
TO: THE CLERK, NATIONAL ASSEMBLY
FROM: THE FEDERATION OF KENYA EMPLOYERS (FKE)

FKE MEMORANDUM ON THE NHIF (AMENDMENT) BILL 2021

1. BACKGROUND

The Federation of Kenya Employers (FKE) is the most representative employers' organization in Kenya. The Federation has 4000 members who employ a total of 1.2 million employees in Kenya. The role of the Federation is to improve the business environment for Kenyan employers through advocacy, effective representation, social dialogue and provision of value-add services. In addition to representing Kenyan employers at local level, the Federation also represents members at regional and international level including at East Africa Employers Organization, BUSINESSAfrica and International Organization of Employers (IOE), and International Labour Organization (ILO).

In taking a policy position, FKE is guided with the need to ensure a balanced and trusted policy position that promotes:

- Kenya's socio-economic development
- Accelerated job creation
- Enterprise development
- Fair labour practices
- Resilient and competitive employers
- Harmonious industrial relation.
- Social justice
- Feasibility and affordability of the costs associated with implementation of the policy
- Ease of doing business

2. NHIF AND UHC: FKE PERSPECTIVE

In Kenya Universal Health Coverage (UHC) has become a national priority. It is one of the Big 4 Agenda priority areas by the current administration. UHC advances 3 areas.

- i) Expansion of services
- ii) Inclusion of all persons
- iii) Reduction of out-of-pocket payments at the point of accessing health services

The effort to provide for Universal health Coverage (UHC) for Kenya are noble and the Federation supports the overall objective of getting every person in Kenya to have a health care insurance. The Federation understands that the realization of this object requires a concerted effort of all parties: Government, employers, workers, health care providers and stakeholders in the health sector, stakeholders in the insurance sector, and the public. Each party has the responsibility and is required to play its part to ensure success in UHC to all Kenyans as envisioned under the Big 4 Agenda.

The Federation outlines the following as key issues that need to be addressed to ensure Kenya succeeds in UHC:

- a) Access to health insurance for all
- b) Management of health care access costs
- c) Governance of health care
- d) Financing health care
- e) Adequacy of the NHIF cover benefits

The NHIF plays a critical role in addressing the above issues and such the Federation wish to submit the following touching on:

- i) Proposals for improvement of NHIF
- ii) Comments on the NHIF (amendment) bill 2021
- iii) Comments Health laws (amendment) Bill 2021

3. LEGAL ASPECTS ON THE NATIONAL HEALTH INSURANCE FUND AMENDMENT BILL AND HEALTH LAWS(AMENDMENT)BILL

Noting that the pandemic has plunged many businesses out of the market. Business environment is faced with uncertainty which is not good for business growth. In as much as these challenges continue to affect all sectors, we must appreciate the resilient nature of our industries and our people even in these tough times.

The Labour sector has been confronted with several proposals in our legal system for example by introducing unemployment fund and social security injury scheme. All these changes are focusing on the employers to finance and sustain them.

The Stanbic Bank Market Report 2021 indicates a decline in new businesses and activity by 1.1%. the timing therefore is not right to start introducing changes with financial implications to our businesses including the NHIF. The proposed changes will be an indicator of making Kenya unattractive destination to do business.

The Fundamental Right to Health

The Constitution of Kenya 2010 Art. 43(1)(a) provides that every person has the right to the highest attainable **standard of health, which includes the right to health care services**, including reproductive health care. This constitutional provision falls within Part 4 of the Constitution dealing with Fundamental Rights and Freedoms against the State.

Role of Government in providing health services

The employers appreciate the role of Government in facilitating provision of, and access to, quality health services. This is done through the ministry of health and other related agencies, which play an important role in health development, through strengthening health systems and generation of human, financial and other resources. This allows health systems to achieve their goals of improving health, reducing health inequalities, securing equity in health care financing, and responding to population needs. This is the essence and sprit of Article 43(1)(a) of the Constitution.

4. GENERAL PROPOSALS FOR IMPROVEMENT OF NHIF

- a) NHIF is public National Health Insurance scheme and therefore it should be mandatory for NHIF to provide health insurance cover for basic medical care for all Kenyans citizens. The identification of eligibility can be based on Huduma numbers and hospital birth notification/certificate card for babies who have not yet been registered and acquired Huduma number. This mandatory requirement on NHIF will ensure that all Kenyans access basic medical insurance.
- b) The employees in formal employment or in formal self-employment, should be obligated to mandatorily contribute to NHIF as per the prescribed rates proposed by the NHIF board and agreed upon by the social partners (COTU(K) and FKE) and the Government.
- c) The minimum benefits provided by NHIF to be enjoyed by every Kenyan citizen be prescribed in the NHIF Act enacted by parliament.
- d) To encourage voluntary contributions, the NHIF board to provide for superior benefits to contributing members and their dependents.

- e) The NHIF legal framework should provide for an option of existing NHIF members in formal employment to cover more additional dependents upon payment of rates prescribed by the Board.
- f) NHIF benefits for contributing members and their dependents to be superior to the basic and provide for better benefit. This will encourage more to contribute.
- g) On financing, the government should pay from exchequer for the financing gap that NHIF need to be able to provide the medical insurance for all citizens that are not able to contribute because they are either in the informal sector or because they do not have income to enable them to contribute to NHIF. The Government should aim at meeting the Abuja Declaration on Health Financing

5. COMMENTS ON THE NHIF (AMENDMENT) BILL 2021

The following are employers submission on the various proposals in the NHIF (amendment) bill 2021 that they want improved.

