The Healthcare Delivery System in Nigeria: Legal Framework, Obstacles and Challenges to Providing a Public Insurance System

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ABSTRACT

This work seeks to examine the Nigerian Healthcare system through the lens of its public health insurance laws to access its successes and challenges and also make recommedations towards an effective healthcare delivery system.

INTRODUCTION

Healthcare delivery in Nigeria is both a private and government business. The Federal and State goverment are allowed to set up hospitals and other health facilities. Effective healthcare delivery is usually a function of the quality, accessibiity and affordability of the service.

Over the years, there has been a rise in Nigeria's poverty level.[1] Consequently, the ability to afford basic healthcare for common illnesses by the average Nigerian reduced drastically and in more extreme illnesses, citizens had to resort to sale of personal effects and/or real property, rely strongly on personal savings and/or resort to taking loans in order to be able to attend to their health needs adequately.[2]

Also, Nigeria's healthcare system have been bedevilled by lack of adequately trained personnel available to carry out medical work as well as lack of required medical equipment needed to aid the delivery of qualitative healthcare.

The establishment of the Nigerian Health Insurance Scheme was the Government effort towards improving the quality, availability and affordability of medical services to its citizenry.

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1 Statistics from Nigeria's National Bureau of Statistics show that the poverty index of the country between the early 80s and the mid 90s progressed from 27.2 % to 65.6 %. See Zunumhan Dapel, 'Poverty in Nigeria: Understanding and Bridging the Divide between North and South' (Center for global development, 6th April) <https://www.cgdev.org/blog/poverty-nigeria-understanding-and-bridging-divide-between-north-and-south> accessed 20 September, 2020.

2 A. O. Abiola et al., 'Knowledge and utilisation of National Health Insurance Scheme Among Adult Patients Attending a Tertiary Health Facility in Lagos State, South-Western Nigeria' [2019] 11(1) African Journal of Primary Healthcare & Family Medicine.

LEGAL FRAMEWORK OF NIGERIA'S HEALTHCARE DELIVERY SYSTEM

Quality healthcare is not a fundamental human right in Ngeria,however, it forms part of the Fundamental Objectives and Directive Principles of State policy.[3] The implication of this is that quality health is not a right that can be enforced in a court of law but every government has an obligation to provide quality healthcare services to it citizens.

The major legislations which regulate healthcare delivery in Nigeria are as follows;

1. National Health Act
2. Medical and Dental Practitioners Act (MDPA) CAP M8, LFN2004
3. Nursing and Midwifery (Registration, etc.) Act 1979
4. The Compulsory Treatment and Care for Victims of Gunshot Act 2017
5. The code of Medical Ethics in Nigeria.
6. National Health Insurance Scheme Act (NHIS), 2004

The NHIS Act established the National Health Insurance Scheme for the purpose of improving the health of all Nigerians by providing social health insurance in Nigeria where healthcare services of contributors are paid from the common pool of funds contributed by the participants of the scheme.[4] The scheme was introduced by the federal government of Nigeria with the following objectives namely:

A. Ensuring that every Nigerian has access to good healthcare services;
B. Protecting families from the financial hardship of huge medical bills;
C. Limiting the rise in the cost of healthcare services;
D. Ensuring equitable distribution of healthcare costs among differentincome groups;
E. Maintaining high standard of healthcare delivery services within the Scheme;
F. Ensuring efficiency in healthcare services;
G. Improve and harness private sector participation in the provision of healthcare services;
H. Ensuring adequate distribution of health facilities within the Federation;
I. Ensuring equitable patronage of all levels of healthcare;

Ensuring the availability of funds to the health sector for improved services.[5]

THE MACHINERY OF THE NATIONAL HEALTH INSURANCE SCHEME

The NHIS Act sets up a Governing Council which is responsible for management of the scheme. The NHIS Act outlines the role of the Council as follows;

A. Registering health maintenance organisations and healthcare providers under. the Scheme;
B. Issuing appropriate guidelines to maintain the viability of the Scheme;
C. Approving format of contracts proposed by the health maintenance organisations for all healthcare providers;

