

L.S.

I Assent



Governor.

27th April, 2014

VIRGIN ISLANDS

No. 7 of 2014

An Act to amend the Social Security Ordinance (Cap 266) so as to establish a National Health Insurance System and to provide for matters incidental thereto.

[Gazetted , 2014]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Social Security (Amendment) Act, 2014.

(2) The provisions of this Act shall come into force on such date or dates as may be appointed by the Minister by Notice published in the *Gazette* and different dates may be appointed for different provisions and different purposes.

Section 3
amended.

2. Section 3 of the Social Security Ordinance (hereinafter referred to as "the principal Act") is amended by deleting subsection (2)(c) and replacing it as follows:

"(c) all expenses properly incurred in the administration of Parts I to V of this Ordinance."

Section 18
amended.

3. Section 18 of the principal Act is amended by deleting subsection (6)(c) and replacing it as follows:

"(6) Insured persons shall be insured under this Ordinance in respect of the several contingencies in relation to which benefits are

provided under section 25 and Part VI and there shall be payable to or in respect of any such person, in the prescribed circumstances, any benefits payable by virtue of the said section or Part.”.

4. Section 25 of the principal Act is amended in subsection (1), by inserting a new paragraph (h) as follows: Section 25 amended.

“(h) NHI benefits as prescribed under Part VI of this Ordinance.”.

5. The Principal Act is amended by inserting the following new Part VI: Part VI inserted.

“PART VI

National Health Insurance System

Interpretation
under this Part.

57. In this Part, unless the context otherwise requires

“allied health care practitioner” has the meaning assigned to it under the Medical Act, 2000;

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“beneficiary” means a beneficiary of the NHI System;

“Deputy Director” means the person appointed as a Deputy Director under section 9 for purposes of this Part;

“health care services” or “services” means the services that are determined under section 63 to be covered under the NHI System;

“health care provider” means a medical practitioner or allied health practitioner or health care institution duly contracted to provide health care and related services to beneficiaries under the NHI System;

“indigent person” means a person whose income is insufficient for the subsistence of himself or his family, as certified by the Chief Social Development Officer;

“medical practitioner” includes a person registered under Part I of the Medical Act, 2000 to practice in the Territory and a person practising medicine outside the Territory who is registered to practice medicine under the law of the place where he so practices; No. 4 of 2000

“NHI” means the National Health Insurance;

“NHI contribution” means a monetary contribution paid by the persons described in section 61 in accordance with regulations made under this Part and “contributor” shall be construed accordingly;

“NHI Division” means a division of the Board established under Section 59;

“NHI Fund” means the National Health Insurance Fund established under section 65;

“NHI System” means the National Health Insurance System established under section 58;

“record” means any record of information or data in any form and however compiled and includes writing or printing on any material whether stored on paper, electronically, magnetically, or on non-paper based form and any storage medium;

“registration” means the process of enrolling persons as NHI beneficiaries under section 62;

“resident” means a person who is legally residing in the Territory

(a) by virtue of being a believer; or

(b) in accordance with the Immigration and Passport Ordinance;

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Establishment of
NHI System.

58. There is hereby established a National Health Insurance System or NHI System which shall be the financing and purchasing mechanism for facilitating equitable access to health care services for all beneficiaries, in accordance with the provisions of this Part.

Establishment of
the NHI
Division.

59. There is hereby established a division of the Board to be known as the NHI Division, which shall administer and manage the NHI System.

Functions of
the NHI
Division.

60. The NHI Division shall

(a) manage, monitor and administer the NHI System;

(b) carry out the registration of beneficiaries;

(c) maintain a record of all beneficiaries and contributors;

(d) collect contributions;

(e) process claims and pay from the NHI Fund benefits as are agreed between health care providers and the Board;

(f) supervise and control expenditures and make payments from the NHI Fund as authorised under section 65 (3);

(g) carry out registration of health care providers and facilities under the NHI System;

- (h) enter into contractual arrangements with such health care providers for the provision of NHI health care services;
- (i) maintain a record of all contracted NHI health care providers;
- (j) receive billing information and make payments from the NHI Fund to health care providers for health care services rendered to beneficiaries pursuant to agreements between health care providers and the Board;
- (k) determine all issues relating to payments to health care providers for services rendered to beneficiaries;
- (l) provide to the Director periodic reports, advice and information in relation to any matters relating to the NHI System as required under this Part;
- (m) monitor compliance of health care providers with regulations, standards and protocols relating to the provision of services; and
- (n) carry out any directions, perform such other functions and discharge such other duties as are given or assigned to the NHI Division by the Director.

