

OCTOBER 2005 LEGAL ALERT: NATIONAL HEALTH INSURANCE SCHEME.

IN THIS ISSUE: -

1. Motivational Quote for this Month.
2. October 2005 Legal Alert: National Health Insurance Scheme.
3. Business development News.

MOTIVATIONAL QUOTE.

An Arabian Proverb says: "He who has health, has hope; and he who has hope, has everything". This above quote, which was an often repeated saying in the days of old and which we nowadays often forget or neglect, is our motivational quote for this month. Without good and full health, what are all material possessions we have and strive to expand? How do we achieve good health? As individuals, we encourage you, as we encourage ourselves, to exercise, have a better diet, plan and take a holiday at the end of this year and every year afterwards, enjoy life, join a health insurance scheme, etc. We wish you good and full health.

OCTOBER 2005 LEGAL ALERT: NATIONAL HEALTH INSURANCE SCHEME ? ITS OPERATIONS & EFFECT ON YOU.

INTRODUCTION

The United Nations has cut down life expectancy of males in Nigeria from 51 years 6 months to 43 years 6 months. Also, Nigerian's ranking in the table of global development has dropped from the 151st position to 158th position out of a total of 177 countries surveyed.

Advances, giant leaps in technology, commerce and changes in life styles have adversely affected the health of us, human beings. Life expectancy especially in sub-Sahara Africa has dropped due to inappropriate diet, lack of exercise and mostly stress. Health care quality, quantity and costs have equally deteriorated that the World Health Organisation (WHO) and other human organisations have been ringing the alarm bells of imminent danger to citizenry in developing countries like Nigeria. To meet this challenge, the Government in Nigeria constituted various panels whose recommendations culminated in the enactment of the National Health Insurance Scheme Act, 1999 (NHIS Law). It is only now that the present government in Nigeria is trying to fast-track the implementation of the NHIS Law.

According to the Government of Nigeria, some of the reasons for establishing the NHIS include: -

1. The poor state of the nation's health care delivery systems.
2. Excessive dependence and pressure on the Federal Government to finance the entire health care delivery system in Nigeria.
3. Rising costs and under-funding of health care delivery.

4. Poor integration of health facilities in the health care delivery system

What is NHIS?

NHIS, as its name implies, is a kind of insurance scheme where many individuals or "Insured" pool their resources ? i.e. contributions - together for the protection of anyone in the group who might fall ill within the period of the insurance.

The drivers of the scheme are called Health Management Organisations (HMO). The providers of the actual medical services are professionals called Health Care Providers.

Objectives of NHIS?

Some of its objectives include: -

- (a) Ensuring that every Nigerian has access to good health care and health care delivery services.
- (b) Protecting Nigerians from the financial hardship of huge medical bills whenever they visit our hospitals.
- (c) Managing the rising cost of health care services in Nigeria.
- (d) Ensuring equitable distribution of health care costs among different income groups.
- (e) Ensuring adequate distribution of health facilities all over Nigeria.
- (f) Ensuring efficiency in health care services both in the public and private sectors.
- (g) Improving and harnessing private sector participation in the provision of health care services.
- (h) Maintaining high standard of health care delivery services within the scheme.
- (i) Ensuring equitable patronage of all levels of health care.
- (j) Ensuring the availability of funds to the health sector for improved services.

Workings of NHIS.

HMOs are required by the NHIS Law to collect contributions from patrons to the scheme and maintain an efficient pool of Health Care Providers (Hospitals, Clinics, Dental and Optical Clinics, etc).

Contributors to NHIS, on regular payment of their contributions, are entitled to visit the appointed Health Care Providers, appointed by their HMO, whenever they are ill or require medical advice or attention. Note that the HMOs are required by Law to ensure that the highest quality and quantity of health care services are provided by their appointed Health Care Providers.

To guarantee financial adequacy of the scheme, the NHIS Law requires all HMOs to have approved, a comprehensive insurance cover to the tune of N100 Million; from this insurance cover, the HMO is indemnified against incidents of defaults in settlement of claims by Health Care Providers or by patrons of the scheme, i.e. insured persons like you.

Registration & Contributions of Employers and employees.

All employers having ten or more than ten employees are required to register their companies and

their employees with a HMO and to pay to the designated HMO contributions at such time and manner as provided in the guidelines issued by the NHIS Council or as agreed to with the HMO where there is no guideline from the NHIS Council.

Employers are forbidden by the NHIS Law from deducting their share of NHIS contributions from their employees' wages and or emoluments.

Self employed people or others who are described as "Voluntary Contributors" under the NHIS Law and who want to enjoy the benefits of the scheme are permitted to register and participate in the scheme by choosing a HMO of their choice.

Benefits under NHIS.

Persons registered under the various NHIS schemes are entitled to enjoy insured benefits based on the contract that they have entered into with their appointed HMO. Common services envisaged and enumerated under the NHIS Law include: -

- a. Defined elements of curative care.
- b. Prescribed drugs and diagnostic tests.
- c. Maternity care for up to four live births for every insured person.
- d. Preventive care including immune station, family planning, ante natal and post natal care.
- e. Consulting with defined range of specialist.
- f. Hospital care in a private or public Hospital in a standard ward.
- g. Eye examination and care, excluding test and actual provision of spectacles.
- h. A range of prosthesis and dental care as defined by the Council.

Requirements for HMOs.

