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LEGAL NOTICE NO. 48

THE SOCIAL HEALTH INSURANCE ACT

(No. 16 of 2023)

THE SOCIAL HEALTH INSURANCE (TRIBUNAL PROCEDURE)
RULES, 2024

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THE SOCIAL HEALTH INSURANCE ACT

(No. 16 of 2023)

IN EXERCISE of the powers conferred by section 44 (6) of the Social Health Insurance Act, 2023, the Cabinet Secretary for Health, makes the following Rules—

THE SOCIAL HEALTH INSURANCE (TRIBUNAL PROCEDURE) RULES, 2024

PART I — PRELIMINARY

1. These Rules may be cited as the Social Health Insurance (Tribunal Procedure) Rules, 2024.

Citation.

2. In these Rules, unless the context otherwise requires—

Interpretation.

“Act” means the Social Health Insurance Act, 2023;

No. 16 of 2023.

“Authority” means the Social Health Authority established under section 4 of the Act;

“chairperson” means the chairperson of the Tribunal appointed in accordance with section 44 of the Act;

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution;

“interested party” means any party with any interest or claim against a matter pending before the Tribunal;

“party” means a party to any proceedings before the Tribunal;

“Register” means the Register kept under rule 45;

“Registry” means the Registry established under rule 45;

“Secretary” means a person appointed as the Secretary of the Tribunal under rule 5; and

“Tribunal” means the Dispute Resolution Tribunal established under section 44 of the Act.

3. These Rules shall apply in the determination of complaints, disputes and appeals arising out of the decisions made under the Act.

Application.

4. (1) The object of these Rules shall be to set out the procedure to facilitate just, expeditious and impartial determination of complaints, disputes and appeals arising out of decisions made under the Act.

Object and guiding principles.

(2) In exercising its mandate, the Tribunal shall be guided by the following principles—

(a) administration of justice to all, irrespective of status;

(b) justice shall not be delayed;

(c) promotion of alternative forms of dispute resolution including reconciliation, mediation, arbitration and other dispute resolution mechanisms; and

- (d) the national values and principles of governance in the Constitution.

PART II – ADMINISTRATION OF THE TRIBUNAL

5. (1) The Tribunal shall have a secretariat comprising of— Secretariat.

- (a) a Secretary appointed by the Commission; and
(b) such technical, administrative and support staff.

(2) The Secretary to the Tribunal shall carry out administrative duties of the Tribunal.

6. (1) The sittings of the Tribunal may be held at such place and time as the Tribunal may deem necessary for the expedient and proper exercise of its authority. Sittings of the Tribunal.

(2) In determining the sittings of the Tribunal under these Rules, the Chairperson shall give a written notice of fourteen days to all parties to appear before the Tribunal.

7. The Chairperson shall—

- (a) preside at all sittings of the Tribunal; and
(b) be responsible for ensuring the orderly and expeditious discharge of the mandate of the Tribunal. Conduct of business.

8. (1) The languages of the Tribunal shall be English, Kiswahili and Kenyan Sign Language. Language of the Tribunal.

(2) The Tribunal may, in appropriate cases provide translation of the proceedings before it.

PART III – FILING AND RESPONSE TO COMPLAINTS

9. (1) A dispute to the Tribunal, arising from a decision made under the Act, shall be commenced by filing a complaint with the Tribunal within thirty days from the date of the making of the decision complained of, if the dispute relates to— Filing of disputes.

- (a) registration of members;
(b) empanelment of healthcare providers and health facilities;
(c) contracting;
(d) preauthorization;
(e) settlement of claims;
(f) service provider payments and refunds; and
(g) any other decision made under the Act.

(2) Despite subrule (1), an omission or failure to perform any act under the Act may be lodged as a complaint.

10. (1) A complaint filed under rule 9 shall state the—

- (a) name and address of the complainant or their legal representative; Form and content of a complaint.

