

## Examining The Protection Of Access To And Delivery Of Healthcare By The National Health Act 2014\*

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### ABSTRACT

Nigeria Health care delivery has been on the decline for decades with no remedy in sight until 2014 when Nigeria enacted the National Health Act which is the first legislation to comprehensively address the issues of health care in the country. In view of this, the paper examines the protection of access to and delivery of health care by the National Health Act of 2014. To achieve this, the paper discusses the challenges to access to health care prior to the enactment of the Act in order to appreciate the enormity of what has been and be able to identify the extent to which the Act has addressed the existing trend. The paper discusses the provisions of the Act and observes that the Act is a laudable piece of legislation which tries to address the status quo in the health sector. Despite the objective of the Act which is to provide a framework for standards and regulation of health services, the paper notes that some parts of the Act needs to be reviewed especially the issue of organ removal and transplant in emergency situation without the consent of the donor. The paper also finds that the Act did not specify what constitutes the basic minimum package of health services but left it for the Minister of Health to determine. The paper notes that this is a dangerous trend as Nigerians may never know what they are entitled to. The paper finally notes that the Act is unpopular as many Nigerians are not aware of its existence or what it provides. The paper therefore calls for the urgent implementation of the Act by putting mechanisms in place towards creating the needed awareness to help Nigerians take the benefit provided by the Act as this will help Nigeria to attain Universal Health Coverage and the Sustainable Development Goals with respect to health.

### INTRODUCTION

This paper examines the protection of access to and delivery of healthcare by the National Health Act, 2014. This is with a view to determining the extent the Health Act of 2014 guarantees the delivery of an efficient and effective healthcare to Nigerians. The National Health Act was passed by the National Assembly after the third reading and was signed into law by the former Nigeria President, Dr. Goodluck Ebele Jonathan on the 9<sup>th</sup> of December, 2014. Before 2014, there was no health law articulating the national health system and stating the roles of government and its agencies. The fundamental objective of the Act is to put in place a legal framework for the Regulation, Development and Management of a National Health System, and to put in place a standard for rendering health services in Nigeria.<sup>1</sup>

The paper will examine critically the provisions of the Act in order to evaluate the efforts that the government intends to make towards ensuring quality health care to Nigerians. To achieve the above aim, this paper is divided into five parts. Part 1 introduces the paper, Part II

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<sup>1</sup> See the Explanatory Memorandum to the National Health Act, 2014.

examines the problems or challenges to accessing quality healthcare in Nigeria, Part III discusses access to healthcare, in line with the National Health Act, Part IV provides the way forward while part V concludes the paper.

### **PROBLEMS/CHALLENGES TO ACCESSING HEALTHCARE IN NIGERIA**

It is no longer news that healthcare delivery in Nigeria has been and is still below standard. A major challenge to achieving an efficient and effective health care system in Nigeria is the limited coverage of the social health insurance. This and other challenges will be discussed hereunder.

#### **National Health Insurance Scheme**

The National Health Insurance Scheme (NHIS) was launched in 2005.<sup>2</sup> Its main goal was the improvement of the health of all Nigerians at an affordable rate. It was also meant to ensure quality healthcare services, provide financial risk protection, reduce rising cost of healthcare services and ensure efficiency in healthcare.

Currently, the programme only provides for federal government employees and contribution to the scheme involves both the employer<sup>3</sup> and the employee<sup>4</sup> in pre determined ratios. This contribution covers the employee, the spouse and four children below the age of 18 years. The fraction of the beneficiaries is quite low when compared with the present population of Nigeria which stands at 198 million.<sup>5</sup>

#### **Absence of Basic Equipment and Infrastructure**

Efficient and quality healthcare delivery is hinged on the availability of basic life saving commodities. There has to be regular supply of drugs. The healthcare system is saddled with the problem of fake, substandard, adulterated and unaffordable drugs. Sometimes the basic drugs are out of stock. The healthcare facilities at the Primary Health Care (PHC) level are inadequate and poorly maintained.<sup>6</sup> Infrastructure such as buildings, equipments and supplies are poorly maintained.<sup>7</sup> There is inequity in the distribution of available facilities. Patients travel long distances to access healthcare and at these facilities, patients have to wait for unduly long periods before being attended to. In addition to the above, hospitals/health centres are without safe water, electricity, functioning equipment, adequate supply of drugs, basic diagnosing machines such as scanning and X-ray machines in Nigeria. Some of these clinics are housed in very unhygienic environment and wastes generated from such clinics and health facilities are not properly disposed.

These have led to dissatisfaction on the part of the patients and have driven many into the hands of private practitioners and quacks. Delays in the supply of drugs have contributed to drug resistance.<sup>8</sup> The unavailability or and obsolescence of medical equipment is the reason for medical pilgrimage by the rich or patients who urgently needs to be properly diagnosed and

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<sup>2</sup> The National Health Insurance Scheme (NHIS) was established by the Federal Government via Act 35 of 1999

<sup>3</sup> The employer contributes 10%

<sup>4</sup> The employee contributes 5% bringing the total contribution to 15% of basic salary

<sup>5</sup> Nigeria provides health cover for only 3% of her citizens. See Orekunrin, D. "Nigeria's Healthcare Problems: A Three Pronged Solution", <http://www.politicalmatter.org/2015/07/11/10769>. Accessed 28/05/18

<sup>6</sup> Obansa, S. A. J. and Akinagbe, D. "Healthcare Financing in Nigeria: Prospects and Challenges", *Mediterranean Journal of Social Sciences*, (2013), Vol.4, No.1, p223

<sup>7</sup> *Ibid*

<sup>8</sup> The resistance to anti-malaria drugs is a clear example of the situation. People still die in Nigeria as a result of malaria or typhoid.

treated.<sup>9</sup> One cannot rule out the fact that poor or wrong diagnosis witnessed most of the times in our health facilities is attributable to lack or obsolescence of equipment even though wrong diagnosis is not peculiar to Nigeria.

