



THE CORONAVIRUS (COVID-19) PANDEMIC:

HEALTH & PHARMACEUTICALS SECTOR
- KEY CONSIDERATIONS

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OVERVIEW

In the face of the rising spread of the COVID-19 pandemic, there are wide-ranging implications for the Health & Pharmaceutical Sector. Health-care systems across the globe are under significant pressure at this time, and many are already overstretched.

At the local country level, the situation remains fluid and several states have deployed resources towards strengthening the existing healthcare systems and supply of pharmaceutical products. In addition to deploying resources, the government has also adopted certain measures to prevent the spread of the Pandemic and alleviate the impact on the medical facilities, with the restriction of international flights, public gatherings beyond a certain number, shut down of schools, the introduction of curfews and recently the restriction of movement in some key states.

In this article, our dedicated team of legal experts has highlighted some key business and legal issues worthy of consideration for industry stakeholders during these uncertain times, which will enable them to make informed and well-considered decisions that will assist with business sustainability and continuity during and post this crisis.





1. Central Bank of Nigeria (CBN) Policy Measures

The lockdown/restriction of movement of goods and people has led to a disruption in supply chains and distribution networks, as laboratories and production plants have been unable to manufacture and/or deliver drugs and other pharmaceutical products. This has led to a shortage of medicines, drugs and other medical-related products that would ordinarily be imported into the country for retail.

The CBN in a bid to alleviate this disruption has created funds/schemes to cater to the immediate needs within the healthcare and pharmaceutical industry to assist with business continuity for companies in this space.

a. Creation of a N50 Billion Targeted Credit Facility

The Central Bank of Nigeria has unveiled a targeted credit facility in response to the outbreak of the Pandemic to cater to the challenges created such as the disruptions to global supply chains, lockdown of movements of persons and goods and turmoil in the financial markets and global stock.

The facility/stimulus package would be disbursed by the NIRSAL Microfinance Bank for households and small and medium enterprises (SMEs) that have been particularly affected by COVID-19, including players in the agricultural value chain; hospitality (accommodation and food services); health (pharmaceuticals and medical supplies); and airline service providers.

b. Credit support for the Healthcare & Pharmaceutical Industry

The CBN has also provided a N100 Billion credit support to the health sector, as a palliative measure to minimize the impact of the COVID-19 pandemic on the health sector. This credit support will operate till 2030 to aid the sector



sector during and post the Pandemic outbreak. Also, the borrowers under the Scheme will enjoy a reduced interest rate of 5%, until February 2021.

According to the CBN, the objectives of the Scheme include: providing long-term, low-cost finance for healthcare infrastructure development that would lead to the evolvement of world-class healthcare facilities in the country, reduction of health tourism to restrict foreign exchange, improving access to affordable credit by local pharmaceutical companies to expand their operations and comply with the World Health Organization's Good Manufacturing Practices (WHO GMP), and supporting the provision of shared services through one-stop healthcare solution to enhance competition and reduce the cost of healthcare delivery in the country.

It is hoped that healthcare and pharmaceutical companies will take advantage of these schemes to boost their operations and ultimately work towards creating world-class health care facilities and pharmaceutical products.





2. Health Infrastructure deficit & Collaborations with Private & Public Investors

The outbreak of the Pandemic is bringing into focus the deficit in Nigeria's healthcare system and there are concerns about the government's ability to respond to the challenges of the Pandemic especially as it relates to the health sector. The Nigerian healthcare sector is plagued with underfunding and very limited infrastructure and fall short of the WHO's recommended ratio of doctor to patients even in a non-crisis situation. The 2020 Nigerian budget allocation for Healthcare is barely above N427 billion which is a meagre fraction compared to the population.

Several benevolent social investors and corporations have made donations towards alleviating this infrastructure deficit, however, most of these donations were made to the government and there is no clear indication of how the funds are to be disbursed.

A further step towards a holistic reform of the health care sector amid this crisis would be the collaboration of social impact investors with healthcare institutions such as hospitals and suppliers of medical equipment. Where such collaborations occur, the private sector may be able to assist the government in providing test kits, isolation areas, and treatment during this crisis and beyond, at affordable prices. Also, the funding to the government will enable the government to hire additional public health personnel, enhance laboratory capacity and support data collection. The Nigerian Health Insurance Scheme may be better positioned to assist patients during this crisis and beyond with more funding from these social investors





3. Exploring Telemedicine

The outbreak of this Pandemic has shown that there is a need for alternative measures to be adopted within the healthcare space. The inadequacies of the traditional methods of access to health care have been exposed. Technology albeit disruptive has created an alternative to traditional medical care with the introduction of Telemedicine. Also known as Telehealth or digital health, it is a more convenient means of accessing healthcare via chat, audio, and video calls.

In this regard, Nigeria has been slow in the adoption of Telemedicine as an alternative or to complement the traditional approach to medical access. Telemedicine which essentially involves the use of electronic communication tools to provide medical services to patients virtually has become an indispensable tool and the current need to practice social distancing and imposition of curfews has increased the demand for telemedicine. This new method makes it easier for doctors to provide medical care remotely. In the wave of the Pandemic, people can make complaints about their symptoms via telemedicine platforms.