Contributions.

61. (1) Notwithstanding section 18(1), all persons who are

- (a) employees in insurable employment pursuant to section 18(4);
- (b) employers of persons in insurable employment;
- (c) self-employed pursuant to section 18(4); and
- (d) recipients of income not originating from employment to which section 18(4) refers,

shall be required to pay contributions towards the NHI System.

(2) A person who fails to pay any contribution due under this Part shall be liable to pay the full cost of any medical services obtained by him or a person on whose behalf he is liable to pay such contributions.

(3) The Government shall pay the contributions of the persons exempted from the payment of hospital charges as specified under regulation 4 of the Public Hospital Regulations, 1927, on their behalf.

(4) The Social Security (Contributions) Regulations and the Social Security (Self-Employed Persons) Regulations, shall apply *mutatis mutandis* in respect of the method of payment and collection of contributions from and on behalf of

persons referred to in subsections (2) and (3) until such time as Regulations for the purpose are made pursuant to subsection (5) or section 71.

(5) The Minister may, by regulations, prescribe the contribution rates to be applied pursuant to this section.

Registration. **62.** (1) A resident shall be registered as a beneficiary of the NHI System under this Part.

(2) A resident shall be registered under the NHI System in the manner prescribed.

(3) Upon registration each person shall be issued an NHI membership card.

Beneficiary Entitlements. **63.** (1) Subject to such conditions and limitations as the Minister may prescribe by regulations, the following health care services shall be rendered by health care providers to beneficiaries under this Part

- (a) primary health care services including general medical or clinical practice services from public or private health care providers certified pursuant to section 64;
- (b) medically necessary hospital outpatient and inpatient services rendered by health care providers at public or private health care facilities including the services of diagnosis, treatment and emergency services;
- (c) diagnostic, laboratory and other medical examination services at public or private health facilities;
- (d) medicines, biologicals and medical supplies prescribed by NHI health care providers;
- (e) any other health care services which may be approved by the Board.

(2) A beneficiary is entitled to

- (a) choose his own medical practitioner; and
- (b) access such health care services in the amount and subject to such conditions and co-payments,

if any, in the manner prescribed by the regulations.

(3) Access to health care services shall be by utilising those services from registered NHI health care providers who offer general medical or clinical practice services and who enter into contracts with the NHI Division to provide such services, however that, in emergency cases such services may be provided by any other NHI health care provider as the case may be.

(4) For the avoidance of doubt, a beneficiary is not precluded from procuring private insurance coverage for the provision of health care services.

(5) Notwithstanding that a beneficiary has another health insurance plan the NHI system shall reimburse the health care provider or the beneficiary as applicable up to the maximum permissible fee for the services rendered or received.

(6) The Board may approve such services under subsection (1) that may be accessed overseas where the same is not available in the Territory.

Certification and
Registration of
Health Care
Providers.

64. (1) All health care providers shall be qualified and licensed in accordance with the laws governing their practice.

(2) A health care provider may be registered by the Board upon application to the Director.

(3) The registration of a health care provider shall be renewed annually.

(4) The Board shall enter into agreement with any health care provider registered under subsection (2) for the provision of health care services to beneficiaries upon such terms as may be agreed and as may be prescribed within the agreement.

(5) An agreement between the Board and a health care provider shall provide for

- (a) the process by which beneficiaries shall be entitled to access services (including the referral process);
- (b) the services to be provided, in accordance with the regulations;
- (c) the rates of reimbursement for the services rendered;
- (d) the quality of health care expectations;
- (e) the processing and management of claims;
- (f) the terms of payment for services by the NHI System;
- (g) financial and clinical audit functions; and

(h) general responsibilities of the parties.

