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HIGHLIGHTS OF THE SOCIAL HEALTH INSURANCE FUND AND RELATED LEGISLATION

LEGAL ALERT

FEBRUARY 2024

Highlights of the Social Health Insurance Fund and Related Legislation

Introduction

The Constitution of Kenya in the Bill of Rights assures every person in Kenya to the highest standard of health which includes the right to health care services. Towards this end, the Government, through the Ministry of Health, embarked on the creation of a fund to ensure lower cost of health since many Kenyans will have access to affordable health care.

Social Health Insurance Act, No. 16 of 2023 (“SHIFA”) was assented to on 19th October 2023 and came into force on 22nd November 2023. It establishes the Social Health Authority and a framework for managing social health insurance to give effect to Article 43(1)(a) of the Constitution.

The Social Health Insurance (General) Regulations, 2024 (“the Regulations”) have been published to operationalize:

- i. The Social Health Insurance Fund (SHIF);
- ii. The Primary Health Fund (PHF);
- iii. Emergency, Chronic, and Critical Illness Fund (ECCIF);
- iv. Mandatory registration of every person resident in Kenya as provided for in the SHIFA; and
- v. The mode of payment of contributions as provided for under the SHIFA.

These Regulations are currently undergoing public participation and once approved, will be gazetted to operationalize the SHIFA.

The Primary Health Care Act of 2023 provides a framework for the delivery of, access to, and management of primary health care. All persons resident in Kenya shall access healthcare services under PHIF and must have registered as a member of the SHIF.

Governing Body

SHIFA establishes the Social Insurance Authority (“the Authority”) which will take over all the functions and

operations of the Board of National Health Insurance Fund (NHIF). The Authority shall be managed by a Board consisting of eleven (11) members including a non-executive Chairperson appointed by the President. Other members of the Board shall consist of: -

- i. the Principal Secretary of Health or a representative;
- ii. the Principal Secretary of Finance or a representative;
- iii. the Director-General for Health;
- iv. a representative of the County Executive Committee Health Caucus;
- v. a nominee of the council of County Governors, not being a Governor, with knowledge in the field of finance, accounting, health economics, law or business and management;
- vi. a person, not being a public officer, with proven experience in matters of health insurance, health financing, financial management, health economics, and healthcare administration;
- vii. four persons, not being public officers, nominated by:
 - a. the Kenya Medical Association;
 - b. the informal sector association;
 - c. the consortium of health providers; and
 - d. the Central Organization of Trade Union-Kenya.
- viii. the Chief Executive Officer of the Authority, who will be an ex-officio member of the Board.

The Chairperson and members of the Board must be:

- i. Kenyan citizens;
- ii. hold a minimum of a bachelor’s degree from a university recognized in Kenya;
- iii. have knowledge and experience of not less than ten (10) years in data science, information technology, health governance, health administration, health policy, finance or economics; five (5) of which shall be at a managerial level; and
- iv. and meet the requirements of Chapter Six of the Constitution.

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The Chairperson and members of the Board shall serve for a term of three (3) years and shall be eligible for re-appointment for one further term of three (3) years.

Establishment of PHF

The PHF is established under the SHIFA to purchase primary health care services from health facilities. The PHF will be funded by monies appropriated by the National Assembly, grants, gifts, donations, or bequests; monies allocated for that purpose from fees or levies administered and monies accruing or received by the Fund from any other source. These funds will be utilized to pay all expenses incurred in pursuance of the objectives and purposes of the Fund. These expenses shall be limited to annual budget estimates and any revision must be approved by the National Assembly.

Establishment of SHIF and Contributions

The SHIF is established under the Act and shall be funded by contributions from every Kenyan household, non-Kenyan resident in Kenya for a period exceeding twelve (12) months, any other employer, national and county governments, monies appropriated by the National Assembly for indigent and vulnerable persons, as well as gifts, grants, innovative financing mechanisms or donations.