### **Dearth of Consumer Participation and Awareness**

A larger percentage of the Nigerian population are either ignorant or unaware of the services available at the health centres and how to access same. Most times, families try to prevent and manage illnesses without any form of government intervention in this regard. Government should try to increase the capacity of families in order to create the necessary awareness for effective participation in the healthcare of families and their children. This to a large extent would help to curb infant and maternal mortality.

### **Inadequate Laboratories**

Laboratories equipment in some Primary Healthcare Centres needs to be upgraded for efficient healthcare delivery. In addition to the upgrading, qualified personnel should be posted to both primary and secondary healthcare facilities. This would help ensure quality control in laboratory tests.

### **Human Resource Management**

One cannot over emphasize the need to have adequate human resources in the health sector. No country can deliver an efficient health system without the necessary manpower. Nigeria must put in a place a mechanism for building sustainable work force that would tackle the health needs of the nation. Healthcare personnel should be motivated and supported and evenly distributed to cover the field. Health personnel in Nigeria today are unevenly distributed particularly in the rural and hard to reach areas.<sup>10</sup> Lack of adequate motivation has led to brain drain in the health sector and the ones left always embark on industrial action (strike) at the slightest opportunity.<sup>11</sup>

There is also the problem of security for health workers. In Nigeria today, doctors and other health workers have been kidnapped or murdered and this has led to the refusal of some healthcare workers to attend to patients at night. In conflict zones around the country, health facilities have been bombed and destroyed and these hinders access to healthcare.<sup>12</sup>

### **Corruption in the Health Sector**

Corruption in the health sector leads to the supply of fake or substandard drugs, poor equipment, sharing of unallocated budget funds, inflation of contracts, diversion of drugs, selective treatment and appointment hinged on political affiliation and the use of government time for personal purposes. All these evidence point to the fact of the deep rooted corrupt practice in the health sector and Nigeria generally.<sup>13</sup> No one can deny the fact that corruption hinders development. It was reported in This Day Newspaper of March 2008 that a former Minister of Health, Adenike Grange was relieved of her appointment for complicity in the

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<sup>9</sup> "The Six Biggest Issues with Healthcare Services in Nigeria, and HOW FM Can Help", [https://www.amfacilities.com/en\\_US/2016/10/04/six-biggest-issues-healthcare-services-nigeria-fm-can-help/](https://www.amfacilities.com/en_US/2016/10/04/six-biggest-issues-healthcare-services-nigeria-fm-can-help/) Accessed 29/05/18.

<sup>10</sup> Obanasa and Akinagbe, *Supra* note 6, p223

<sup>11</sup> The Joint Health Workers Association of Nigeria on 31<sup>st</sup> of May 2018 called off a 42 days strike and enjoined their members to resume duties on the 4<sup>th</sup> of June 2018 across the nation.

<sup>12</sup> Cases of kidnapping and killing of health workers have been recorded in Port Harcourt, and the North East of Nigeria.

<sup>13</sup> Abdulfatai, A.I, "Challenges of Healthcare Financing in Nigeria", <http://www.punchng-com.cdn.ampproject.org>. Accessed 2/6/18.

sharing of N300 million unallocated health sector fund.<sup>14</sup> The Minister, the Minister of State for Health and Iyabo Obasanjo were questioned by the Economic and Financial Crimes Commission (EFCC) in respect of the above fund during President Umaru Musa Yar'Adua's regime. Corruption is a disease that has eaten deep into the fabric of the Nigerian Society and must be eradicated. Private health sectors are thriving at the expense of public health facilities. The owners of these private facilities are also employees of government who would rather refer patients to their own clinics and charge exorbitant fees.

### **Budgetary Allocation to the Health Sector**

The health sector in Nigeria is poorly funded. Going by the Abuja Agreement Government ought to allocate 15% of its budgetary allocation to the health sector but Nigeria is still below the World health Organization (WHO) standard of 13%. Evidence reveals that the funding at both federal and state levels is poor. Allocation to the health sector in 2015 was 5.78%, in 2016, 4.13%, 2017 it stood at 4.16 percent and in 2018 it is 3.95 percent.<sup>15</sup> This is a paltry sum and one wonders why the budget of 2015-17 should be higher than 2018 but a dwindling pattern is noticed from the figures.

This is a violation of Nigeria commitment at both international and regional levels.<sup>16</sup> This 3.95 percents represents the sum of ₦340.45 billion which is less than ₦359.2 billion that Nigerians spend on medical tourism annually.<sup>17</sup> By the WHO rating, Nigeria is ranked 187<sup>th</sup> out of 191 countries in terms of healthcare delivery. Again, a third of more than the 700 health facilities have been destroyed in Nigeria and about 3.7 million Nigerians are in need of health assistance.<sup>18</sup> WHO also placed Nigeria at third highest in infant mortality rate in the world.<sup>19</sup> It is estimated that five women die daily across the country due to pregnancy related issues.<sup>20</sup>

By these, Nigeria obviously is not living up to its agreement with the AU as evidenced in the Abuja Declaration of 2001 which it signed.