NHI Fund. 65. (1) For the purpose of this Part, there is hereby established under the control and overall management of the Board, a fund to be known as the National Health Insurance Fund, hereinafter called the "NHI Fund", which shall be operated and maintained separately from the Social Security Fund established under section 3.

(2) There shall be paid into the NHI Fund

- (a) all contributions for the NHI System required to be paid under this Part;
- (b) all interests, rents and other income derived from the assets of the NHI Fund;
- (c) all sums recovered under this Part, as fines, fees, penalties or costs;
- (d) all sums properly accruing to the NHI Fund under this Part including any repayment of benefit, donations and grants;
- (e) such other sums as shall be provided out of the Consolidated Fund or as may be received by the Board on behalf of the NHI Fund for purposes of the NHI System only; and
- (f) any other monies legitimately applied for the implementation of the NHI System.

(3) There shall be paid or met out of the NHI Fund

- (a) monies solely for the purchasing and financing of NHI health care services for beneficiaries;
- (b) refunds of contributions;
- (c) costs and expenses properly incurred in the management and administration of the NHI System, including the purchase of real property, remuneration, allowances and other operating costs and such expenses as may be incurred by the Board in carrying out its functions with respect to the implementation of the NHI System;
- (d) monies, as approved by the Board, to meet the cost of health surveys, health studies and analyses, public education

programmes and the implementation of measures to promote wellness and prevent illnesses; and

(e) other expenditure as approved by the Board.

(4) Sections 14, 15 and 16 and the provisions of the Social Security (Financial and Accounting) Regulations shall apply *mutatis mutandis* to the NHI Fund, subject to any regulations, which may be made to provide for the financial organisation of the monies of the NHI Fund.

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(5) Subject to the provisions of this Part, the use, disposition, investment, disbursement, administration and management of the NHI Fund, including any subsidy, grant or donation received for operations of the NHI System shall be governed by an affirmative resolution of the Board.

(6) The Board shall set aside a portion of the accumulated NHI Fund as reserve funds, provided that the total reserves shall not be less than the expenditure of the NHI System for the previous three months.

(7) The Board shall maintain separate administrative, financial, accounting and other records with respect to the NHI Fund, including separate internal auditing, independent external auditing and separate administrative processing of benefit claims and appeals.

Investments and Loans. 66. The Board shall not make any investments in or make any loans to any person, company, individual, health care provider or other entity whatsoever that may be involved in the provision of health care services, diagnostic treatment services, the provision of drugs or any other services that may be provided under the NHI System.

Actuarial Review. 67. (1) Section 17 relating to actuarial review, shall apply to the NHI Fund in like manner as it applies to the Social Security Fund, save and except that the period to be covered by such review shall be after the first year from the coming into force of this Part.

(2) Notwithstanding subsection (1), the Board may, from time to time, direct that an Actuarial Review be undertaken as it deems necessary.

Grievance Procedures. 68. (1) Where

(a) a beneficiary is aggrieved in respect of any violation of his entitlements under section 63;

(b) a health care provider

(i) is denied registration under the NHI System; or

(ii) disagrees with the NHI Division on payments made on claims,

the matter shall be determined by the Director or, in his absence the Deputy Director, or any other person whom the Director may authorise to act on his behalf.

S.I. 1981 No. 17 (2) For the purpose of any complaints to which subsection (1) refers, the provisions of the Social Security (Decisions and Appeals) Regulations shall apply *mutatis mutandis* to a grievance under this section.

Confidentiality. 69. (1) Each person engaged in the administration of the NHI System, any committee appointed under section 5 for the purposes of this Part, any agent of the Board, any member of a tribunal constituted under section 32, shall preserve confidentiality with respect to all matters that come to his knowledge in the course of his employment or duties pertaining to beneficiaries, and any health care services rendered and payments made therefor and shall not disclose or communicate any such matters to any other person except as required for the performance of his functions or as otherwise provided under this Ordinance, any other enactment authorising such disclosure or by order of a court.