- (b) name and address of the respondent or their legal representative;
- (c) date when the decision or action upon which the complaint is based arose;
- (d) decision, if any, complained against; and
- (e) grounds on which the complaint is presented.

(2) A complaint shall be—

- (a) accompanied by an affidavit signed by the complainant verifying the grounds stated on the complaint;
- (b) accompanied by copies of any supporting documents and information to be relied on;
- (c) accompanied by signed witness statements, if any; and
- (d) signed by the complainant or by a person duly authorized by the complainant.

(3) A complaint filed under this rule shall include a precise relief, request or prayer being sought at the Tribunal.

(4) Where an aggrieved party makes a complaint in writing to the Tribunal other than in the prescribed form, the Tribunal may require that the complaint be reduced into the prescribed form and proceed with it in accordance with these Rules.

11. (1) A complainant shall serve the complaint on the respondent within seven days of filing the complaint with the Tribunal.

Service on the respondent.

(2) A complaint shall be served together with a Notice to Appear in the Form set out in the First Schedule to these Rules.

(3) A complaint against a healthcare provider, health facility or the Authority shall be served—

- (a) in person;
- (b) through a legal representative or guardian;
- (c) to the last known registered address;
- (d) using mobile messaging applications and technology; or
- (e) with the leave of the Tribunal, an advertisement in a newspaper of nationwide circulation.

12. A person serving a document under these Rules shall swear an affidavit of service stating the time and manner in which the document was served and the name and address of the person, if any, receiving or witnessing the delivery.

Proof of service.

13. (1) Upon being served with a complaint under rule 11, the Respondent may respond to the complaint by filing and serving a response within seven days from the date of service.

Response by the respondent.

(2) The response under subrule (1) shall be—

- (a) accompanied by a verifying affidavit;
- (b) accompanied by witness statements signed by the witnesses;
- (c) accompanied by copies of any supporting documents to be relied on at the hearing; and
- (d) signed by the respondent or by a person duly authorized by the respondent.

(3) A respondent shall respond to each claim made in the complaint.

(4) A respondent who has not filed a response as provided under this rule may not be allowed to take part in the proceedings unless the Tribunal directs otherwise upon application.

14. (1) After the response is filed by the respondent, the complainant shall be at liberty to file a reply to the response within seven days of service or such other period as may be directed by the Tribunal.

Close of pleadings.

(2) Pleadings shall close seven days after the filing of the reply by the complainant or such other period as may be directed by the Tribunal.

15. A person filing a complaint or response at the Tribunal shall ensure that there are sufficient copies of the complaint or response for all the parties involved with the matter and the Tribunal.

Number of copies.

16. Upon receipt of the documents filed under these Rules, the Tribunal shall—

Acknowledgement by the Tribunal.

- (a) acknowledge receipt of the documents by stamping and endorsing the date on which the documents were received;
- (b) enter the name of the complainant, respondent and their advocates in a register;
- (c) assign a case file number as entered in the case register; and
- (d) advise the person of any steps required to be performed to enable the Tribunal to determine the matter.

17. (1) Where a dispute is filed under a certificate of urgency, the file shall be placed before the Chairperson for appropriate direction.

Filing under certificate of urgency.

(2) Where it appears to the Chairperson that a matter is of utmost urgency, an—

- (a) appropriate interim relief may be issued; and
- (b) inter-party hearing date may be set at a convenient date.

PART IV — HEARING OF DISPUTES

18. Parties to proceedings before the Tribunal shall cooperate with the Tribunal and exercise decorum, respect and candour at all times during and after the proceedings.

Conduct of parties.

19. A party to a dispute that has been scheduled for hearing before the Tribunal may represent themselves or be represented by a duly appointed legal representative. Representation.

20. (1) The Tribunal may schedule a conference to—

Pre-trial conference.