### **Out of Pocket Expenditure on Healthcare**

Out of pocket expenditure is any direct outlay by household, including gratuities and in – kind payments to health practitioners and suppliers of pharmaceuticals, therapeutic appliances, and other goods and services whose primary intent is to contribute to the restoration or enhancement of the health status of individuals or population or groups. It is a part of private health expenditure.<sup>21</sup>

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<sup>14</sup> Onwuka, N. and Dayo, T., "Nigeria: EFCC Quizzes Grange, Adiku, Iyabo Again", <https://www.allafrica.com/stories/2008032700523.html>, Accessed 8/6/18.

<sup>15</sup> Abdulfatai, A.I., "Funding Healthcare under Basic Healthcare Provision Fund", <http://www.punchng.com/funding-health-care-under-basic-healthcare-provision-fund>. Accessed 2/6/16.

<sup>16</sup> When compared with health obligations contained in the International Covenant for Economic, Social and Cultural Right, 1966 and the African Charter on Human and Peoples Right 1982.

<sup>17</sup> Adepaju, P. "Here's a Breakdown of Nigeria's 2018 Budgetary Allocation for Health", <http://www.healthnew-ng-cdn.amproject.org>. Accessed 2/6/18

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*

<sup>20</sup> Obiejesi, K. "2018 Budget Maintains Abysmal Allocation to Health Sector," <https://www.icirnigeria.org>. Accessed 2/6/18

<sup>21</sup> WHO, "Nigeria-Out-of-Pocket Health Expenditure (% of total expenditure on health)", <https://www.apps.who.int/inha/dataase>. Accessed 2/6/18. See also "Nigeria - Health expenditure, public (% of GDP)", <https://www.indexmundi.com/facts/nigeria/indicator/SH.XPD.PUBL.ZS>. Accessed 2/6/18.

Out of pocket expenses for healthcare in Nigeria are a huge challenge. Patients are required by both public and private health facilities to make deposits before they can be attended to. It is estimated that over 70 percent of Nigerians are poor<sup>22</sup> and out of pocket expenses on healthcare can lead to families and individuals incurring huge health expenses and this has a tendency of increasing the poverty level of the masses. Those not insured by the NHIS are up to 90 percent of the population an indication that less than 5 percent are covered by the scheme.<sup>23</sup> When patients are uninsured, they are left at the mercy of a non performing health system.<sup>24</sup> Nigeria health sector is not substantially meeting the health needs of the population.

Nigeria must adopt international best practices that would drastically reduce out-of-pocket expenditure at the point of service delivery. Citizen should be protected from huge financial burdens.<sup>25</sup>

### **Lack of Integrated System for Disease Prevention, Monitoring and Treatment**

In the health sector and Nigeria generally, there is the absence of targeted efforts at awareness, health promotion and disease prevention activities to cover the targeted population and this has given rise to incidences of low immunisation coverage for children, pre and post natal care and screening for various diseases. In the public healthcare sector, there are no activities designed to motivate the people to change their attitudes or to inculcate behaviours and practices that would curb or eliminate their risk to diseases. The resultant effect of the above situation is that most children are not immunised because their parents see no reason why they should immunise them. Women do not receive adequate pre natal or post natal care. Most women do not see the need for pre natal care as long as they do not develop complications during the gestation period and after a successful normal (vaginal) delivery, some women do not go back to the clinics for post natal care after six weeks of delivery. Most Nigerians do not see the need to do regular screenings for blood sugar, cholesterol, breast and cervical cancer, high blood pressure (hypertension), and other chronic and communicable diseases. If the public health sector fails in creating the relevant awareness in this regard, there will be no data to help the health sector in planning for these diseases prevention, monitoring and treatment.

The above list is not exhaustive but gives the reader an insight into what the health situation is in Nigeria. As noted earlier, the National Health Act which was signed into law in 2014 has a laudable objective. The next section of this paper is dedicated to the review of the NHA 2014 to determine the extent of protection of access to and delivery of Healthcare considering the challenges discussed above.

### **NATIONAL HEALTH ACT AND ACCESS TO HEALTHCARE DELIVERY**

The National Health Act is an important legislation that seeks to address the various challenges in the health sector in order to ensure that Nigerians achieve the right to health and ultimately the right to life as enshrined in the constitution.<sup>26</sup>

The African Charter on Human and Peoples Right which Nigeria has domesticated<sup>27</sup> provides that:

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<sup>22</sup> National Bureau of Statistics, "Nigeria Poverty Profile Report", <https://www.nigeriastat.gov.ng>. Accessed 2/6/18.

<sup>23</sup> Aregbesola, B.S. "Out-of-Pocket Payments in Nigeria", <https://www.theconcet.com/article>. Accessed 2/6/18.

<sup>24</sup> *Ibid*

<sup>25</sup> Abdulfatai, A.I. *supra* note 13.

<sup>26</sup> Sections 17(3)(c)(d) and 33 of the Constitution of Nigeria as amended 2011

*Every individual shall have the right to enjoy the best attainable state of physical and mental health;<sup>28</sup> States Parties to the present Convention shall take the necessary measures to protect the health of the people and to ensure that they receive medical attention when they are sick.<sup>29</sup>*

The implication of the above provisions is that healthcare is a right and States must ensure that their citizens enjoy this right. Enacting the NHA is a step in the right direction but to what extent does this piece of legislation protect and guarantee access to healthcare in Nigeria. The Act is divided into seven parts with a total of 65 sections. Some of the very critical provisions of the Act would be discussed.

