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**HIGHLIGHTS OF THE
SOCIAL HEALTH
INSURANCE
(AMENDMENT)
REGULATIONS, 2024**

LEGAL ALERT

SEPTEMBER 2024

Highlights of the Social Health Insurance (Amendment) Regulations, 2024

Introduction

The Government published the tariffs for health services on 20th September 2024 vide Legal Notice No. 146 of 2024. The tariffs are the prices payable to healthcare providers or health facilities for provision of healthcare services. It is important for the public to familiarize themselves with these tariffs.

In addition, the Government gazetted the Social Health Insurance (Amendment) Regulations, 2024 (“the Amendment Regulations”) on 20th September 2024. The Amendment Regulations amend various provisions of the Social Health Insurance Regulations, 2024 (“the Principal Regulations”). The following are the key highlights of the Amendment Regulations:

Registration to the Social Health Insurance Fund (“SHIF”)

Registration as a member of SHIF is deemed to have commenced from 1st July 2024. This replaces the registration deadline of 30th June 2024 that was set in the Principal Regulations. Although there appears to be no deadline for registration as a member of SHIF, payment of contributions and access to services is scheduled to commence on 1st October 2024. This suggests that eligible persons need to register by 30th September 2024.

Commencement date for paying SHIF contributions

The commencement date for paying SHIF contributions has been changed from 1st July 2024 to 1st October 2024. The contribution is equivalent to 2.75% of a person’s monthly gross salary or wage of the household. This is in line with the Court of Appeal’s Ruling in *The Cabinet Secretary, Ministry of Health v Joseph Enock Aura and 13 others Civil Appeal (Application) No. E565 of 2024* where the Court granted a stay of execution pending hearing and determination of the Appeal on the validity of the Social Health Insurance Act 2023 (“SHIA”), the Primary Health Care Act 2023 and the Digital Health Act 2023, paving the way for the rollout of SHIF.

Payment of premiums by a contributor with more than one (1) spouse

Going forward, a contributor with more than one (1) spouse will pay a single premium determined by a means testing instrument, allowing the spouses to access health care services using SHIF. A means testing instrument is used to determine whether an individual in a household has the ability to pay their premium. The means test tool is part of the registration tool and will compute the premium due. This is a shift from the position in the Principal Regulations which required a contributor with multiple spouses to pay multiple premiums for each spouse. This is a welcome addition as it will reduce the overall financial strain on contributors with multiple spouses, providing greater affordability and financial relief.

Transition of National Hospital Insurance Fund (“NHIF”) members to SHIF

All NHIF members will transition to SHIF upon verification of their data by the Social Health Authority (“the Authority”) using the existing relevant government databases. This is a shift from the position in the Principal Regulations which required NHIF members to register afresh with the Authority. This too is a welcome change as a fresh registration process would require significant resources to process new applications, verify information and manage the influx of data. The transition of NHIF members to SHIF is more efficient and cost-effective as it avoids the need to process new applications from millions of members, reducing the administrative burden and associated costs.

Notwithstanding the above provision, eligible persons are still required to register and provide the relevant information for verification by the Authority.

The addition of timelines for payment of approved claims

The Authority will be required to make payments of claims approved by the Claims Management Office or a medical insurance provider within ninety (90) days of the

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approval date. This is a welcome move as it ensures that payments are made to contracted and empaneled healthcare providers within a prescribed period without delays.

Payment of claims to healthcare providers that have not been empaneled and contracted

Paragraph (a) of Regulation 63 of the Principal Regulations prohibited the Authority from paying out claims arising from any health care provider or health facility that is not empaneled and contracted except in the provision of emergency services as provided in the SHIA and the Principal Regulations. The Amendment Regulations deletes this paragraph. The rationale behind this amendment is unclear as SHIA obligates the Authority to pay claims to health care providers or health care facilities that are empaneled and contracted in accordance with the provisions of SHIA.

Conclusion

The amendments are important as they seek to ensure a smooth transition and implementation of SHIF. However, the implementation of SHIF is still subject to the determination of the Court of Appeal on the validity and constitutionality of the three (3) health statutes. We will keep you posted once the Court of Appeal renders its Judgment on the matter.

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 Jacob Ochieng, Partner, (jacob@oraro.co.ke) and Lilian Renee Omondi, Partner, (renee@oraro.co.ke) or your usual contact at our firm, for legal advice.



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