



NATIONAL HEALTH INSURANCE IN NIGERIA: A LEGAL ANALYSIS AND INCLUSIVITY OF THE VULNERABLE GROUP

By

Boma Geoffrey Toby Ph.D¹

Abstract

A functional and efficient health care system can improve the overall well-being and productivity of its citizenry and cause positive improvements on the socio and economic life of especially the less privileged. No wonder, governments across the world pay huge attention to healthcare in terms of funding and legislation. Nigeria is one of the nations that has found interest in building its national health care system with particular attention to the vulnerable group via insurance. To achieve this objective, in 2020 the Minister of Health unveiled the Nigeria's Health Sector Roadmap guided by the 2019 president's "Health Sector Next Level Agenda." One of the key components of the agenda includes the implementation of a mandatory Universal Health Insurance in collaboration with State governments and the Federal Capital Territory (FCT) administration. This effort followed the signing into law in May 2022 by the president the National health Insurance Authority Act, 2021 (NHIA) otherwise referred to as 'Authority'. This law provides the framework for a health insurance scheme that enlists the States in achieving health insurance for every one including 83 million poor Nigerians classified as vulnerable group. It was a build-on on government's earlier effort in 1999 to promote, regulate and integrate health insurance schemes in Nigeria among other related matters which failed.² This law, like its predecessor was geared towards an effective implementation of a national health insurance policy that will ensure the attainment of universal health coverage in Nigeria and particularly targeted to ameliorate the suffering of the vulnerable in accessing quality health care in Nigeria; the focus of this paper. Almost two years into its existence, the new law is yet to be seen in the lives of the vulnerable but has continued to exist in the law books³. This and more will be examined in this article. An introduction of the concepts and an analysis of the extant law in question will be made. In conclusion, findings were made amongst others that the NHIA⁴ is net on ground as envisaged and lacks the necessary structures to implement its set objectives of providing health care for residents and the vulnerable in Nigeria. Recommendations were made that the Nigerian government and its relevant health ministries at the federal, state and local government levels

¹ LLB (HONS),BL,ACIarb (UK/Nig),NCMG, Cert. Comp, LLM(MERIT), PGD (Educ),PhD(ABSU). Senior Lecturer & Deputy Post-Graduate Coordinator, Faculty of Law, Department of Jurisprudence and International law, Faculty of Law, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt, Rivers State. Emails: bomag.toby@ust.edu.ng; tobybomag@yahoo.co.uk.

² National Health Insurance Scheme Act 1999, CAP N42 LFN, 2004 referred to as the 'scheme.'

³

⁴ National Health Insurance Authority Act, 2021.

can engage with trusted international health partners and donor organizations for assistance to set and manage for an agreed period, Nigerian health care structures for ease of system implementation; review and update the law on health insurance in Nigeria that has become weak in handling current health issues plaguing the society simultaneously invest in government owned insurance institutions across Nigeria which has become moribund to aid effective implementation of the health scheme.

Keywords: *Insurance, Health insurance, Vulnerable, Health care and Law.*

Introduction

Health is an essential part of the United Nations Sustainable Development Goals (SDGs)⁵ targeted at an affordable health care and ending poverty to which Nigeria is subscribed. United Nation's Sustainable Development Goals are foundational investments in human capital and economic development. This is particularly relevant to Nigeria given the current economic climate fraught with much hardship. Health care on the other hand is a primary service that provides basic medical services in society and most especially to vulnerable groups concentrated in the informal sectors and rural areas, many of whom are poor and suffer from some inability to provide adequate health care for themselves. Health care (physical and mental) is however a human right to which everyone should enjoy to the highest attainable standard to lead a productive life. It is true that an effective and efficient health care system represents the life wire of any nation and its citizens because health they say is wealth. Therefore, when a people are in good health condition or at best are able to cater for their health challenges adequately, that society grows and excels in its economic and social wellbeing whilst a dysfunctional society is easily mirrored by its poor health care system. The attainment of health for the Nigerian populace, 'a country of the young'⁶ has remained a burning issue in governance and represents a key component of successful governance in Nigeria. Many Nigerians still struggle to fulfil their health care needs because of expensive health care services. The Nigerian medical or health sector is fragile with palpable irregularities playing out in the handling of health issues and implementation of legislations on health matters. The country is faced with significant challenges of poverty, low governments investment into the health sector, inadequate and poor maintenance of health infrastructures, low utilization of health maintenance professionals in the health and insurance sectors to mane and implement relevant provisions of the law, a review and amendment of the extant laws on health insurance and a lack of funding to maintain and upgrade existing health sectors amongst others in spite

