

**EXPLANATORY MEMORANDUM TO THE SOCIAL HEALTH INSURANCE  
REGULATIONS, 2024 AND THE SOCIAL HEALTH INSURANCE (TRIBUNAL  
PROCEDURE) RULES, 2024**

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**PART I**

**Name of the Statutory Instrument:** The Social Health Insurance Regulations, 2024  
The Social Health Insurance (Tribunal Procedure) Rules, 2024

**Name of the Parent Act:** The Social Health Insurance Act, No. 16 of 2023

**Enacted Pursuant to:** Section 44(6) and 50 of the Social Health Insurance Act, No. 16 of 2023

**Name of the Ministry:** Ministry of Health

**Name of the Agency:** The Social Health Authority

**Gazetted on:** 8<sup>th</sup> March 2024


**Tabled on:** March 2024

**PART II**

**1. Purpose of the Statutory Instruments**

- 1.1. The purpose of the statutory instruments is to give effect to the provisions of the Social Health Insurance Act, No. 16 of 2023 of the Laws of Kenya (hereinafter referred to as “the Act”), which is not self-executing.
- 1.2. The Social Health Insurance Regulations, 2024 provide for, among other things, the implementation of the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund established in the Act, the mandatory registration of every person resident in Kenya pursuant to section 26(1) of the Act and the mode of payment of contributions pursuant to section 27(1) and (2) of the Act.
- 1.3. The Social Health Insurance (Tribunal Procedure) Rules, 2024 operationalizes the Dispute Resolution Tribunal established under section 44(1) of the Act.

**2. Legislative Context**

 <b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
DATE: 21 MAR 2024	
DAY: <u>THURS</u>	
TABLED BY: 1	<u>Hon Naomi Wago, MP Deputy Majority Whip Gertrude Chebet</u>

- 2.1. Article 43(1) of the Constitution of Kenya, 2010 guarantees the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care and the right to social security.
- 2.2. The Social Health Insurance Act, No. 16 of 2023, enacted on 19<sup>th</sup> October 2023 and came into force on 22<sup>nd</sup> November 2023, gives effect to the progressive realization of the rights of the highest attainable standard of health and social security as provided in Article 21(2) of the Constitution of Kenya, 2010.
- 2.3. To ensure full operationalization of the Social Health Insurance Act of 2023, a multi-agency Technical Working Group (TWG) was formed by the Ministry of Health to *inter alia*, develop the necessary draft Regulations and the Regulatory Impact Statement for the better carrying out of the provisions of the Act.
- 2.4. Section 24 provides that “the Cabinet Secretary shall in consultation with the Board make Regulations for the implementation of the Primary Healthcare Fund”.
- 2.5. Section 30 provides that “the Cabinet Secretary shall in consultation with the Board make Regulations for the implementation of the Emergency, Chronic and Critical Illness Fund”.
- 2.6. Section 44(6) provides that “the Cabinet Secretary shall prescribe procedures for the operationalization of the Tribunal”.
- 2.7. Section 46(2) provides that “the Cabinet Secretary shall prescribe Regulations on the modalities of engaging stakeholders at the national and county level”.
- 2.8. Section 47(5) provides that “the Cabinet Secretary shall make Regulations for the better carrying out of the provisions of this section”.
- 2.9. Section 50(1) provides that “the Cabinet Secretary shall, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act”.

### **3. Policy Background**

- 3.1. Parliament enacted the Social Health Insurance Act, No. 16 of 2023, on 19th October, 2023. The Act came into force on 22<sup>nd</sup> November, 2023 vide a *Gazette Notice* issued by the Cabinet Secretary for Health. The Act on its own, however, is not sufficient since it does not provide the modalities of the implementation of the Primary Healthcare Fund and the Emergency, Chronic and Critical Illness Fund, the operationalization of the Dispute Resolution Tribunal, the modalities of empaneling and contracting and settling of claims,

Resolution Tribunal, the modalities of empaneling and contracting and settling of claims, the development of benefits and tariffs and the establishment of a digital platform for the management of the processes and services under the Act.

3.2. In light of this, the TWG developed The Social Health Insurance Regulations, 2024 and Social Health Insurance (Dispute Resolution Tribunal) Regulations, 2024. The Regulatory Impact Statement was also developed as the two Regulations impose significant costs on the community.

3.3. The Regulations provide for the—

- (a) procedure for registration of members and change of beneficiaries;
- (b) manner of making contributions;
- (c) criteria and procedure for empanelment and contracting of healthcare providers and health facilities;
- (d) measures that the Authority shall take to enhance access to safe and quality services offered by healthcare providers and to ensure that the public can access healthcare services from qualified and licensed healthcare providers;
- (e) implementation of a system for pooling of resources and risks based on the principles of solidarity, equity and efficiency to guarantee access to health care services for all;
- (f) the benefits payable and how the payment of claims will be processed;
- (g) establishment of a Centralized Digital Platform for purposes of claims administration, recording beneficiaries' data and healthcare service delivery data and maintaining healthcare providers' data; and
- (h) operationalization of the Dispute Resolution Tribunal.

#### **4. Consultation outcome**

4.1. Pursuant to Article 10 of the Constitution, the Ministry of Health and the Social Health Authority subjected the Regulations to stakeholder engagement and public participation both physically and virtually. The Technical Working Group identified and engaged key stakeholders and members of the public for consultations.