- (a) determine the possibility of alternative dispute resolution;
- (b) determine whether there are any documents that the Tribunal may require to be produced before or during the hearing;
- (c) consider compliance with these Rules;
- (d) identify contested and uncontested issues;
- (e) create a timetable for the proceedings;
- (f) consider consolidation of complaints, disputes or appeals; and
- (g) consider any other form of settlement.

(2) Where the parties reach an agreement and the Tribunal is satisfied that it is the will and intention of the parties to so agree, the Tribunal shall record a settlement on the terms agreed upon by the parties.

21. Where the parties fail to reach an agreement after the conference under rule 20 and where alternative dispute resolution is not an option, the Tribunal shall issue appropriate directions as to the conduct of hearing the complaint. Directions on hearing.

22. Notice to Appear shall be signed by the Chairperson of the Tribunal. Notice to Appear.

23. If it appears to the Tribunal, whether on its own motion or on application by a party that it is desirable that any other person be made a party to the proceedings, the Tribunal may order such a person to be joined as a respondent or interested party and may issue appropriate directions as to service. Third parties.

24. (1) For purposes of hearing a matter before it, the Tribunal shall first hear the evidence of the complainant, followed by that of their witnesses, if any, unless the Tribunal orders otherwise. Procedure at the hearing.

(2) At the close of the evidence of the complainant and each of the witnesses, the Tribunal shall accord the respondent an opportunity to cross examine the complainant and the witnesses.

(3) After the close of the complainant's case, the evidence of the respondent shall be heard and the complainant shall be given an opportunity to cross examine the respondent and each of the respondent's witnesses.

(4) The Tribunal may, at any time during the proceedings, examine either party or any witness and may, in its discretion, call any additional evidence it considers necessary.

(5) The Tribunal may at its discretion require parties to file written submissions in addition to or in lieu of taking oral evidence.

25. (1) A complainant shall have the burden of proving their case. Burden and standard of proof.
- (2) Where any party asserts any fact or claim, he or she shall prove that fact or claim.
- (3) An issue before the Tribunal shall be proved on the balance of probabilities.
26. (1) A party to a dispute may elect to rely on the evidence of an expert witness. Expert witnesses.
- (2) The Tribunal may on its own motion summon an expert witness if it deems fit in the interest of the dispensation of justice.
27. (1) The proceedings of the Tribunal shall be open to the public. Open proceedings.
- (2) The Tribunal may, upon application by a party, order that the public generally or any particular person shall not have access to the proceedings.
28. Where, on the date fixed for the hearing, the complainant fails to appear and the respondent appears, if the tribunal is satisfied that the hearing notice was duly served, ask the respondent whether he or she admits the claim and if the— Non-appearance of complainant.
- (a) respondent admits the claim or any part of the claim, the Tribunal may make a ruling against the respondent for the claim or for the part of the claim so admitted and dismiss the part not admitted;
 - (b) respondent does not admit the claim, the Tribunal may in the first instance, adjourn the matter and order that the matter be heard in the presence of the complainant; or
 - (c) complainant fails to appear a second time, after the first adjournment, dismiss the matter.
29. Where on the date fixed for the hearing, the complainant appears, but the respondent does not appear, the Tribunal may if— Non-appearance of the respondent.
- (a) satisfied that the hearing notice notifying the respondent of the place and time of the hearing was duly served, adjourn the matter and ask that the matter be set for another hearing date;
 - (b) the respondent fails to appear, on the second hearing date, proceed to receive the evidence and submissions; and
 - (c) the Tribunal is satisfied that the complainant has established a case, in whole or in part, make a decision in favour of the complainant as the case maybe.
30. (1) Where on the date fixed for the hearing both parties do not appear, the Tribunal may adjourn or dismiss the complaint. Non-appearance of both parties.
- (2) Where a complaint is dismissed under subrule (1), the Tribunal may reinstate the complaint if the complainant shows sufficient cause for non-appearance.

31. (1) A party may, at any time before or during the hearing, apply to withdraw any pleadings filed by the party. Withdrawal of pleadings.