⁵The World Bank IBRS-IDA, 'Universal Health Coverage', (6 October, 2022) <<https://www.worldbank.org/en/topic/universalhealthcoverage>> assessed 12 march, 2023. SDG 3.8 target aims to "achieve universal health coverage, including financial risk protection, access to quality essential health care services, and access to safe, effective, quality, and affordable essential medicines and vaccines for all." In addition, SDG 1, calls to "end poverty in all its forms everywhere".

⁶ See note 9 below

of Nigeria's huge size and strength⁷ and being signatories to several international health organizations remains unattainable. Under extant law, healthcare appears to be limited to providing medicines related care only but a comprehensive system of healthcare extends to ensuring clean water, sanitation, food and nutrition.

Almost 90 million people are impoverished by health expenses every year. There is no arguing that health care is such an important sector yet studies show that in Nigeria, only 3% of Nigeria's Gross Domestic Product (GDP) is invested in the healthcare sector⁸ as against the requirement under the National Health Act⁹ that 15%¹⁰ of the national budget be dedicated to the health sector.

A World Bank Report¹¹ show that people in developing countries spend half a trillion dollars annually — over \$80 per person — out of their own pockets to access health services. Such expenses hit the poor the hardest and threaten decades-long progress on health. In 2019, an average of 6% of the total annual spending of Nigerian household was recorded with higher figures in rural areas on health¹². Medical expenses have continued to prove difficult to afford in Nigeria; leaving citizens to pay for medicines out of their pockets. Given the country's over 219 million people¹³ with diverse health issues, managing these challenges out of pocket is inexplicable coupled with low ratio of unemployment opportunities. This precarious situation makes life expectancy in Nigeria about the lowest. Also, in 2021,¹⁴ life expectancy in Nigeria stood at 60.87 years, the lowest in Africa as well as the world and a recent demographic study has proven that in 2022 also, life expectancy at birth in Nigeria was 61.33 years; male equaled 60 years while 63 years for females.¹⁵

Averagely, only 3% of Nigerians population have health insurance provided by employee's health coverage while a whopping 97% have no form of health insurance. This confirms a

⁷ Multi-ethnic groups, languages and diverse range of cultural and religious groups, beliefs and practices.

⁸ Worldometer, 'Population of Nigeria' < <https://www.worldometers.info/world-population/nigeria-population/> > Assessed 12 March, 2023.

⁹ NHA, 2014. (Act No. 8 of 2014). Health professionals form a significant component of health-care systems and are important in the delivery of smooth, efficient, effective and quality health care services.

¹⁰

¹¹ World Bank, 'People Spend Half a Trillion Dollars Out-Of-Pocket on Health in Developing Countries Annually' (June 27, 2019)

<<https://www.worldbank.org/en/news/press-release/2019/06/27/world-bank-people-spend-half-a-trillion-dollars-out-of-pocket-on-health-in-developing-countries-annually>> assessed 12 March, 2023.

¹² Sasu, D.D, 'Expenditure of Nigerian households on health care 2019', (2022) <<https://www.statista.com/statistics/1126516/expenditure-of-nigerian-households-on-health-care/> > Assessed on 12 March 2023.