The Act in section 1 establishes the National Health System (NHS). The NHS shall define and provide a framework for standards and regulations of health services<sup>30</sup> that would include public and private providers of health services<sup>31</sup> to: promote a spirit of cooperation and shared responsibility among all providers of health services in the federation and any part thereof;<sup>32</sup> provide for persons living in Nigeria the best possible health services within the limits of available resources;<sup>33</sup> set out the rights and duties of health care providers, health workers, health establishments and users;<sup>34</sup> and protect promote and fulfil the rights of the people of Nigeria to have access to healthcare services.<sup>35</sup>

The NHA also recognizes as part of the NHS the Federal Ministry of Health,<sup>36</sup> Ministry of Health in every State and the Federal Capital Territory,<sup>37</sup> department responsible of health which includes: parastatals under the federal and state Ministries of health;<sup>38</sup> all local government health authorities;<sup>39</sup> the ward health committees;<sup>40</sup> the village health committees;<sup>41</sup> the private healthcare providers;<sup>42</sup> traditional healthcare providers;<sup>43</sup> and alternative healthcare providers.<sup>44</sup>

When the Act states the healthcare would be provided to the people within the limits of the available resources, it appears that Nigeria is not yet ready to tackle the health challenges in the country. By, this government will persistently under fund the health sector but would reserve money for their personal treatments abroad and allocate huge sums for their security while the masses suffer. Nigeria to the mind of the writer is capable of adequately funding the health sector and transforms our hospitals and clinics to world class. On the issue of traditional healthcare and alternative healthcare providers, the Act did not specifically mention how it

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<sup>27</sup> African Charter on Human and Peoples Right (Ratification and Enforcement) Act, Cap A9 LFN 2001 (ACHPR)

<sup>28</sup> Article 16(1) ACHPR

<sup>29</sup> Article 16(2) ACHRR

<sup>30</sup> Section 1(1) National Health Act 2014 (NHA)

<sup>31</sup> Section 1(1) (a) NHA

<sup>32</sup> Section 1(1) (b) NHA

<sup>33</sup> Section 1(1) (c) NHA

<sup>34</sup> Section 1(1) (d) NHA

<sup>35</sup> Section 1(1) (e) NHA

<sup>36</sup> Section 1(2) (a) NHA

<sup>37</sup> Section 1(2) (b) NHA

<sup>38</sup> Section 1(2) (c) NHA

<sup>39</sup> Section 1(2) (d) NHA

<sup>40</sup> Section 1(2) (e) NHA

<sup>41</sup> Section 1(2) (f) NHA

<sup>42</sup> Section 1(2) (g) NHA

<sup>43</sup> Section 1(2) (h) NHA

<sup>44</sup> Section 1(2) (I) NHA

intends to coordinate the activities in these sectors and this is very crucial because most Nigerians patronise them.

The Act in section 2 lists the functions of the Federal Ministry of Health (FMOH). It provides *inter alia* that the FMOH shall coordinate health and medical services delivery during national disasters.<sup>45</sup> This provision is apt as it settles the ever raging disputes on which agency is responsible for what in times of emergency.

It also tasks the Federal Ministry of Health with the responsibility of promoting the availability of good quality, safe and affordable essential drugs, medical commodities, hygienic food and water;<sup>46</sup> and issue guidelines and ensures the continuous monitoring, analysis and good use of drugs and poisons including medicines and medical services.<sup>47</sup> This will help ensure that Nigerians can only purchase drugs upon prescription. There is the nagging issue of drugs and substance abuse because people can walk into pharmaceutical shops and purchase whatever drugs they want without monitoring. Even where certain drugs are banned,<sup>48</sup> pharmaceutical stores and chemists secretly sells such drugs at exorbitant prices and the monitoring agencies have not lived up to their responsibilities in this regard.

It further provides grounds for eligibility for exemption from payment for health services in public health establishment. Particularly, it provides for the needs of vulnerable groups such as women, children, older persons and persons with disabilities.<sup>49</sup> It also provides that all Nigerians shall be entitled to basic minimum package of health services.<sup>50</sup> The Act did not specify what constitutes the “minimum package” that Nigerians would be entitled to but states that it has be determined from time to time by the Minister after consultation with the National Council on health.<sup>51</sup> This provision is vague and requires a review that would categorically provide what constitutes the basic minimum package of health services and not to be left at the whims and caprices of the Health Minister and the National Council on Health especially when one considers the fact that the members of the National Council on Health are mostly political appointees who may leave office at any time and the proposition of a particular National Council on Health may not be accepted by another Council thereby creating uncertainty to what Nigerians are entitled to with respect to health services.

Worthy of note is the establishment of the National Tertiary Health Institution Standards Committee<sup>52</sup> and its composition.<sup>53</sup> Its functions include but not limited to: establishing minimum standards to be attained by the various tertiary health facilities in the nation and also to inspect and accredit such facilities;<sup>54</sup> monitor and evaluate all activities and receive annual reports from the tertiary hospitals and supervise annual peer renewals.<sup>55</sup>

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<sup>45</sup> Section 2(1) (f) NHA

<sup>46</sup> Section 2(1) (l) NHA

<sup>47</sup> Section 2(1) (m) NHA

<sup>48</sup> Recently, the government banned the sale of Tramadol, a strong analgesic and Codeine, a cough syrup for its abuse. Most young people have been found to be addicted to these drugs but these drugs are still being sold at the drug stores.