(2) Upon receipt of an application under subrule (1), the Tribunal shall consider the application and make a determination.

(3) Where pleadings are withdrawn under subrule (1)—

- (a) the Tribunal shall, by notice, inform all the parties of such withdrawal; and
- (b) a party may request the Tribunal to order costs to be paid by the party withdrawing the pleadings.

32. The Tribunal may on its own motion or on application by a party take judicial notice of facts that are publicly known or before any court of law. Judicial notice.

33. Where a member of the Tribunal who has a conflicting interest in any matter before the Tribunal, that member shall declare the interest in the matter which shall be recorded and the member shall not participate in the hearing or decision-making process of the Tribunal in relation to that matter. Disclosure of interest.

34. Complaints filed under the Act and these Rules shall be heard and determined within six months from the date of filing of the complaint. Determination timelines.

PART V — DOCUMENTARY EVIDENCE AND WITNESSES

35. The Tribunal shall have the power to order any person to produce documents relevant to a matter before it. Production of documents.

36. (1) The Tribunal shall allow a witness to testify on any matter unless it is established that the witness is prevented from understanding the questions or is not capable of giving rational answers, due to age or infirmity, whether of body, mind or any cause. Competence of witnesses.

(2) If the Tribunal deems that a witness may not be competent, it may direct that remedial measures be undertaken or order that the party relying on that witness calls another witness.

37. (1) The Tribunal may at any stage of the proceedings— Power of the Tribunal.

- (a) examine any person in attendance as a witness; or
- (b) recall and re-examine any person, if the Tribunal deems their evidence essential.

(2) The complainant or respondent shall have the right to cross examine any person examined under subrule (1) and the Tribunal may, upon request by a party, adjourn the hearing for such time as it considers necessary to enable the party to adequately prepare for cross examination.

(3) A witness before the Tribunal shall have the same immunities and privileges as if the person was a witness before the High Court.

PART VI—DECISIONS OF THE TRIBUNAL

38. (1) The decision of the Tribunal may be unanimous or determined by a majority verdict. Decisions of the Tribunal generally.

(2) The decision of the Tribunal shall contain the following—

- (a) the nature of the complaint;
- (b) the number of the complaint;
- (c) the names of the parties;
- (d) a summary of all the relevant evidence produced before the Tribunal and the reasons for accepting or rejecting the evidence;
- (e) the order or decision and the reasons thereof;
- (f) the relief or remedy to which the parties are entitled; and
- (g) an order as to costs.

(3) The decision of the Tribunal shall be read out in open court or as the Chairperson may direct.

(4) The members of the Tribunal, with the exception of any dissenting member, shall sign the decision.

(5) The Chairperson or the Secretary may certify orders, directions or decisions of the Tribunal.

39. (1) The Tribunal may, at any stage in the proceedings, after giving the parties an opportunity to be heard, reject an application or a complaint in whole or in part if it considers that the application discloses no valid ground or that it is vexatious. Rejection of an application.

(2) Where the Tribunal rejects an application or a complaint, it may make any consequential order it considers appropriate.

40. (1) Notwithstanding the provisions of these Rules, the Tribunal may hear and determine an application for conservatory or interim orders. Conservatory or interim orders.

(2) Any such order may be discharged, varied or set aside by the Tribunal on application made thereto by any party dissatisfied with such order.

41. (1) A member of the Tribunal shall not be liable to be sued in any civil court or Tribunal for any act done or ordered to be done by the member in the discharge of judicial functions. Immunity of the Tribunal.

(2) An officer of the Tribunal or any other person designated to execute any summons of the Tribunal shall not be liable to be sued in any civil court or Tribunal in respect of any lawful act done in the execution of the summons.

PART VII—REVIEW AND APPEAL

42. (1) The Tribunal may, on its own motion or upon application by an aggrieved party, review its decisions or orders. Reviews.