3 Section 17(3) (d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

4 In www.nhis.gov.ng/about-us/ (accessed 20th September, 2020).

5 See Section 5 of the National Health Insurance Scheme Act, CAP N42, L.F.N, 2004.

D. Determining after negotiation, capitation and other payments due healthcare providers, by the health maintenance organisations;
E. Advising the relevant bodies on inter-relationship of the Scheme with other social security services;
F. Conducting research and providing statistics of matters relating to the Scheme;
G. Advising on the continuous improvement of quality of services provided under the Scheme through guidelines issued by the Standard Committee established under the Act;
H. Determining the remuneration and allowances of all staff of theScheme;
I. Exchanging information and data with the National Health Management Information System, Nigerian Social Insurance Trust Fund, the Federal Office of Statistics, the Central Bank of Nigeria, banks and other financial institutions, the Federal Inland Revenue Service, the State Internal Revenue Services and other relevant bodies;
J. Doing such other things as are necessary or expedient for the purpose of achieving the objectives of the Scheme under this Decree.[6]

The Act provides for the registeration of Health Care Providers. These registered Health Care Providers are obligated to provide a range of medical services to persons enrolled under the scheme in consideration for a capitation payment in respect of each insured person registered with it, or for payment of approved fees for services. The medical services as detailed under the Act are as follows[7]:

1. defined elements of curative care;
2. prescribed drugs and diagnostic tests;
3. maternity care for up to four live births for every insured person;
4. preventive care, including immunization, family planning, ante natal and post natal care;
5. consultation with defined range of specialists;
6. hospital care in a public or private hospital in a standard ward during a stated duration of stay[8] for physical or mental disorders;
7. eye examination and care, excluding test and the ad provision of spectacles; and
8. a range of prosthesis and dental care as defined.

The Scheme is admnistered by registered Health Maintenance Organisations (HMOs). The registeration of the HMOs is done by the Governing Council of the Scheme. The HMOs have the responsibility for;

1. The collection of contributions from eligible employers and employees under the Act.
2. The collection of contributions from voluntary contributors under the Act

6 Section 6 of the National Health Insurance Scheme Act, CAP N42, L.F.N, 2004.
7 Section 18(1).
8 The NHIS Guidelines usually sets the duration of stay at a cumulative number of 21 days in a year.

3. The payment of capitation fees for services rendered by health care providers registered under the Scheme.
4. Rendering to the Scheme returns on its activities as may be required by the Council
5. Contracting only with the healthcare providers approved by the Scheme for the purpose of rendering health care services under the Act.
6. Ensuring that contributions are kept in accordance with guidelines issued by the Council and in banks approved by the Council and
7. Establishing a quality assurance system to ensure that qualitative care is given by healthcare providers.

Presently, the Scheme has developed various programmes to cover different segments of the society and these are:

FORMAL SECTOR

1. Formal Sector Social Health Insurance Programme
2. Mobile Health
3. Vital Contributors Social Health Insurance Programmes

INFORMAL SECTOR

1. Tertiary Institution Social Health Insurance Programmes
2. Community Based Social Health Insurance Programmes
3. Public Private Partnership Social Health Insurance Programmes

VULNERABLE GROUP

1. Pregnant Women
2. Children Under five
3. Prison Inmates
4. Retirees
5. Aged

FORMAL SECTOR

The Formal Sector Social Health Insurance Programme[9]. is a social health security system in which the health care of employees in the Formal Sector is paid for from funds created by pooling the contributions of employees and employers.

9 National Health Insurance Scheme, "The Formal Sector Health Insurance Programme" in https://www.nhis.gov.ng/formal-sector-social-health-insurance-programmefsship/ accessed (September 23, 2020).

The Formal Sector consists of the following:

1. Public Sector
2. Organized Private Sector
3. Armed Forces, Police and other Uniformed Services

MEMBERSHIP

Employees of the public sector and organized private sector organizations employing ten (10) or more persons shall participate in the Programme.[10]

CONTRIBUTIONS.

Contributions are earnings-related. For public (Federal) sector programme, the employer pays 3.5 % while the employee pays 1.75 % of the employee's consolidated salary. For the private sector programme and other tiers of Government, the employer pays 10 % while the employee pays 5 % representing 15 % of the employee's basic salary. However, the employer may decide to pay the entire contribution. The employer may also undertake extra contributions for additional cover to the benefit package.

PAYMENT MECHANISM

NHIS pays capitation for primary care and Fee-for-service upon referral through accredited HMOs to accredited Healthcare facilities

WAITING PERIOD

There shall be a processing/waiting period of ninety (90) days before a participant can access health care services.

SCOPE OF COVERAGE

1. The contributions paid cover health care benefits for the employee, a spouse and four (4) biological children below the age of 18 years.
2. More dependants or children above the age of 18 are covered on the payment of additional contributions by the principal beneficiary as determined by NHIS.
3. Principals are entitled to register four (4) biological children each, however a spouse or a child cannot be registered.

