of any expenses incurred by a contributor before the month in which he first became liable to pay a contribution.

Section 23 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

23. (1) The Board shall cause to be kept, for the Fund, a register containing the names of all contributors and there shall be entered in that register the particulars stated on every card issued to a contributor and particulars of all contributions or other payments to the Fund made by or in respect of the contributor in so far as they are evidenced by a card surrendered or shown to an officer of the Board in accordance with subsection (2) of this section or by any receipt issued in accordance with that subsection.

Register and receipts.

(2) A contributor or an employer shall be entitled on request—

- (a) upon the surrender of his card or cards to an officer of the Fund, to a receipt acknowledging all the payments of contributions evidenced by that card or cards;
- (b) not more than once in every three months, upon showing his card to an officer of the Board, to have entered in the register a record of all the payments evidenced by that card;
- (c) to a receipt acknowledging any payments to the Fund made by or in respect of him otherwise than by affixing a stamp to his card,

but save as aforesaid, no person shall be required to issue any receipt to a contributor.

Section 24 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

24. (1) There shall be offered for sale to the public in such quantities and at such times and places as the Board may consider necessary for the implementation of this Act, National Hospital Insurance stamps at such prices as the Board may from time to time determine.

Stamps.

(2) For the purposes of this section, the Board shall cause stamps to be printed of such design, which may be varied from time to time, as it may deem fit.

Section 25 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

25. (1) Any person who, for the purpose of obtaining the payment of any benefit under this Act, knowingly makes any false statement, whether orally or in writing, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twenty-four months, or to both.

Offences relating to benefits.

(2) Any person who—

- (a) with intent to obtain the payment of any benefit under this Act, impersonates any person whether living or dead; or
- (b) buys, sells or offers for sale, takes or gives in exchange, or pawns or takes in pawn any card or used stamp or any receipt issued under this Act; or

(c) affixes any used stamp to any card,

commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(3) Any person who prints or sells stamps in of the provisions of this Act, commits an offence and is liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

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

- (i) a fine not exceeding five hundred thousand shillings;
- (ii) suspension from the list of declared hospitals for the purposes of this Act for a period not exceeding five years:

Provided that the Board may review such suspension any time after the twenty fourth month from the date of imposition thereof.

(5) The Board shall cause the name of every hospital suspended under subsection (4)(ii) of this section to be notified in the Gazette and such institution shall not, during the suspension, be entitled to any benefit from the Fund.

(6) A hospital which has been suspended under this section shall be required to disclose the fact of such suspension to all its actual or potential patients prior to their admission or rendering of any services to any patient:

Provided that where a hospital fails to comply with the provisions of this subsection, it shall not be permitted to claim from any patient more than the difference between the actual cost of the service and what the Board would have contributed had the hospital not been suspended.

Section 26 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

26. The Board may, in consultation with the Minister, make regulations providing for—

Regulations on contributions and stamps.

- (a) any matters incidental to the payment and collection of any contributions under this Act, or to the issue of any stamps or to the issue or replacement of any cards under this Act;
- (b) the refund of any contributions paid in error;
- (c) the remission in whole or in part of penalties incurred under this Act, in such circumstances and subject to such conditions as may be prescribed;
- (d) the giving of such rebates as may be prescribed to contributors who have no dependants or who fulfil such other conditions or requirements as may be prescribed in cases of voluntary contributions.

Section 30 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

30. (1) The Board may, in consultation with the Minister and the chairman of the Medical Practitioners and Dentists Board, by notice in the Gazette, declare any hospital, nursing home or maternity home to be a hospital for the purposes of this Act.

Declaration of hospitals for purposes of Act.

(2) A declaration under subsection (1) may be made subject to such conditions as the Board thinks fit as to the charges which may be made by the hospital to any contributor under this Act (including conditions as to the amount of such charges and the requirement of the Board's consent to any variation thereof) and where any such conditions are made—

- (a) the Board may publish such conditions in the Gazette or in such other manner as it thinks fit; and
- (b) it shall not be lawful for the hospital to make any charge to any contributor under this Act which is contrary to such condition.

(3) The Board may, at any time, after consulting the Minister, revoke any declaration under this section.

Section 32 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

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

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

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

- (a) standard contributions are or have been payable, or have been duly paid, by or in respect of any person; or
- (b) any benefit is or was payable to or in respect of any person; or
- (c) in the case of a declared hospital, whether the conditions (if any) attached to the declaration have been met.

(3) Any person who—

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

commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings and in the case of a conviction for making false claims or receiving illegal benefits shall be required to make good any moneys falsely received.

(4) Every inspector shall, before entering any premises or other place liable to inspection under this section, if so required by the occupier or other person

authorised by him, produce a certificate of his appointment signed by or under the authority of the Board.

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

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

Section 34 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

(1) All moneys in the Fund which are not immediately required to be applied for the purposes of this Act shall be invested—

Investment of Funds.

(a) in such investment in a reputable bank, being an investment in which trust funds, or part thereof, are authorised by law to be invested;

(b) in the procurement and acquisition of essential medical equipment for provision to hospitals, on such terms and conditions as the Board may, from time to time, prescribe:

Provided that the Board may advance money to any declared hospital for improvement of medical and health care services, subject to the Board being satisfied that such hospital is financially viable and in any underserved area, as may from time to time, be defined by the Minister.

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

Section 41 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

41. Proceedings in respect of an offence under this Act, may, notwithstanding any provision to the contrary in

Legal proceedings under the Act.

any other written law, be commenced at any time within the period of three months from the date on which evidence sufficient in the opinion of the Board to justify a prosecution for an offence, comes to its knowledge, or within the period of twelve months after the commission of the offence, whichever is shorter.

Section 43 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

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

Recovery of
compensation or
damages.
Cap. 236

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

Section 45 of No. 1998 of No. 9 of 1998 which it is proposed to amend—

45. A person convicted of an offence under this Act for which no other penalty is prescribed shall be liable to a fine not exceeding fifty thousand shillings or, in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.

General penalty.

Second Schedule of No. 1998 of which it is proposed to amend—

3. Meetings

(4) The quorum for the conduct of the business of the Board shall be nine members excluding the Chief Executive Officer.