(2) A person aggrieved by a decision of the Tribunal may apply to the Tribunal for a review.

(3) The law applicable to reviews before the High Court in civil matters shall apply in reviews before the Tribunal.

43. (1) A person aggrieved by a decision of the Tribunal may appeal to the High Court. Appeals.

(2) The law applicable to appeals before the High Court in civil matters shall apply in appeals arising from the Tribunal.

PART VIII— MISCELLANEOUS PROVISIONS

44. Members of the Tribunal shall take the oath of office set out under the Second Schedule to these Rules. Oath of office.

45. (1) The principal registry of the Tribunal shall be located in Nairobi. Registry.

(2) The Tribunal may establish registries in other parts of the Republic as appropriate.

(3) The Secretary shall be responsible for—

- (a) the establishment and maintenance of the registry;
- (b) the acceptance, transmission, service and custody of documents; and
- (c) keeping records of proceedings of the Tribunal.

(4) There shall be a register which shall contain the following particulars—

- (a) the number of the complaint;
- (b) the date of filing of the complaint;
- (c) the name and address of the complainant, or where there is more than one complainant, the names and addresses of all the complainants;
- (d) the name of the respondent, or where there is more than one respondent, the names and addresses of all the respondents;
- (e) the nature of the complaint;
- (f) the date of hearing;
- (g) a list of documents, either produced or filed, including those requested by the Tribunal;
- (h) the decision or order of the Tribunal and the date it was made;
- (i) the date on which the remedy was executed;
- (j) the particulars and details of execution of the decision or order; and
- (k) the final decision on the complaint.

46. The Tribunal, may on application by a party, extend the time appointed by these Rules for doing any act or taking any proceedings, and may do so upon such expedient terms and conditions in the interest of justice.

Application for extension of time.

47. (1) The filing fees for the Tribunal shall be as provided in the Judiciary guidelines.

Fees.

(2) Any fees payable to the Tribunal shall be assessed correctly by the registry staff.

(3) The Registry staff shall receipt and account for any payment made and prepare a certificate of payment before decrees or orders are issued.

48. (1) The Tribunal shall leverage on information and communication technology and related technological advancements to increase accountability and efficiency in service delivery through electronic case management system.

Digitalization of dispute resolution.

(2) The electronic case management system shall entail—

- (a) e- case filing;
- (b) e-case registration;
- (c) maintenance of records in the Registry;
- (d) fees assessment and payment;
- (e) cause listing;
- (f) central repository of Tribunal decisions;
- (g) USSD and SMS enquiry; and
- (h) live proceedings, audio visual recording and transcription of Tribunal proceedings.

49. A party to a dispute may apply to the Tribunal for correction of errors on any matter before the Tribunal.

Correction of errors.

50. (1) The costs of any matter before the Tribunal shall be determined by the Tribunal.

Taxation of costs.

(2) The costs of any complaint shall follow the event unless the Tribunal, for good reason, otherwise orders.

FIRST SCHEDULE

(r. 11(2))

NOTICE TO APPEAR

To(name) of(address)

Take notice that a complaint has been filed in the Social Health Insurance Dispute Resolution Tribunal at.....in Complaint Case No.of 20.....in which you are named as a respondent. Service of summons on you was ordered to be by this notice.

A copy of the summons and the complaint may be obtained from the Tribunal at (insert postal address of the registry).

Unless you enter an appearance within fifteen days, the complaint will be heard in your absence.

Dated.....

Issued by.....

SECOND SCHEDULE

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/ MEMBER OF THE DISPUTE RESOLUTION TRIBUNAL (r. 44)

I..... having been appointed (the Chairperson/Member) to the Dispute Resolution Tribunal, do solemnly (swear/ declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

.....

Before me this.....day of

.....

Chief Justice.

Made on the 6th March, 2024.

NAKHUMICHA S. WAFULA,
Cabinet Secretary for Health.