(2) Every health care provider, its employees or agents shall preserve confidentiality with respect to all matters that come to his knowledge in the course of his employment or duties pertaining to the rendering of health care services to beneficiaries, and shall not disclose or communicate any such matters to any other person except as required for the performance of his duties or functions or as otherwise provided under this Ordinance, any other enactment authorising such disclosure or by order of a court.

(3) Notwithstanding subsection (2), every beneficiary is deemed to have authorised his health care provider which provided a health care service to the beneficiary to give the Director, and every health care provider shall give to the Director, particulars of services provided to the beneficiary

(a) for the purpose of obtaining payment under the NHI System for the service;

(b) for the purpose of enabling the NHI Division to monitor and control the

(i) delivery of health care services; and

(ii) payments made under the NHI System for health care services.

(4) Where confidential information is required to be disclosed all names and identifying numbers, symbols or other particulars shall be excised from the relevant documents, unless disclosure of the names and other identifying information is necessary for purposes including but not limited to

(a) disclosure to any court of competent jurisdiction within the Territory, or under the provisions of any law of the Territory;

(b) disclosure for the purpose of

(i) criminal proceedings; or

(ii) disciplinary proceedings as more particularly set out in subsection (5), whether within or outside the Territory, relating to the exercise by counsel or attorney, auditor, accountant, valuer or actuary of his professional duties; or

(iii) disciplinary proceedings relating to the discharge by a public officer of his duties; or

(iv) research and surveillance as approved by the Director.

(5) Where, in the course of administration of the NHI System under this Part or the Regulations, the Director or a committee appointed under section 5 for the purposes of this Part, has reasonable grounds to believe that a medical, dental or allied health care provider is incompetent or has committed professional misconduct, the Director or the committee, as the case may be, shall give to the regulatory body governing the medical, dental or allied health care provider,

(a) information pertaining to the nature of the health care services provided by the medical, dental or allied health care provider;

(b) information concerning a patient's diagnosis given by the medical, dental or allied health care provider;

(c) such other information pertinent to the care of that patient, including the patient's personal information.

(6) A person who discloses information contrary to the provisions of this section commits an offence and is liable on summary conviction to a fine not exceeding twenty five thousand dollars or to a term of imprisonment not exceeding two years or both.

Subrogation. 70. (1) Where as a result of negligence or other wrongful act or omission of another, a beneficiary suffers personal injuries for which he receives health care

services, the Board is subrogated to any right of the beneficiary to recover for the cost for past health care services received in relation to such injuries, and the cost that will probably be incurred for future health care services in relation to the said injuries.

(2) For purposes of subsection (1), the Board is empowered to sue in the name of a beneficiary for the recovery of costs for health care services rendered to or for future health care services in respect of a beneficiary as provided in subsection (1).

(3) For the purposes of subsections (1) and (2), payment under the NHI System for health care services rendered or to be rendered to a beneficiary shall not be construed to affect the right of the beneficiary to recover the amount so paid in the same manner as if such amounts are paid or to be paid by the beneficiary.

(4) Any person who commences an action to recover for loss or damages arising out of negligence or other wrongful act of a third party causing injury or disability and in respect of which NHI health care services have been provided, is required to include a claim on behalf of the Board for the cost of NHI health care services and shall forthwith pay over the sum recovered to the Board.

(5) Insurance providers against which any claim for damages under subsections (1) or (2) are made shall notify the Director of any negotiations for settlement of any such claim and no settlement of a claim for damages shall be binding on the Board unless approved by the Director.

(6) Subrogation shall not, however, extend to the recovery of costs against a health care provider or health care facility if the negligence or wrongful act or omission upon which the action is based occurred in the course of providing health care services that the health care provider or health care facility, as the case may be, is authorised to provide and in such circumstances as may be prescribed.

Regulations. 71 (1) The Minister may, with the approval of the Cabinet, make regulations for the efficient administration of the provisions of this Part and for prescribing anything that is required to be prescribed.

(2) Regulations made pursuant to this Part shall be subject to a negative resolution of the House of Assembly.”.

Schedule
amended.