<sup>49</sup> Section 3(2) (d) NHA

<sup>50</sup> Section 3(3) NHA

<sup>51</sup> Section 64 NHA

<sup>52</sup> Section 9(1) NHA

<sup>53</sup> Section 9(2) (a) – (g) NHA

<sup>54</sup> Section 10(1) (c) NHA

<sup>55</sup> Section 10(1) (i) NHA

The Act further establishes a Basic Health Care Provision Fund which would be financed from the Federal Government Annual Grant of not less than one percent of its Consolidated Revenue Fund; grants by International donor partners; and funds from any other sources.<sup>56</sup>

From this amount, 50% shall be used for the provision of basic minimum package of health services to citizens, in eligible primary or secondary health care facilities through the National Health Insurance Scheme (NHIS);<sup>57</sup> 20% shall be used to provide essential drugs, vaccines and consumables for eligible primary health care facilities,<sup>58</sup> 15% shall be used for the provision and maintenance of facilities, equipment and transport for eligible primary healthcare facilities,<sup>59</sup> 10% shall be used for the development of human resources for primary healthcare;<sup>60</sup> and 5% shall be used for emergency medical treatment.<sup>61</sup> Ultimately, the government by the allocation is determined to revive the primary healthcare which appears to be going into extinction in Nigeria due to lack of adequate manpower and infrastructure. The primary Healthcare is the basic healthcare that should be accessible to all Nigerians at the onset of any medical situation. People need not travel long distances to secondary or tertiary health facilities if the primary healthcare is functional and available. The question then is to determine the level of commitment of the government towards to allocation and release of this one percent from the consolidated revenue fund. If the fund is not released, then the revival expected in the health sector would be a mirage.

Section 11(4) of the Act provides for the disbursement of the fund thus: the National Primary Healthcare Development Agency shall disburse the funds through state and federal capital territory Primary Healthcare Boards for distribution to local Government and Area Council Health Authorities to provide for essential drugs, vaccines and consumables; maintenance of facilities, equipment and transport and development of Human Resources for Primary Healthcare for eligible primary healthcare facilities.

By the provisions of sub section 6, the Act prohibits the National Primary Healthcare Development Agency from disbursing funds to any:

- (a) Local Government Health Authority if it is not satisfied that the money earlier disbursed was applied in accordance with the provisions of the Act;
- (b) State or Local Government that fails to contribute its counterpart funding; and
- (c) States and Local Government that fail to implement the national health policy, norms, standards and guidelines prescribed by the National Council on Health.

The above would help to ensure accountability on the part of those who received the fund but this can only be achieved where there is an effective mechanism for checking compliance level for all those involved.

It is also important to note that four (4) years down the line, the Federal Government is yet to show commitment on its part by providing for this one percent in the annual budget of the Federal Ministry of Health.

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<sup>56</sup> Section 11(1) (2) (a) (b) and (c) NHA

<sup>57</sup> Section 11(3) (a) NHA

<sup>58</sup> Section 11(3) (b) NHA

<sup>59</sup> Section 11(3) (c) NHA

<sup>60</sup> Section 11(3) (d) NHA

<sup>61</sup> Section 11(3) (e) NHA



The Act prohibits a person, entity, government or organization from establishing, constructing modifying or acquiring a health establishment, health agency or health technology; increase the number of beds in, or acquire prescribed health technology at a health establishment or health agency; provide prescribed health services; or continue to operate a health establishment, health agency or health technology after the expiration of 24 months from the date this Act took effect if such a person or entity or government does not possess a certificate of standards.<sup>62</sup>

The certificate of standard is obtained by application in prescribed manner from the appropriate body of government where the facility is located,<sup>63</sup> except for tertiary institution that should apply to the National Tertiary Health Institutions Standards Committee, acting through the Federal Ministry of Health.<sup>64</sup>

Section 14 provides that a person who performs any act stated under section 13(1) without a certificate of standard commits an offence and shall be liable on conviction to a fine of not less than ₦500, 000.00, or in the case of an individual to imprisonment for a period not exceeding 2 years or both.

This paper considers the penalty as paltry as the Act will be honoured more in breach. The fine ought to be punitive enough so as to serve as a deterrent to those who would establish health facilities without obtaining the certificate. Imposition of a fine, term of imprisonment; closure of the facility in addition to withdrawal of license of the practitioner would be a better deal and not what the Act currently provides.

The Act empowers the Minister to prescribe mechanisms to ensure coordinated relationship between the private and public health establishment in the delivery of health services. To achieve this, the Federal Ministry, any state Ministry or any Local Government or any public health establishment may enter into an agreement with any private practitioner, private health establishment or non-government organization in order to achieve any objective of the Act.<sup>65</sup> One wonders whether this partnership would include traditional and alternative healthcare providers. Obviously, this partnership excludes traditional health practitioners. The Act in section 16 (2) (b) provides that the Minister may, subject to the provisions of any law, prescribe conditions relating to traditional health practices to ensure the health and well-being of persons who are subject to such health practices. The use of the word 'may' by the Act denotes that it is not an obligation and this is quite sad as many Nigerians patronise traditional health practitioners who obviously do not have a perfect understanding of various ailments and usually prescribe medications that are not graduated in doses. Many Nigerians have lost their lives as a result of over dosage of traditional medications. The Act should be proactive in this respect as most Nigerians as noted earlier patronise traditional healers.