Some of the key requirements that a HMO, which must be a registered limited liability company, must fulfil to qualify for registration as a HMO include providing evidence of its financial viability, full disclosure of ownership structures and very importantly, the insurance of the HMO with a reputable insurance company acceptable to the NHIS Council. Also, HMOs are required by the NHIS Law establishing them to ensure that they establish a Quality Assurance System that guarantees quality care by the Health Care Providers.

NHIS Regulator, Functions & Powers.

A Council is required to be constituted to regulate the NHIS. Some of the functions and powers of the NHIS Council include: -

1. Registering HMOs and Health care providers under the scheme,
2. Issuing appropriate guidelines to maintain the viability of the scheme.
3. Approving the format of contracts proposed by HMOs for all Health Care Providers.
4. Determining, after negotiations, the capitation and other remuneration due to health care

providers by HMOs.

5. Exchanging information and data with the Federal Office of Statistics, Pension Administrators, Central Bank of Nigeria, other Banks and financial institutions, Federal and States Boards of Inland Revenue and other relevant government agencies.

Actuaries/Insurance Valuers.

The NHIS Law requires the appointment of a licensed Actuary who among others must review and evaluate the entire NHIS scheme by particularly keeping an eagle eye on the rates of contribution payable under the scheme and advise the NHIS Council accordingly.

Taxation under NHIS.

NHIS is governed by a NHIS Council. The NHIS Council is authorised to invest income accruing from contributions, government subvention, etc. These incomes are exempted from any tax charge. However, other incomes of HMOs, Health Care Providers and other primary health providers are subject to the payment of tax as provided for under the relevant tax laws in Nigeria.

Concerns with NHIS.

I Restriction as to choice of Doctors and medical institutions as patrons can only use the Doctors and other specialists who are on the retainer list of the chosen HMO. Where the HMO allows the patron to see a Doctor or medical professional outside its list of retainers, the patron pays the additional costs for the services required.

II From reports, it appears that modern policies and practices, including the NHIS plan, emphasises treatment instead of prevention in health care management and administration. Please ensure that you encourage your health care provider to schedule check-ups ? preventive care ? as opposed to medicine when ill.

III Insufficient, improperly trained manpower, lack of funding for capital development in the health sector, research, etc in the health care sector.

IV. NHIS does not sufficiently incorporate all health care delivery Practitioners. Examples of Practitioners who are complaining about insufficient provision under the NHIS include primary health care providers, dental and optical surgeons, pharmacists, Nurses. The latter claim exclusion by their counter parts who spent more time in drafting the NHIS Law.

V. Lack of corporate governance principles in NHIS. This is because there is no prohibition of conflict of interest or insider dealings between some HMOs who are alleged to have either chosen their medical establishments - owned by the Owners of the HMO before the NHIS Law or in which the Owners of the HMO also own majority shares or other stakes in the Health Care Provider.

VI. Serious concerns about primary health care providers being paid on time and regularly by

HMOs. Without early payments, the Health Care Providers may not provide qualitative and quantitative service which would lead to a collapse of NHIS.

Offences under NHIS.

Any person who deducts contributions from employee wages and fails to remit the contribution within the stipulated time commits an offence. The punishment for such a default, in the case of a first offender, is N100,000 or 500% of the amount of the contribution with accrued interest or imprisonment for two years or to both a fine and imprisonment.

In the case of a second or subsequent offender, the punishment is a fine of N200,000 or 1000% of the contribution withheld with accrued interest, whichever is higher or to a term of imprisonment not exceeding five years or to both the fine and imprisonment.

MISCELLANEOUS PROVISIONS OF THE NHIS LAW.

? Contributions made under NHIS are inalienable to the scheme and cannot be used to satisfy creditors in the event of a bankruptcy or insolvency situation of a HMO or a primary Health Care Provider.

? Contributions under NHIS, by both employers and employees, are tax deductible expenses.

? In the event of a merge or acquisition, contributions made are transferred to the merged or acquiring entity.

? The Federal Government of Nigeria is permitted to enter into reciprocal agreements with governments of other nations so that the benefits of the NHIS scheme can be replicated/benefited in the consenting countries.

? All health care providers are required to maintain full professional indemnity cover from insurance companies approved by the NHIS Council.

? A standards committee is established for the scheme with responsibility of recommending guidelines for the maintenance of quality assurance among HMOs and Health Care Providers.

IMMEDIATE PROBLEMS WITH NHIS

1. There is a limitation on the scope of services and preferences of medical professionals that contributors to the Scheme can access and enjoy.
2. There is also inadequate publicity on the existence and benefits of the Scheme; this is especially amongst members of the informal sector of the economy who constitute a vast majority of the economy.
3. There are still a very small number of participants/contributors to this scheme and this is because of low per capital income in Nigeria. In comparison, the current high rate of contributions by HMOs is a disadvantage of spreading the net and having more participants.
4. The Public Officers Protection Law requires special notices and procedures before law suits can

be brought against members of NHIS Council and their staff. The application of this Law to this scheme is unfortunate as the Public Officers Protection Act is an archaic colonial legislation. It is suggested that this provision be removed and substituted with a kind of insurance indemnity covering exposures such as this.

BUSINESS DEVELOPMENT NEWS.

Economic reform policies of the Government in year 2004 and 2005 would in the coming years change the landscape of business. Survivals of these changes would be people who have armed themselves with modern practices and knowledge.

A new Client of our Firm who is trying to meet this essential need is I-Skill Limited. We encourage you to visit their site ? www.i-skillonline.com ? and see areas that may be beneficial to you and your business.

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