- i) **Sections 10 & 15** – *Matching of contributions and Contribution to the fund* – Contribution will be made by all Kenyans who have attained the age of 18 years whether being in formal or informal sector. Further, employers are required to contribute an amount equal to that which they have remitted on behalf of their employees.

Issues with the proposal

All Kenyans aged 18 years and above to mandatorily contribute is not feasible. There are many persons in this bracket that either do not have means to earn an income or do not have the ability to contribute. Many households in Kenya are struggling to put food on their tables and live from hand to mouth. This proposal is only feasible in a country with majority of her citizens having formal employment. In Kenya almost 85% of persons in wage employment are in informal sector. How will Government enforce it? Will Government jail millions of defaulters?

Employers' Proposal

Contributions to the Fund be made by all persons in formal employment. The government should provide for the gap in funding from the exchequer in line with the Abuja Declaration on healthcare financing in 2001 to cover all the persons not in formal employment including the vulnerable persons.

Employers should not be compelled to match the employees' contribution to NHIF. This will not only affect the wage bill and sustainability of enterprises but also destroy the capacity of enterprises to create new jobs and sustain the existing jobs. The proposal assumes that employers do not provide for medical insurance for their employees. Most employers in Kenya operate private medical insurance schemes for their employees. Making it mandatory for the employers to match their employees' contribution will mean that they are paying double for the health insurance. This will not only lead to unnecessary increase in the cost of labour in Kenya, but it will also destroy the private health insurance industry and the competitiveness of Kenya's Business Operating environment.

All employers will be saddled with the cost of matching their employees' contributions. Consequently, it will be highly unlikely that employers will continue their existing private insurance schemes on-top of matching employee NHIF contributions, employers who have supplemented their employees' medical insurance cover with private insurance companies may cease to do so or considerably reduce the benefits available to employees in a bid to mitigate the rise in labour related costs.

This will lead to a heavy reduction in premiums, commissions paid to agents and generally increase the level of unemployment, as employers may prefer casual or contractual employment contracts over permanent employment. Employers may also be hesitant to increase the salaries of their employees as this will call for a higher contribution to the fund.

As alluded earlier, with an increase in labour related costs, this makes our country unattractive to foreign investors especially in labour intensive industries such as agriculture and hospitality services.

Employers Proposal

NHIF to develop products that employers and workers can voluntarily take. This will encourage efficiency, and good governance of NHIF. Competition in the industry is very important for efficiency.

- ii) **Section 22 - Payment of Benefits** - Where a person has a private medical insurance policy, the private insurer will pay first. NHIF will only pay after the limits of the private cover are exhausted.

Implication

Responsibility of NHIF currently is to cater for the Primary services, the proposed bill removes this primary responsibility if one has an insurance cover. It is the Government's responsibility to cater for primary health Services.

This will increase the cost of private medical insurance and impact negatively on cost management programs and therefore low uptake of private medical insurance. This will be counterproductive to NHIF because, with diminished private insurance, there will be over reliance on NHIF cover, even if it is to be utilised upon exhaustion of private insurance cover. Furthermore, it will affect employment in the insurance sector.

Employers' proposal

Maintain the current practice in the Health Insurance industry

iii) Penalty

The penalties imposed by the proposed amendments are more inclined to punishing employers than ensuring compliance. They are geared towards closing businesses rather than making it easy for enterprises to conduct business. This is open to abuse during implementation as it is a good ground for possible extortion by the officers. Consequently, this will lead to low levels of compliance and sustaining the financing of the UHC.

Implication

Punitive measures affect the doing of business in many ways. It does not act as a deterrence but may also to a larger extent may lead low level of compliance. There is no justification for these heavy punitive measures. Employers with employees and who are experiencing cash flow may end up closing shop. This is not what is anticipated while introducing UHC in the market. We are killing the already existing and struggling enterprises and scaring away entrepreneurs who can create jobs by resorting to punitive laws.

Employers Proposal

Adopt technology to reduce noncompliance

6. HEALTH LAWS (AMENDMENT)BILL

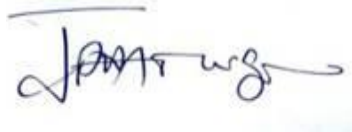
The Bill has introduced changes in the composition of the board by proposing to remove the AKI and KMA, very substantive players in public health sector. Since this is an insurance scheme, the expertise of the two institutions will be key in driving the policy framework of the scheme.

The employer representative

There is a proposal that the persons to be appointed to represent employers shall be selected through conventional board resourcing procedures including through applications, referrals and knowledge of the market and industry actors.

This is discriminatory as the same rules do not apply to employee and Council of Governors representative to the Board. It's therefore unconstitutional and the current provision should be retained.

JACQUELINE MUGO (MRS), MBS



The Executive Director & CEO
Federation of Kenya Employers

(Signed)

17/06/2021

(Date)