Another important provision of the Act which would protect the lives of Nigerians is the provision on referral from one health establishment to another.<sup>66</sup> Where a health establishment is not capable of treating an ailment, such health facility should refer the patient to another facility on time. We have had cases in Nigeria where health facilities continue to treat a patient on the bases of trial and error thereby subjecting the patient to undue torture.

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<sup>62</sup> Section 13(1) (a) – (d) NHA

<sup>63</sup> Section 13(2) NHA

<sup>64</sup> Section 13(3) NHA

<sup>65</sup> Section 18(1) (2) NHA

<sup>66</sup> Section 17 (1) (2) NHA

Most times, these patients die before referral or rejected by hospitals they are referred to on the grounds that the condition of the patient has become critical and can no longer be managed. The only snag about this provision is that there is no penalty for the health establishment or doctor that continues to detain a patient without referral knowing quite well that that he or his facility is incapable of handling the medical needs of the patient.

Section 19 provides that all health establishments shall comply with the quality requirements and standards prescribed by the National Council on Health Particularly as it relates to human resources, health technology, equipment, hygiene, premises, the delivery of health services, business practices, safety and the manner in which users are accommodated and treated.

The Act makes it an offence for any healthcare provider, health worker or health establishment to refuse a person emergency medical treatment for any reason. Contravention of this provision and upon conviction, the person would pay a fine of ₦100, 000.00 or to imprisonment for a period not exceeding six months or both.<sup>67</sup> This provision is quite laudable as many Nigerians have lost their lives on refusal by the health workers to attend to them on grounds on non payment of deposit especially accidents and gunshot victims. The Act makes it clear that no reason is sufficient to deny emergency treatment to victims.

Section 21 provides for the rights of the healthcare personnel and further provides that every health establishment shall implement measures to minimize injury or damage to the person and property of healthcare personnel working at the establishment; and disease transmission.<sup>68</sup>

Section 22 provides for the indemnity of the healthcare provider where he/she has not been found negligent in any civil or criminal proceedings in which judgment is given in his favour or he is acquitted if the suit was brought against him in his capacity as a healthcare provider, an officer or employee of the healthcare establishment.<sup>69</sup>

The NHA 2014 allows a person to lay a complaint about the manner in which he or she was treated at health facilities. The Minister, Commissioner or any other appropriate authority shall establish the procedure for the laying of complaints within the areas of the national health system for which the Federal or State Ministry is responsible. The procedure, when established shall be displayed in a manner that is visible for any person entering the establishment and this procedure shall be communicated to users on a regular basis.<sup>70</sup> This is a step in the right direction as it will curb the years of unethical behaviours of healthcare providers which discourages many from attending any health facility. The healthcare providers on their own should know that they are being watched and assessed. However, it is not enough to lay complaints, the appropriate authorities must ensure that such complaints are investigated and addressed as it will help to build confidence and trust in the people that attend clinics and other health facilities.

The Act in section 35 mandates the Federal Ministry of Health to facilitate and coordinate the establishment, implementation and maintenance of Health Information System by State Ministries, Local Government Health Authorities and the private health sector at national, state

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<sup>67</sup> Section 20(1) (2) NHA

<sup>68</sup> Section 21(2) (a) (b)

<sup>69</sup> The indemnity shall be paid out of the assets of the healthcare establishment where the healthcare provider is rendering such service(s).

<sup>70</sup> Section 30(1) (2) (3) (a) – (b)

and local government levels. This would enable the Minister and Commissioners to publish annual reports on the state of health of the citizenry and the health system of Nigeria including the states.<sup>71</sup>

The Private Healthcare provider is also mandated to establish and maintain a health information system as part of the national health information system as specified under section 35(1) of this Act<sup>72</sup> and must ensure compliance with this provision as it is a condition necessary for the grant or renewal of the certificate of standards.<sup>73</sup> Non compliance with the above provision constitutes an offence and upon conviction the offender shall be liable to a fine of ₦100, 000 – or jail term of six months or both.<sup>74</sup>

The Act provides for the maintenance of a compendium of drugs approved for use in health facilities throughout the federation. The Act refers to this as the “Essential Drug List”. This list shall be subject to periodic review by the National Drugs formulary, and the Essential Drug List Review Committee.<sup>75</sup> It also encourages indigenous and local manufacture and production of as many items in the formulary.<sup>76</sup>

The National Health Council is also mandated to ensure the widest possible catchment for health insurance scheme throughout the federation.<sup>77</sup>

In an attempt to solve the persistent problem of inadequacy and the lopsided allocation of health workers across the federation with particular emphasis at the grassroots level, the Act mandates the National Council on Health to develop policy and guidelines for, and monitor the provisions, distribution, development, management and utilization of human resources within the national health system and this includes *inter alia*, facilitating and promoting the adequate distribution of human resources. Provision of appropriately trained staff at all levels of the national health system to meet the populations’ health care needs; and the effective and efficient utilization, functioning, management and support of human resources within the national health system.<sup>78</sup>

In the same vein, the Minister of Health and the National Council on Health shall determine guidelines that will enable the State Ministries and Local Government to implement programmes for the appropriate distribution of healthcare providers and health workers.<sup>79</sup>