¹³ Worldometer, 'Population of Nigeria' < <https://www.worldometers.info/world-population/nigeria-population/> > Assessed 12 March, 2023

¹⁴ Statistica Research Department Reported a study

¹⁵ Macrotrends, 'Nigeria Life Expectancy 1950 – 2023' <https://www.macrotrends.net/countries/NGA/nigeria/life-expectancy> Assessed 12 March, 2023.

similar finding that 8 out of 10 Nigerians have no access to health insurance in Nigeria.¹⁶ Out of the 3% of Nigerians with health insurance, men have 56.7% more cover than women 43.3%¹⁷ classified amongst the vulnerable group in Nigeria. Not to mention the health infrastructure which is inadequate to cater for the health scheme. It is further revealed that out of the 30,000 primary health care facility across Nigeria, only 20% are fully functional. These challenging situations make access to affordable healthcare out of the reach of most Nigeria's especially those without formal employment, vulnerable women, children, orphans and children; the most affected when it comes to health care in Nigeria.

On a worldwide scale, a joint 2020 report published by the WBG¹⁸, WHO¹⁹ and UNICEF²⁰ reveal that 15,000 children under five still die every day. In Sub-Saharan Africa, one child in 13 dies before his or her fifth birthday—compared to one in 199 in high-income countries and that every year, 2 million babies are stillborn around the world and progress on reducing these numbers has not kept up with the decline in under-five mortality.

As part of health care reforms in Nigeria, the Federal government of Nigeria in 1999 designed the National Health Insurance System (NHIS) through the insurance window to promote a national health policy that will cater for the health needs of residents of Nigeria but the scheme was repealed by the National Health Insurance Bill passed in 2021 for non-achievement of its target. A review and amendment became necessary metamorphosing into a new law passed in 2021 as the National NHIA²¹ by the federal government to improve the health of all Nigerians at an affordable cost and to support the vulnerable in achieving a healthy wellbeing. The law was designed to implement a national health insurance for residents of Nigeria and the vulnerable through the creation of a vulnerable fund from where their health care will be funded. To what extent therefore has this law attained its set goals and objectives as proposed for the vulnerable becomes the focus of this article, which now begins with a conceptual analysis of the terms relevant to this research.

Vulnerable and Indigent Groups

To Collins,²² a vulnerable person is someone who is weak and without protection, with the result that they are easily hurt physically or emotionally. Indigent persons or individuals that cannot engage in any meaningful activity to cater for their well-being fall into this group. The 'Authority' Act²³ describes them as those legible to access Free State health insurance cover

¹⁶Omokhudu Idogho et al 'Making Health Insurance work for the Most Vulnerable in Nigeria' (November,17 2022), *Ploss Global Public Health*, <medicine.ploss.org> accessed on 11 March, 2023

¹⁷

¹⁸ World Bank Group

¹⁹ World Health Organization

²⁰ United Nations International Children's Emergency Fund created December 1946

²¹ Health Insurance Authority Act, 2021

²² Collins COBUILD Advanced Learners Dictionary <linsdictionary.com> assessed 12 March, 2023.

²³ Section 59 NHIA Act, 2021

under the vulnerable group fund by government. They are that population within a state or country that has specific characteristics that makes it at a higher risk of needing humanitarian assistance²⁴ than others or being excluded from financial or social services. They are marginalized because of the inability to provide for themselves. Section 25²⁵ defines the vulnerable group as; the physically/mentally challenged persons living with disability who due to their physical status cannot engage in any meaningful economic activity,²⁶ prison inmates which include convicts, those awaiting trial (remanded in prison custody), offending minors, who by virtue of their restriction cannot engage in any activity to earn income, children under 5 years of age especially those whose parents are participating in community based social health insurance programme (CBSHIP), the unemployed, retirees, pregnant women, sick and the aged.