10 Section 16(1) (2) of the National Health Insurance Scheme Act, CAP N42, L.F.N, 2004.

VITAL CONTRIBUTORS SOCIAL HEALTH INSURANCE PROGRAMME

Vital Contributors Social Health Insurance Programme (VCSHIP)[11]is health insurance that is taken up and paid for at the discretion of willing individuals or at the discretion of employers on behalf of employee in organization with less than ten staff. It is a programme designed for those who are not currently covered by any of the NHIS programmes and for those who may not have been satisfied with the existing health care services.

This programme shall provide full or partial coverage for services that are excluded or not fully covered by statutory health system. Premiums in Social Health Insurance are not risk related and access to health care by voluntary contributors is always dependent on proof of contribution.

Family members of persons voluntarily insured in Nigeria social health insurance scheme are not covered as co-insured. The Enabling law establishing the Scheme and the Operational Guidelines of NHIS refers to these group of people as:

- Large number of financially viable Nigerian businessmen and women with staff strength of less than ten but could not be categorized under OPS programme and not yet covered.
- An active self employed individual not covered and categorized under CBSHIP but willing to participate in the programme.
- Retirees who wish to continue under NHIS Formal Sector Programme
- Political office holders
- Foreigners living in Nigeria (legal residents),etc

MEMBERSHIP

Membership shall be voluntary and shall cover interested individuals, families, employers of establishments with less than ten staff, and actively self employed persons, political office holders at three tiers of governments and retirees not currently covered by any of the NHIS prepaid programmes. Others are foreigners to Nigeria or persons with temporary residency status and Nigerians in Diaspora.

Note: all extra dependants registered under formal sector programme should be transferred and folded into VCSHIP.

FINANCING

The programme shall be financed from contributions made by interested individuals.

11 National Health Insurance Scheme, "Vital Contributors Social Health Insurance Programme" in https://www.nhis.gov.ng/voluntary-contributor-social-health-insurance-programmevcship/ (accessed September 23, 2020). Also see the provisions of Section 17 (3) of the National Health Insurance Scheme Act, CAP N42, L.F.N, 2004.

INFORMAL SECTOR GROUP

Under the informal sector group, there is the the Tertiary Institution Social Health Insurance Programme; the Community Based Social Health Insurance Programme; the Public Primary Pupil Social Health Insurance Programmes.

TERTIARY INSTITUTION SOCIAL HEALTH INSURANCE PROGRAMME

The Tertiary Institutions Social Health Insurance Programme[12] (TISHIP) is a social security system whereby the health care of students in tertiary institutions is paid for from funds pooled through the contributions of students. It is a programme committed to ensuring access to qualitative healthcare service for students of tertiary institutions thereby promoting the health of students with a view to creating conducive learning environment. It takes cognizance of the current practices and challenges faced by students in accessing care both during and out of session, as well as the potential of the current tertiary health facilities to maximize access to quality health care. Tertiary institutions are categorized as Universities, Colleges of Education, Polytechnics, Colleges of Agriculture, Monotechnics, Schools of Nursing, Midwifery, Health Technology and other Specialized Institutions.

The purpose of TISHIP is to cater for the health care needs of Nigerian students in tertiary institutions who due to their studentship status cannot benefit under other health insurance programmes.

This population constitutes a very large percentage of the country's population. By virtue of their age and their status as students, most of them cannot benefit from the public sector programme as enrollees or dependants of enrollees. This necessitates a programme designed to meet their needs.

Providing students access to qualitative and affordable healthcare is not only imperative to the achievement of the presidential mandate which is to achieve universal coverage and access to healthcare services for all Nigerians and legal residents but also to the overall development of our nation.

The ultimate goal is to ensure the health and well-being of this critical population 9 with a view to creating a conducive learning environment and contributing to the overall development of the country.

12 National Health Insurance Scheme, "The Tertiary Institutions Social Health Insurance Programme" https://www.nhis.gov.ng/tertiary-social-health-insurance-programmetiship/ (accessed on September 22, 2020).

THE COMMUNITY BASED SOCIAL HEALTH INSURANCE PROGRAMME

Community Based Social Health Insurance Programme[13] is a non-profit making programme for a cohesive group of households/individuals or occupation-based groups. It was formed on the basis of the ethics of mutual aid and the collective pooling of health risks, in which members take part in its management.