The Minister is to ensure the availability of resources for the education and training of healthcare personnel to meet the human resources requirements of the national health system, prescription of a re-certification programme through a system of continuing professional development; identification of shortage of key skills, expertise and competence within the national health system, and prescribe strategies to make up for any shortfall in respect of any skill, expertise and competences; and prescribe strategies for the recruitment and retention of healthcare personnel within the national health system and from anywhere outside Nigeria.<sup>80</sup>

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<sup>71</sup> Section 35(3) NHA

<sup>72</sup> Section 38 1(a) NHA

<sup>73</sup> Section 38 1(b) NHA

<sup>74</sup> Section 38 (2) NHA

<sup>75</sup> Section 39 (1) NHA

<sup>76</sup> Section 39 (2) NHA

<sup>77</sup> Section 40 NHA

<sup>78</sup> Section 41(1) (2) (a) – (c) NHA

<sup>79</sup> Section 42 NHA

<sup>80</sup> Section 43 (a) – (e) NHA

The health sector in Nigeria has witnessed incessant industrial disputes that led to complete or partial closure of health facilities (public) across the nation. Recently, some health workers, Joint Health Sector Union (JOHESU) went on an industrial strike that lasted for 42 days across the nation. The strike has just been called off and work resumed on the 4<sup>th</sup> of June 2018. This is just one of such industrial disputes that have bedevilled the health sector. The Act in addressing this menace provides that all cadres and all groups of health professionals have a right to demand for better conditions of service; and that health services should be classified as “Essential Service”.<sup>81</sup>

Furthermore, it provides that industrial disputes in the public sector of health shall be treated seriously and shall on no account cause total disruption of health service delivery and where such has occurred, the Minister is mandated to apply all reasonable measures to ensure a return to normalcy of any such disruption within 14 days.<sup>82</sup>

This Act is already 4 years in existence and industrial dispute in the health sector has continued unabated and none of these disputes have been resolved within 14 days. Many patients have died and would continue to die if this trend is not addressed.

It is estimated that public office holders and their family members and others who can afford it spend not less than ₦359.2 billion annually on medical tourism abroad including African countries. This amount is more than the ₦340.45 billion allocated to healthcare in the 2018 budget. The expenses for medical tourism by public office holders and their families are sponsored with public funds and Nigeria is a leading nation in this wise.

To curb this trend, the NHA without prejudice to the right of any Nigerian to seek medical check-up, investigation or treatment anywhere within and outside Nigeria, prohibits public officers of the Government of the Federation or any part thereof from being sponsored for medical check-up, investigation or treatment abroad at public expense except in exceptional cases on the recommendation and referral by the medical board and such recommendation shall be duly approved by the Minister or the Commissioner as the case may be.<sup>83</sup> This provision is apt and if it is genuinely enforced would lead to the transformation of our health facilities to world class as government would see the need to invest in the health sector but until that is done medical tourism would continue.

Section 48 prohibits the removal of tissue, blood or blood product from the body of another living person for any purpose except with the informed consent of the intending donor.<sup>84</sup> There is a proviso that allows for the waiver of the right of the donor if the removal is for medical investigation and treatment in emergency cases.<sup>85</sup> Where the removal is for treatment in times of emergency, what then happens to the donor? The paper foresees a situation where some health practitioners would get involved in organ harvesting and sale. The Act must urgently address this to avoid illegal removal of tissue, blood or blood product including organs from unsuspecting Nigerian. The paper posits that the removal of organs for whatever reason must be with the informed consent of the donor. It is noted that since the Act mandates the hospitals

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<sup>81</sup> Section 45(1) NHA. The National Association of Resident Doctors (NARD) has issued a one month ultimatum to the federal government for it to honour all the agreements it entered into with them. The one month period will terminate by the first week of July 2018.

<sup>82</sup> Section 45(2) (3) NHA

<sup>83</sup> Section 46 NHA

<sup>84</sup> Section 48(1) (a) NHA

<sup>85</sup> Section 48(1) (b) NHA

to treat patients in times of emergency, the Law makers may have unwittingly given doctors the licence to engage in unauthorised surgical procedures for the purpose of removing vital organs of living persons.

Furthermore, it prohibits the removal of tissues which is not replaceable by natural processes from a person younger than 18 years.<sup>86</sup> A tissue, blood or a blood product shall not be removed from the body of another living person for purpose of merchandise, sale or commercial purposes.<sup>87</sup> This provision runs contrary to the earlier discussion which allows doctors to take tissues, blood or blood product from people during emergency without their consent. How do one determine emergency situation in order for him/her to waive consent.

Contravention of the above provision is an offense and upon conviction, the offender is liable – for tissue to a fine of ₦1, 000,000 or imprisonment of not less than 2 years or both; for blood or blood products, to a fine of ₦100, 000.00 or imprisonment for a term not exceeding one year or both.<sup>88</sup> On the issue of penalty, a human rights activist, Femi Falana posits that although the penalties for commercialising any organ removed from a living person is stringent; he wonders why consent should be dispensed with.<sup>89</sup> He further posits that in other Third World countries where similar dangerous legislations exist, organs removed from living or dead persons are sold and transported to western countries where they are in high demand.<sup>90</sup> He concludes by noting that sections 48 and 51 were introduced into the Act due to pressure from an influential foundation in the United States.<sup>91</sup> He therefore calls for a review of the sections and maintains that informed consent of the donor must not be dispensed with and the present writer agrees with the views of Falana.