The Vulnerable Group Fund (VGF) and Management

The establishment of the vulnerable group fund²⁷ is to subsidize the cost of providing healthcare services to those who are unable to cater for their health care cost in this group. The funds were to come from;

- i. the Basic Health Care Provision Fund (BHCPF)
- ii. health insurance levy
- iii. telecommunications tax of at least one kobo per second of GSM calls
- iv. money allocated to the vulnerable group fund by the government
- v. money that accrue to the VFG from investment made by the governing council; and
- vi. Grants, donations, gifts and any other voluntary contributions made to the fund to the VGFund.

Management of the VGFund

The Governing council is mandated to review the sources of fund for the VGF through regulations to keep up with changes in the health insurance industry and will be responsible for managing it. They were also to determine the criteria for disbursement of subsidy payments for the healthcare and needs of the indigent in addition to determining who actually falls within this group in Nigeria.

Contributions under the Health Insurance Schemes

Based on Section 31 of the Act²⁸, the Councils of the various State Health Insurance Schemes will determine the rates of contributions to be paid by employers and employees in the formal

²⁴ Kuran, CHA *et al*, 'Vulnerability and vulnerable groups from an intersectionality perspective' *Elsevier International Journal of Disaster Risk Reduction*, (Vol.50, Nov.220,101826), Accessed 8 March, 2023.

²⁵ NHIA Act, 2021

²⁶ 'Vulnerable Group Social Insurance Programmes' <nhis.gov.ng> assessed 11 March 2023

²⁷ Section 25 NHIA Act,2021

²⁸ NHIA Act, 2021

sector, and individuals, groups, and families in the informal sector. However, contributions for vulnerable individuals not covered by other schemes will be borne by the three levels of government, development partners and/ or non-governmental organizations.

Employers are also required to register themselves and their employees with the State Health Insurance Schemes and remit the required contributions in the manner and time specified by the State Health Insurance Scheme laws and guidelines issued by the States. This is notwithstanding any arrangements made for supplementary or complementary private premiums with private insurers for themselves and their employees. Every State of the Federal Republic of Nigeria were charged to establish and implement a state health insurance and contributory scheme registered under the state to cover everyone residing in the State for the purpose of providing access to health services.

Residents

Residents included all persons employed as well as employees in the public and private sectors with at least 5 staff and above and those in the informal sectors. It also recognizes everyone legally resident in Nigeria. These categories of persons are contemplated under the Act but the law does not preclude them from having a private health insurance cover in addition to the mandatory minimum cover.

Health Insurance Scheme

Health insurance is one of the many forms of insurance schemes that the law makes provision for.²⁹ It is closely linked with life insurance and both are social insurance packages that are regarded as the most important of all forms of insurance.³⁰ This form of insurance protects against sickness, accidental loss of life from poor health or incidences associated thereto that can be voluntarily taken upon payment of appropriate premium as individuals or as a group³¹. Health insurance or accident insurance is a social security system that guarantees the provision of health services to persons on the payment of token contributions at regular intervals. It covers for loss of ability resulting from sickness or accidental bodily injury, loss of wages, medical expenses, medicines, consultation fees or the expenses of long term-care resulting from sickness. It also deals with all losses due to disability sustained as a result of disease or other health conditions as may be provided under the policy. Health or life insurance is classified under the legal instrument creating it.³² It typically caters for health care expenditures such as medical, surgical, prescription drugs, dental and other expenses incurred by the insured.³³

²⁹ Section 2, Insurance Act, 2003

³⁰ G C Evans, *Insurance of the Person*, (Ojota, David Sanya Press, 1998), 1/1.

³¹ Toby B. G, *The Essentials of Insurance Law in Nigeria* (Alex Printing Press, 2007), pp.40-41

³² Section 2(2)(C) Insurance Act, 2003.

³³ 'National Health Insurance Authority Act and mandatory health insurance' (August 2022)

<https://punchng.com/national-health-insurance-authority-act-and-mandatory-health-insurance/> Accessed on 22 March 2023.