Eligibility to Access SHIF

The following persons are required to register to facilitate access to SHIF:

- i. Every Kenyan shall register as a member of SHIF;
- ii. Any person who is not a Kenyan but ordinarily resides in Kenya for more than twelve (12) months;
- iii. i. Any child born after the commencement of the SHIFA;

To access public services from the national and county government or related entities, a registered person must demonstrate that they have complied with registration

and contribution requirements.

A non-Kenyan who will be resident for less than twelve (12) months shall be required to have travel health insurance cover as may be designated by the Cabinet Secretary.

How are Contributions to SHIF Made?

The following are the methods of contribution;

- i. Members who draw their income from salaried employment shall make contributions every month as a statutory deduction from wages or salary by the employer. The regulations have proposed a rate of 2.75%. However, this rate is pending approval in the Regulations which are undergoing public participation. It further proposed that the contribution share, however, not be less than KES 300.
- ii. Where the household does not have salaried income the contribution shall be on an annual basis on the proportion of household income determined by the means testing measurement as prescribed by the SHIFA. The Regulation proposes a rate of 2.75% which shall not be less than KES 300 and shall be paid fourteen (14) days before the lapse of the annual contribution. It is further proposed that the Authority in collaboration with the Ministry responsible for cooperatives and micro, small, and medium enterprises development and other financial institutions shall provide premium financing to those who are non-salaried to pay the annual contributions.
- iii. Those who require financial assistance as determined by the means testing instrument will be paid by the government at a rate apportioned from the funds appropriated by Parliament and County Assemblies as prescribed. The Regulations propose that the Ministry of Social Protection shall be liable to contribute in the case of the national government, and the County Executive Committee

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member responsible for matters relating to social protection in the case of the county government. This is after the Authority has used the testing instrument to determine qualification.

- iv Persons under lawful custody will be paid by the government at a rate apportioned from the funds appropriated by Parliament. It is proposed that the Ministry responsible for correctional services shall be responsible for contributions under this category and the funds will be deducted by the National Treasury.
- v Permanent residents in Kenya shall pay at a rate prescribed in Kenya. The mode of remittance is not proposed in the Regulations and needs to be addressed.

Effect on NHIF

SHIF shall replace NHIF, and on the appointed day when SHIFA becomes operational, all enhanced benefits schemes and packages which immediately before the appointed day were provided by NHIF shall vest in the Authority until the lapse of the existing contracts and the NHIF Board shall wind up the Fund within one year of the appointed day and the cash balances and all other assets held by NHIF shall be transferred to the Authority.

Establishment of ECCIF

The ECCIF shall be utilized to defray the costs of managing chronic illness after depletion of the SHIF and costs incurred on emergency treatment.

The ECCIF shall be funded by monies appropriated by the National Assembly, grants, gifts, donations or endowments, and such monies from any other lawful sources.

A member of SHIF and their beneficiaries shall be entitled to the benefits of ECCIF upon depleting their benefits under the SHIF. The Regulations propose that a beneficiary suffering from a chronic illness shall access treatment for chronic illness per the benefit package.

What is the Means Testing Method?

Means testing is defined as a method that uses the Means Testing Instrument to determine whether an individual in a household has the ability to pay for their premium. The parameters to be considered are the housing characteristics, access to basic services, household composition and characteristics, and any other socio-economic aspects that may be relevant. Therefore, to qualify to be considered as a person requiring financial assistance then you must meet the criteria set by this instrument.

Conclusion

The SHIFA and the draft Regulations endeavour to provide comprehensive medical coverage from the primary health care leave and extend benefits covering beneficiaries who have exhausted their covers under SHIF. This ensures that the beneficiaries don't have to ponder on how they will cover medical expenses where they have exhausted the normal cover. This is an improvement to the NHIF which did not make such express provisions. We await to review the report on the views concerning the regulations and whether the National Assembly will consider and include all or most of the proposed amendments to the Regulations.

Disclaimer

This alert is for informational purposes only and should not be taken to be or construed as a legal opinion. If you have any queries or need clarifications, please do not hesitate to contact Lilian Renee Omondi, Partner, (renee@oraro.co.ke) or your usual contact at our firm, for legal advice.



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