The paper is of the opinion that the word merchandize, sale or commercial purposes should be further explained as hospitals charge patients for the use of blood or blood products.

### THE WAY FORWARD

The National Health Act from all indication is a laudable piece of legislation but would amount to nothing if not implemented. The protection to access and delivery of healthcare to Nigerians is hinged on the implementation of the Act. Implementing the Act would help Nigeria to achieve the Universal Health Coverage.<sup>92</sup> As noted earlier, 70% of healthcare expenditure is borne out of pocket by individuals.

The Act made provision for not less than one percent consolidated Revenue Fund as basic healthcare provision fund but the non allocation of this fund four years down the line in the health sector budget has worsened the health situation in the country particularly at the local/primary healthcare level. The financial burden in seeking quality healthcare has increased on the part of the citizens. If the Act is implemented, it will help Nigeria to achieve

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<sup>86</sup> Section 48(2) (a) NHA

<sup>87</sup> Section 48(2) (b) NHA

<sup>88</sup> Section 48(3) (a) (b)

<sup>89</sup> Falana, F., "Demand for Urgent Review of the National Health Act, 2014",

<https://www.nigerianmuse.com/20141229144703zg/sections/health/demand-for-urgent-review-of-the-national-health-act-2014-by-femi-falana>. Accessed 28/5/ 2018.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> Ojo, J. "The Non-Implementation of Nigeria's National Health Act" <https://www.punchng.com/non-implementation-nigerias-national-health-act/> Accessed 25/05/18

some of the Sustainable Development Goals (SDGs) especially the SDGs which provides for Good Health and well being by 2030.<sup>93</sup>

Jide Ojo posits that at present, Nigeria has the highest infant and maternal mortality rate in Africa. He further stressed that a Demographic Survey in 2013 found that Nigeria contributes about 13 percent of global maternal mortality, with estimated 36,000 deaths annually.<sup>94</sup>

The NHA is expected to reverse this trend if implemented as the Act provides free access to healthcare for the vulnerable population including pregnant women, children, elderly and the disabled.

There are so many benefits to be derived by implementing the Act and the government should tackle the problem of healthcare in Nigeria. This Act appears to be very unpopular as those in the medical field are unaware of what the Act is all about. A survey conducted by the Africa Health Nigeria reveals that about 60% of medical doctors claim to be aware of the Act but only about 20% could correctly mention at least a section of the new law.<sup>95</sup> There is a need to put mechanisms in place to ensure the effective implementation of the NHA. Twenty eight (28) states and the FCT and their Local Government Areas have established State Primary Healthcare Development Agencies in readiness for the implementation of the Act.<sup>96</sup>

Low awareness of the NHA among Nigerians is a huge set back in the implementation. A survey conducted by UNICEF in 2015 reveals that about 80% of the Nigerian population is unaware of the NHA.<sup>97</sup> Information materials designed to increase awareness have not yet been printed for dissemination across the country.<sup>98</sup>

There is also a delay in the Development of Guidelines and Manuals. Going by the provision of the NHA, a costed work plan, guidelines and manuals should have been completed by the end of 2015. However many guidelines, including those on quality standards for healthcare, health information and knowledge management is either yet to be drafted or finalized.<sup>99</sup>

## CONCLUSION

The Act has in many respects addressed the challenges bedeviling the health sector in Nigeria. It is trite to note that the NHA recognizes that healthcare is a right for Nigerians. The signing into law of this legislation is expected to improve the nation's primary healthcare in many respects. For years, the primary healthcare sector was abandoned and not adequately funded but this Act has made provision for addressing this trend. We therefore call on all stakeholders to ensure that the advantages of the Act is enjoyed by Nigerians as the Act is set to bring positive development into the health sector. The one percent allocation should be enforced and there should be accountability and transparency in the administration of the fund as envisaged by the Act.

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<sup>93</sup> *Ibid*

<sup>94</sup> *Ibid*

<sup>95</sup> Africa Health Nigeria, "National Health Act 2014", <https://www.healthnewsng.com> Accessed 31/5/18

<sup>96</sup> The Nigeria National Health Act 2014: Snap Review,

<https://www.lawyersalert.wordpress.com/2015/01/26/the-nigeria-national-health-act-group-snap-review/> Accessed 22/5/18

<sup>97</sup> Obi, F.A. "2014 National Health Act: Slow Implementation Delays Health Benefits to Nigerians,

<https://www.resyst.ishtm.al.uk/news-and-blogs/2014-national-health-act-slow-implementation-delays-health-benefits-nigerians>. Accessed 29/5/18

<sup>98</sup> *Ibid*

<sup>99</sup> *Ibid*

Furthermore, it should be noted that delay in the implementation of the Act has caused some Nigerians to lose their lives and health and the government can be sued by the Nigerian public in order to enforce their right to healthcare as guaranteed by the constitution, the African Charter on Human and Peoples Rights and the National Health Act respectively. The government must demonstrate that it has the political will and commitment towards the implementation of the Act so that we can achieve the much needed universal health coverage.

Finally, budgetary allocation to the sector should be improved upon from the 3.9 percent to at least 13 percent as envisaged by the World Health Organization. According to Randy Glasbergen “laughter is the best medicine, giggling is good for mild infections, chuckling works for minor cuts and bruises, and snickering only makes things worse”.