National health insurance is a social insurance arrangement designed by the federal or state government for the health of its targeted groups with share responsibilities of contributing financial sums by the providers and the beneficiaries. Under the National Health Insurance Act, health care scheme system approved by the authority, that is, state of federal capital territory office either run by a private or public sector, a Health Maintenance Organization (HMO), Mutual Health Association (MHA), or Third-Party Administration (TPA) or any health care facilities.

Analysis of the Health Insurance and the Vulnerable Group

On May 2022, the President of Nigeria signed into law the NHIS Act, 2021 to law to provide the framework for a health insurance scheme that enlists the states in achieving health insurance for all. The new law makes it mandatory³⁴ for every legal resident Nigerian to be covered with health insurance at the federal and state and levels. It further provides for access to quality health care³⁵ and public education on health insurance and other related matters.³⁶ Collaborations between the NHIS and state governments especially in accreditation of primary and secondary health care facilities were included with priority on access to healthcare for the most vulnerable population through a vulnerable group fund to be funded by the Basic Health Care Provision Fund (BHCPF) and other levies to fund the premiums of the most vulnerable. To support the fund are the federal, state and local governments, development partners and civil society organizations are expected to make contributions in advance to the vulnerable group fund. The BHCPF draws 1% allocation from the consolidated revenue fund and a counterpart mobilized by states, premiums paid by enrollees and others sources. The law is to promote, regulate and integrate health insurance in Nigeria and other related matters.

In keeping with the above objective of the law, the Authority³⁷ shall ensure that health insurance is mandatory for every Nigerian and legal resident and that information and communication technology infrastructure and capabilities is provided and maintained for the integration and update of all Data on health schemes in Nigeria.

The objectives of the NHIA

In summary the objective are as follows:

- i. Promotion, regulation, and integration of health insurance schemes;
- ii. Improving and harnessing private sector participation in the provision of health care services; and
- iii. Assisting the authority in achieving universal health coverage for all Nigerians.

The Authority shall among its other functions:

³⁴ Section 14 NHIA Act,2021

³⁵ Section 3(d) NHIA Act, 2021

³⁶ Section 3(m) NHIA Act,2021

³⁷ Section 3 (c) NHIA Act, 2021

- secure mandatory health insurance for every Nigerian and legal resident.
- establish a basic minimum package of health service across all health insurance providers in the country.
- provide general guidelines for the implementation and utilization of the Basic Health Care Provision Fund (BHCPF).
- regulate the activities of Healthcare Facilities, Health Maintenance Organizations (HMOs), Mutual Health Associations (MHAs), and Third-Party Administrators.
- establish mechanisms for receiving and resolving complaints by members of the schemes and Healthcare Facilities, HMOs, MHAs, and Third-Party Administrators.

Participation under the Health Insurance Scheme

The vulnerable group and resident were included under the provisions of the law. it detailed the category of residents as employers and employees in the public and private sector to come under the scheme mandatorily. Payment of insurance premiums by the formal sector were to be determined by the council of the various state health insurance schemes while the informal sectors shall be paid by individuals, groups and families at rate determined by the state health insurance scheme council. The law further provides that they are to be covered by the vulnerable group fund. Consequently, every legal Nigerian resident mandatorily comes under the scheme.

Offences, Penalties and Instituting Legal Proceedings

The Act³⁸ outlines the offences and prescribes a fine of ₦1,000,000 and/ or imprisonment for a maximum of 2 years for first time offenders, while repeat offenders will be liable to a fine of ₦2,000,000 and/or imprisonment for a maximum of 5 years. The Act also empowers the NHIA to sanction erring HMOs, Health Care Providers, MHAs, insurance brokers, insurance companies, banks, or any other licensed or accredited persons in line with the operational guidelines issued by the Authority and the modalities for instituting legal action against the Authority was outlined, such as the requirement to issue a written notice informing the Authority of intention to commence suit, one month before instituting the suit.

So Far, How well?