4.2. The Ministry conducted public participation using various means. The Ministry of Health invited the public and all stakeholders for public participation and stakeholder engagements through the print media on 9<sup>th</sup> February 2024 (see Annexure 1). The public and



stakeholders were thereafter engaged from 12<sup>th</sup> February 2024 to 21<sup>st</sup> February 2024. Before this, the Ministry of Health had placed an advertisement in the print media on 22<sup>nd</sup> January 2024 seeking public and stakeholder views and a memorandum on the Regulations and the Regulatory Impact Statement (see Annexure 2) to be submitted vide the email [regulations@health.go.ke](mailto:regulations@health.go.ke) or hand delivered to Office of the Cabinet Secretary on Afya House 7<sup>th</sup> Floor, Nairobi . The Ministry had also placed an advertisement in the print media on 28<sup>th</sup> November 2023 before the court case that stopped the implementation of the Act.

4.3.The Regulations and the Regulatory Impact Statement were also posted on the official Ministry of Health website for ease of access by the public and stakeholders for purposes of submission of views.

4.4.The Ministry of Health further received and considered written and oral submissions on the two Regulations and the Regulatory Impact Statement from several stakeholders including departments and agencies within the Ministry of Health, the county governments, institutions of higher learning, the private sector and faith-based institutions providing healthcare services in the country, development partners, the media, the civil society, special interest groups, patients' associations, the informal sector groups, employer' associations, workers' representatives, public officers and the public who are directly or indirectly likely to be affected by the proposed statutory instruments. The views of these stakeholders are captured in the consolidated matrices on the stakeholder and public engagements (see Annexure 3).

4.5.The final versions of The Social Health Insurance Regulations, 2024, The Social Health Insurance (Tribunal Procedure) Rules, 2024 and the Regulatory Impact Statement have taken into account the views of key stakeholders and the general public.

4.6.The analysis of the views and submissions expressed during the consultations indicated that the two Regulations are good and will facilitate the realization of universal health coverage in the country.

4.7.Sufficient time for seamless transition from the defunct National Health Insurance Fund to the Social Health Authority has been provided, particularly in the fresh registration of Kenyans to ensure that there will be no disruptions in the provision of health services.

## **5. Guidance**

5.1. The Social Health Authority in collaboration with the Ministry of Health will sensitize stakeholders including Parliament, healthcare providers, health facilities and the general public, on the provisions of the Regulations, the obligations of each party, the penalties for non-compliance as well as the monitoring and evaluating mechanism, to ensure that the Regulations serve the purpose for which they have been made.

## 6. Impact

**6.1. Impact on Fundamental Rights and Freedoms:** The two Regulations promote and facilitate the realization of fundamental rights and freedoms. The Regulations therefore do not limit fundamental rights and freedoms.

**6.2. Impact on the Private Sector:** Private and faith-based healthcare providers that provide the healthcare services provided under the Act and The Social Health Insurance Regulations, 2024 are required to comply with the two Regulations. These healthcare providers will have to provide healthcare services based on the empanelment and contracting framework and the benefits package and tariffs developed pursuant to The Social Health Insurance Regulations, 2024. The Regulations will inspire public trust in the private sector, including in faith-based health institutions, in regard to the provision of quality healthcare services, thereby creating accountability and transparency, which in turn leads to a positive impact on the reduction of the country's health burden and the national economic growth and performance.

**6.3. The impact on the Public Sector:** Any public office, as defined in Article 260 of the Constitution or any entity performing a function within an agency, health facility or other body at both levels of government is required to comply with the Regulations. The Regulations will inspire public trust in the public sector in regards to public resources therefore creating accountability and transparency which in turn leads to a positive impact on the quality of healthcare in public health facilities, the reduction of the country's health burden and on national economic growth and performance. Compliance with the Regulations will prevent fraud and fictitious claims and will save public resources that will, in turn, be used to provide improved and comprehensive healthcare benefits to all persons in Kenya.

**6.4.Regulatory Impact Statement:** A regulatory impact assessment (annexure 4) was done which culminated in the preparation of the Regulatory Impact Statement that was subjected to public participation and stakeholder engagement together with the two Regulations. The Regulations impose costs on private, faith based and public healthcare providers by requiring them to enable their internal systems to integrate with the Centralized Digital Platform established under the Regulations.

## **7. Monitoring and review**

7.1.The Board of the Social Health Authority shall monitor the implementation of The Social Health Insurance Regulations, 2024, and The Social Health Insurance (Tribunal Procedure) Rules, 2024 through annual reports. In addition, the Board will also carry out regular monitoring and evaluation of the specific provisions of the Regulations through interaction with the public and stakeholders through the public engagement fora and the Benefits Package and Tariffs Advisory Panel provided for in The Social Health Insurance Regulations, 2024.

7.2.The two Regulations shall apply from their commencement date as specified within the text of The Social Health Insurance Regulations, 2024. In this respect, a review thereof will be done by the Cabinet Secretary in consultation with the Board of the Social Health Authority and subject to the approval of Parliament in line with the provisions of the Statutory Instrument Act, Cap. 2A.

## **8. Contact Person**

8.1.The contact persons shall be the Cabinet Secretary for Health, Nakhumicha S. Wafula, EGH and the Chairperson of the Board of the Social Health Authority, Dr. Timothy Olweny. The contact persons may be reached through:

*The Office of the Cabinet Secretary  
Afya House, 7<sup>th</sup> Floor, Cathedral Road  
P.O Box 30016 – 00100  
Nairobi*