MEMBERSHIP

This shall be voluntary and open to all residents (families) of the participating communities/occupation-based groups (including retirees). The family or individual members shall be the unit of registration. In order to achieve a critical pool of funds to ensure financial viability, as well as to address the problem of adverse selection, communities/occupation-based groups shall have at least 50 % of members willing to participate (or a minimum of 1000 members).

REGISTRATION PROCEDURE

Registration of enrollees shall be by technical facilitators or BOTs. Each programme shall have a clearly defined procedure for registering enrollees as well as a form of identification (such as membership card) to assist in the identification of scheme members.

BENEFIT PACKAGE

The benefit package shall reflect preventive, promotive and curative components of health care delivery. It shall aim at minimum primary and secondary curative care, taking into cognizance the prevailing local morbidity and mortality profile, including pre- & post-natal care, normal delivery, child welfare services (including immunization), family planning and health education services.

CONTRIBUTION/PREMIUM

This shall be actuarially determined flat rate fee per household/individual household member or member of an occupation based group and paid in cash monthly or seasonally in advance.

13 National Health Insurance Scheme, Community Based Social Health Insurance Programme, https://www.nhis.gov.ng/community-based-social-health-insurance-programmecbship/ (accessed on September 24, 2020).

DONATIONS

Project managers may seek for donations/grants by way of formal launching/fund-raising events, or by targeting individuals, governmental and Civil Society Organizations, including private companies, with the aim to boost the financial base of this scheme.

VULNERABLE GROUP SOCIAL HEALTH INSURANCE PROGRAMMES

Vulnerable Group Social Health Insurance Programmes[14] are designed to provide health care services to persons who due to their physical status (including age) cannot engage in any meaningful economic activity.

They include the following:

1. Physically Challenged Persons Social Health Insurance Programme(PCPSHIP):- Physically Challenged Persons Social Health Insurance Programme is a programme designed to provide health care services to Physically/Mentally Challenged Persons who due to their physical status cannot engage in any meaningful economic activity.
   Membership:Physically/Mentally Challenged Persons will be covered under the programme

Contributions
The Federal, States, Local Governments, Development Partners and Civil Society Organizations will pay contributions in advance into the Vulnerable Group Fund.

2. Prison Inmates Social Health Insurance Programme(PISHIP):- A programme designed to providehealth care services to inmates of Nigeria Prisons and offending minors in Borstal Homes, who byvirtue of their restriction, cannot engage in any activity to earn income.

Membership

1. Convicts
2. Awaiting trial (remanded in Prison custody).
3. Offending Minors in Borstal Homes.

Contribution: – The Federal, States and Local Governments, Development Partners and Civil Society Organizations (CSOs) will pay contributions in advance into the Vulnerable Group Fund.

3. Children Under Five (5) Social Health Insurance Programme (CUFSHIP):- Children under Five Social Health Insurance Programme (CUFSHIP) is a programme designed to cover the health needs of Children under the age of five (5) years across the country, who are considered vulnerable.

14 National Health Insurance Scheme, Vulnerable Group Social Health Insurance Programmes, https://www.nhis.gov.ng/vulnerable-group/ (accessed on September 25, 2020).

Membership: – Children under the age of five (5) years especially those whose parents are participating in Community Based Social Health Insurance Programme (CBSHIP).

Contributions; – The Federal, State, Local Government, Development Partners and Civil Society Organizations will pay contributions in advance into the Vulnerable Group Fund.

4. Pregnant Women
5. Aged

For the purpose of admnistration of the Scheme, the Country is divided into Zones by the Council[15]. The Zonal office is responsible in the zone for-[16]

1. Determining the areas in which there are sufficient services for the scheme to operate;
2. Strategic planning for the successful implementation ofthe Scheme.
3. Undertaking programmes for phsing-in the Scheme
4. Maintaining a register of health care providers
5. Inspecting health care providers and their facilities to ensure that they maitain good qulity services.
6. Developing health care services in areas where those services are not adequate.
7. Collecting statistics on consultations and admissions to hospitals, including length of stay
8. Preparing report, accounts and statistical returns and forwarding them to the Council
9. The geneal admnistration of the Scheme
10. Promoting the good relations of the Scheme

Dispute Resolution under the Scheme is by an Arbitration Board set under the Act[17]

Any person (corporate body inclusive) who fails to pay into the account of any HMO and within the time specified any contribution liable to be paid under the Act or deducts the contribution from the employee's wages and withholds the contribution or refuses or neglects to remit the contribution to the organisation concerned within the specified time is guilty of a crimanal offence.[18] The Act also makes a defaulting Director, Chief Executive, Partner, Manager or Secretary of the Company personally laible for the crime[19].