6. The Schedule to the principal Act is amended by deleting paragraph (1) and replacing it as follows:

“1. The Board shall consist of nine persons appointed by the Minister with the approval of the Cabinet, of whom

- (a) one shall be the Director or in his absence his Deputy;
- (b) three shall represent Government one of whom shall be the Chief Medical Officer;
- (c) two shall represent employers;
- (d) two shall represent employed persons, and
- (e) one shall be a private health practitioner,

however that, members of the House of Assembly shall not be eligible for appointment to the Board.”.

Passed by the House of Assembly this 8th day of April, 2014.

Ingrid Moses-Scatliffe,
Speaker.

Phyllis Evans,
Clerk of the House of Assembly.

LEGAL REPORT

The purpose of this Act is to introduce a National Health Insurance System for persons who are legally resident in the Territory. Through the introduction of this Act, all eligible persons shall have equal access to quality health care at a cost that is not prohibitive.

Sections 2, 3 and 4 amend sections 2, 18 and 25 of the Social Security Ordinance and these amendments are consequential upon the introduction of Part VI.

Section 5 deals with Part VI as follows:

Section 57 is the interpretation section, defining terms that are pertinent to Part VI.

Sections 58 and 59 establish the National Health Insurance System and the National Health Insurance Division, respectively, both of which fall under the purview of the Social Security Board.

Section 60 outlines the functions of the Division.

Section 61 outlines the mechanism for collecting contributions. In particular, subsection (2) goes beyond the scope of section 18 of the Ordinance by enabling contributions to be collected from persons who are recipients of income not originating from employment, such as from pension and investment income.

Section 62 defines the beneficiaries who are allowed registration into the National Health Insurance System. All legal residents in the BVI are eligible to be enrolled in the National Health Insurance System and will be issued an NHI membership card upon registration.

Beneficiary entitlements are covered in Section 63. In particular, attention is drawn to subsections (4), (5) and (6) which respectively give beneficiaries the right to purchase additional health insurance, require the National Health Insurance Plan to be first payer, and permit health services to be acquired overseas when not available in the Territory.

Section 64 requires health care providers participating in the scheme to be certified and registered.

Section 65 establishes the National Health Insurance Fund and sets the terms and conditions of its operation. The Fund shall be operated and maintained separately from the Social Security Fund; however both Funds shall be governed by the same provisions of the Ordinance, specifically sections 14, 15 and 16.

Section 66 prohibits the Board from making any investments in or loans to any person, company, individual, health care provider or other entity whatsoever that may be involved in the provision of health care services.

Section 67 (1) provides for an Actuarial review to be conducted after the first year of the operation of the National Health Insurance System and thereafter, similar to what obtains for the Social Security Board. Section 67 (2) empowers the Board to at any time, direct that an Actuarial review be undertaken if it deems it necessary.

Section 68 addresses the means to be employed in resolving disputes that may be brought by beneficiaries or by health care providers registered under the National Health Insurance System. Section 68(2) sets out the conditions under which redress can be sought and, the Social Security (Decisions and Appeals) Regulations are made to apply, with the necessary modifications, for that purpose.

Section 69 deals with the confidentiality obligations to be observed by all persons within the National Health Insurance Division and by contracted health care providers.

Provision is made in Section 69 (4) for special exceptions to the foregoing confidentiality obligations for the purpose of disciplinary proceedings, court matters and research and surveillance.

Where confidential information is to be otherwise shared by health care providers or persons within the National Health Insurance Division, the relevant names and identifying numbers are to be removed before any such disclosure, so as to preserve confidentiality. Contravention of the provisions of the Section constitutes an offence, which upon summary conviction can draw a fine of twenty five thousand dollars or a term of imprisonment not exceeding two years or both.

Section 70 addresses the ability to recover the costs of injury or disability against a health care provider in cases where the person suffered damage due to negligence or wilful misconduct of a healthcare provider.

Section 71 is the Regulation making provision for the operationalisation and administration of this new Part.

Section 6 amends the Schedule by increasing the number of persons on the Social Security Board. In particular, the Chief Medical Officer and a private health practitioner are included in the membership of the Board.

This Act was introduced in the House of Assembly on the 19th day of November, 2013, taken through its remaining stages and passed on the 8th day of April, 2014.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.



Jo-Ann Williams-Roberts
Acting Attorney General

14th April, 2014

