

DATA PROTECTION

LEGAL TAKE

DATA PRIVACY ISSUES

SURROUNDING THE NHIF-SHA

DATA MIGRATION



ADVOCATES

in association with

Pr1merio

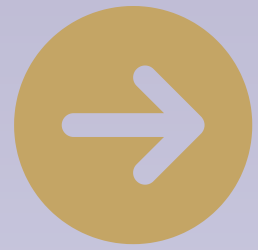
The migration of member's personal data from the National Health Insurance Fund (NHIF) to the Social Health Insurance Fund (SHIF) has been met with mixed reactions with some Kenyans citing infringements to their rights during this process. The migration of this personal data raises concerns as to the rights to privacy of members guaranteed under Article 31 of the Constitution of Kenya, 2010.

In this piece, we highlight some FAQs on data privacy concerns during this data migration:



Is the Social Health Authority (which manages the SHIF) bound by Kenya's data privacy laws?

Yes, the Data Protection Act 2019 (the DPA) specifies that data controllers and processors, which are the entities that process data under the law, includes public authorities such as the Social Health Authority.



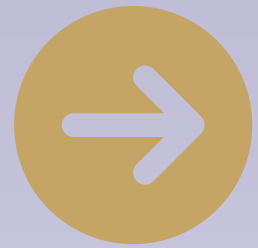
Should the Authority have requested my authority to transfer my data from NHIF?

Any processing of data, including transfer, must be done with an individual's consent. However, the law does give some exceptions. A key exception relevant to this discussion is data may be processed without obtaining an individual's consent where the processing is necessary:

- in performance of a task by a public authority; or
- for the exercise, by any person in the public interest, of any functions of a public nature.

This allows the Authority to migrate the information without requiring the consent of an individual.

The DPA also defines a separate category of data called sensitive data that includes information regarding one's health. Section 46 of the DPA allows processing of health information if such processing is necessary for public interest in the area of public health. All in all, the Authority is legally empowered under the DPA to migrate every individual's data.



Can a person object to the migration of data to the Authority

Under the DPA, a person can object to processing of information. Such right to object is absolute where information is being used for direct marketing. However, an objection can be denied if there is a compelling legitimate interest that overrides the individual's interest.

In summary, with respect to data privacy, the process of migration of personal data from NHIF to SHIF does not contravene the DPA.



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