The commitment of the federal government towards achieving universal health coverage for Nigerians without hardship is almost two years old into its existence but with no significant inroad to achieving laudable objectives. The issue of funding from the government and its prescribed sources continue to multiply into a hydra headed monster as the day goes by.

³⁸ Section 48, NHIA Act, 2021.

Government's inability to meet its commitment to reach its 15%³⁹ budgetary allocation benchmark is discouraging.

The Nigerian Economic Summit Group projected that unemployment rate will hit a 33 percent high by 2023⁴⁰ and figure are expected to keep rising and there are a lot of citizens who due to their special financial and physical circumstances, may not be able to afford the premium to make them eligible to be covered by a health insurance scheme. While many do not even understand and believe in what insurance offers in Nigeria. Nigerians clamored for the signing into law this piece of legislation wherein the law will work in line with state governments health insurance schemes by empowering them (state governments) to accredit primary and secondary healthcare facilities and ensure the enrollment of Nigerians in the scheme. That enrollment has not taken off. According to World Bank, almost 50% of Nigerians live in the rural areas and a vast population of expanding urban poor still do not have relatively constrained ability to pay insurance on an ongoing basis. Most Nigerians at the rural areas especially are yet to understand how this law will affect them in the long run.

Challenges Impacting on the Attainment of Good Health in Nigeria

Many challenges are bedeviling the implementation of the health law in Nigeria, amongst which are that;

- i. The BHCPF fund itself which stand as a basis of the funding for the vulnerable appears to be constrained by the debt burdens on Nigeria and the government dire fiscal strain. During the 2023-2025 Medium term Fiscal Framework/Fiscal Strategy paper by the Federal Government (FG) with highlights on the retained revenue for the period as N1.63 trillion and debt service at N1.94 trillion in the first quarter of 2022. These figures show a heavy burden on the government and an unlikely positive health outcome for Nigerians especially in the informal sectors and rural areas.
- ii. Primary Health Care systems are the entry points into health systems especially at the rural points but report suggests that only about 20% of the facilities are functional even after the 3 cycles of BHCPF investments.
- iii. Lack of awareness of the law and poverty is afflicting the implementation amongst other.
- iv. Unemployment which has skyrocketed following the recent 2020 worldwide pandemic lead to loss of sources of income and consequently serious lack of money in the hands of citizens.
- v. Among the major health challenges facing Nigeria are poor sanitation and hygiene, vector borne diseases, maternal and infant mortality, infections and non-

³⁹ recommended by the World Health Organisation and approved by the leaders of African Union in April 2001 in Abuja.

⁴⁰ <<https://www.premiumtimesng.com/business/business-news/576709-nigerias-unemployment-rate-projected-to-hit-37-nesg.html>>



communicable diseases, sewage disposals, drug and substance abuse and alcoholic abuse, issues of environmental pollution, road traffic accidents injuries, malnutrition and incessant health sector strikes leading to unnecessary deaths that can be prevented. Accordingly, to a 2019 Statistical Research Department Report, the 10 causes of death in Nigeria are neonatal disorders amounting to 12.25%, malaria 12%, Diarrhea 4.37% and stroke 3.98% leading to a summation of almost 69% deaths in 2019 in the country etc.

Conclusion and Recommendation

Governments are coming and going but efficient universal health care provision has remained a mirage to Nigerians. The Nigerian government spends less than 4% of its budget on health care and depends on donors, non-governmental organizations and foreign partners to finance its health care projects. This puts a huge strain on the system and has not provided the required result to the Nigerian populace. The current government on its way out but merely signed into law the new Act in 2021 with few months in office to implement it. It is hoped that the incoming government, come May 29 2023 will remember this law for what it is worth and sue for its implementation. Similarly, the insurance Act of 2003 is in serious need of a review to promote effect health insurance in the country amongst other. It is hope that these will be taken into consideration as future decisions and discussions and considered on health issues in Nigeria.