The Act also established a Standards Committee[20] which is charged with the responsibility of recommending to the Scheme guidelines for the maintenance of quality assuarnce among HMOs and Health Care Providers.

Since its operation, the Health insurance Scheme have provided better access to quality medical services for its enrolles. It has also improved the quality of medical service delivery as medical service providers now have access to more funds for medical equipment and

15 Section 21, NHIS Act.
16 Secion 22, NHIS Act.
17 Section 26, NHIS Act.
18 Section 28, NHIS Act.
19 Section 29, NHIS Act.
20 Section 46, NHIS Act.

facilities. There is also more competiiton in the medical service industry which has imporved service delivery. The scheme have also created opportunity for pooling of funds by members of the public which in turn creates a form of subsidy as high income earners subsides healthcare for low income earners. It has eliminated the frequent out of pocket payments for healthcare needs for its enrollees.

OBSTACLES AND CHALLENGES TO CREATING A PUBLIC INSURANCE SYSTEM

A. PARTIAL IMPLEMENTATION AND UNDER SUBSCRIBTION TO THE SCHEME: Despite being in operation for about 2 (two) decades, a great number of the populace are still not disposed to subscribing to the scheme. Statistics show that only about 5 % of the entire Nigerian population is covered by the Scheme[21] and that percentage mostly consists of individuals in the formal sector where employers compulsorily enroll thier employees in the scheme. The vast majority of the populace still operate a "pay-as-go" arrangment. This is largely due to lack of awareness of the cost effectiveness of the scheme.

From available statistics, save for the Formal Sector programme of the Scheme, the other programs have not been fully implemented.

B. POVERTY AND UNEMPLOYMENT: The country is still plagued with an epidemic of widespread poverty.[22] The rate of poverty in Nigeria as at the 2nd Quarter of 2020 is estimated at 27.1 % which invariable translates to the fact that at least 21.7 million Nigerians are as it stands, unemployed.[23] Due to the rising poverty rate which stems directly from either unemployment or underemployment, a lot of persons struggle to have thier basic needs of food and shelter and resort to orthodox medical care, quacks or self medication when they fall sick.

C. THE GENERAL DISPOSITION TOWARDS INSURANCE: Traditionally, Nigerians do not have an attraction towards insurance schemes. Hence most average Nigerians see the Health Insurance Scheme as another ploy to strip individuals of their funds without adequate delivery of the benefits.

21 A. Onwuzoo, '15 Years After NHIS Establishment, Affordable Healthcare Still Eludes Nigerians' (Punch Healthwise, 17th February) https://healthwise.punchng.com/15-years-after-nhis-establishment-affordable-healthcare-still-eludes-nigerians/ accessed 30th September 2020.

22 The National Bureau of Statistics in its "Nigeria Living Standards Survey Report" for the year 2019 the percentage of poor people in Nigeria is currently measured at 40.1 % according to national standards in https://nairametrics.com/wp-content/uploads/2020/05/2019-POVERY-AND-INEQUALITY-IN-NIGERIA.pdf Accessed October 10, 2020.

23 S. Oyekanmi, 'Nigeria's Unemployment Rate Jumps to 271 % as at 2020 Q2' (*Nairametrics*, 14 August, 2020) https://nairametrics.com/2020/08/14/breaking-nigeria-unemployment-rate-jumps-to-27-1/ accessed 14 October 2020.

D. ABSENCE OF IMPLEMENTATION AT STATE LEVEL: Most states are yet to replicate the operation of the scheme at the state civil service level. Nigeria is a country comprised of 36 states. Yet, only few states[24] have taken steps to implement the scheme.

RECOMMENDATIONS AND CONCLUSIONS

The Scheme is very laudble and its programmes are quite broad enough to cover a large proportion of the Nigeria Populace. I therefore recommend the following;

A. COMPLETE IMPLEMENTATION: The Council should wholistically implement all its progrmme to ensure a wider coverage of subscribers. This will provide a larger pool of funds which will in turn improve the healthcare sector.
B. STATE WIDE IMPLEMENTATION: In Nigeria, the state at all levels remains the largest employer of labour. Every state should enact laws which replicates the NHIS Act that makes health insurance mandatory for all state and local government workers.

24 Onoka C, et al. "Why Are States Not Adopting the Formal Sector Programme of the NHIS and What Strategies Can Encourage Adoption?" in https://www.who.int/alliance-hpsr/projects/alliancehpsr_nigeriapolicybriefstates.pdf?ua=1 Accessed October 15, 2020.