Healthcare providers typically subscribe to these telemedicine platforms through which they can provide their medical services. An example of such a platform is the Tremendoc platform. It has also become a necessity for hospitals and pharmacies to create a digital medium/ telemedicine feature through which their personnel can offer health and pharmaceutical services without the need for physical presence during the COVID-19 outbreak.

With telemedicine, patients with minor symptoms of the COVID-19 can be attended to virtually without having to converge with persons with high-risk of the virus. The use of the video-chat option is also available with telemedicine to aid consultations for patients. Also, the cost of accessing health care via these telemedicine platforms are cheaper in some instances than walk-ins.



Although there is no primary legislation in relation to Telemedicine in Nigeria, the Rules of Professional Conduct for Medical & Dental Practitioners recognizes Telemedicine as a professional opportunity outcome of modern advances in computer and telecommunication technology which is steadily creeping into the professional practice in Nigeria. It also provides that practitioners should assess and avoid medico-legal pitfalls in areas of confidentiality, professional competence, legal and registration status of the specialist being consulted. Users of telemedicine and practitioners need to take precautions to ensure data protection whilst adopting telemedicine.





4. Protection for Healthcare Workers on the Frontlines of the Pandemic

In the face of the Pandemic, it has become imperative to ensure that the frontline workers are adequately equipped with personal protective equipment ("PPE") and provided with diagnostic testing kits to ensure that they are not incapacitated. The front-line workers/first responders include the physicians, nurses, respiratory therapists, cleaners, carers, radiology technicians, emergency service providers.

Typically, the health workers should be tested periodically to give them the all-clear and to isolate carriers of the virus. However, the availability of the testing kits poses a challenge as the test kits are used for patients without giving priority to the health workers. We have seen that in some countries, there is a shortage of healthcare workers because of the rapid infection rate amongst them, due to inadequate protection.

We recommend that Health care facilities take steps towards ensuring the periodic test of its workers as well as providing protective equipment for its workers to prevent the infection of these frontline workers.

It may also be important to establish a healthcare worker fund to protect frontline healthcare providers and their families from financial harm resulting from exposure or infection where such arises. Considering that the health workers most likely contracted the disease in the line of duty.

Employers in the healthcare sector should also sensitize its personnel on best practices such as how to set up COVID-19 wards efficiently, alternate staffing models, etc.



5. Supply Chain Distribution of Healthcare & Pharmaceutical Products – Contractual Issues

One of the COVID-19 challenges that have arisen in the Healthcare and Pharmaceuticals sector, is the performance of contractual obligations. The rapid outbreak has become a business challenge as many distribution companies are having trouble in shipping and/or clearing their goods for their customers.

A key legal issue that captures the present circumstances is whether contracting parties can have recourse to legal remedies for non-performance of contracts during the crisis. It has now become important to review the force majeure provisions and consider the extent to which it was defined in these supply/distribution contracts. Typically, a force majeure clause is to cover unexpected circumstances outside a contracting party's reasonable control, which prevents it from performing its contractual obligations. Such circumstances usually include natural disasters (generally written as "acts of god") such as earthquakes, tsunamis, plagues or "serious epidemic". In some instances, the clause is stretched to include "act of man" which are reasonably unforeseeable such as government policies (if not provided for in other parts of the agreement), industrial action and the likes.

When this clause is activated, contractual obligations may be suspended, or performance of those obligations may be excused. However, it does not imply the termination of the contract. It is recommended that parties take reasonable steps towards the part performance of the contracts, mitigate the losses and eventually perform the contractual obligations after the Pandemic is over.

Where the force majeure clause is absent in these contracts, the common law principle on frustration of contracts can be considered.



6. Data Protection issues relating to COVID-19

In the face of an outbreak of this nature, the public health sector owes the public some duty of care to send out communications regarding the virus and its response to the same. However, hospitals and other healthcare workers still owe the data subjects a measure of confidentiality and data protection.



By the Infectious Diseases Regulation of Lagos State, 2020, the Governor of Lagos state may direct medical practitioners within the local area to notify the Governor of any person that presents the symptoms of COVID-19. Not to derogate from the importance of data protection and privacy rights of patients, ensuring full compliance of privacy rights and data protection would require taking into consideration the compelling public interest in the current situation. It is important that Data collectors still show a measure of respect for the privacy rights of Data Subjects by refraining from disclosing the personal details of persons who have contacted the virus to the general public without their consent.



Conclusion

The effect of the Coronavirus Pandemic is being felt the world over and may, unfortunately, remain for the foreseeable future. It is however imperative that we recognise that the extent of its negative effect can indeed be mitigated if the necessary precautionary measures are taken and adhered to by the government, health workers and the general public. Also, the collaborations discussed above will aid in alleviating the far-reaching impact of the pandemic and there must be sustained & united nationwide improved measures to combat it.

We are hopeful that these precarious and unprecedented times will soon become a thing of the past with the Nigerian Health & Pharmaceutical Sector emerging much stronger and better, to face any further challenges in the future.

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