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A Blueprint for a *Sharīʿah* Compliant Contributory Private Health Care Scheme in Nigeria

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KEYWORDS

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ABSTRACT

Purpose of the study: The current health care system in Nigeria, the National Health Insurance Scheme (NHIS), is mostly driven by the government as a public health care scheme. NHIS dates to the pre-civil war period. It became more prominent after the return of the country to a democratic rule in 1999. The scheme was designed based on the conventional insurance principles. Thus, it has some *Sharīʿah* issues such as elements of gambling (*maisīr*), uncertainty (*gharar*) and usury (*ribā*). *Takāful,* the Islamic alternative to the conventional insurance, has become operational in the nation. Thus, since the NHIS is not *Takaful*-based, it faces *Sharīʿah* compliance challenges. **Methodology:** This study is accomplished using the doctrinal legal research methodology combined with explorative and analytical techniques. **Main Findings**: This study found that, for Muslims in Nigeria to key into a public health care scheme like the National Health Insurance Scheme (NHIS) without *Sharīʿah* issues, the government needs to design a sister *Takaful*-based health care scheme. This is proposed to be known as the "National Health Takaful Scheme (NHTS)". Thus, the Nigerian public health care scheme would be in two forms: NHIS and NHTS. But, realising this laudable alternative *Sharīʿah* compliant public health care scheme is not enough to cater for the health care needs of the populace, especially at the grassroot. Therefore, it is necessary to design a *Sharīʿah* compliant private health care scheme as well. **Application of this study**: Private Healthcare models proposed in this study can be implemented by Islamic Cooperative Societies or Muslim Organisations. The models can be applied anywhere across the globe. **Novelty/ Originality of this study**: This study presents a blueprint for the implementation of a *Sharīʿah* compliant private health scheme in the country. This will afford different grassroot groups, organisations, and institutions, such as Islamic cooperative societies, to be involved.

INTRODUCTION

Having a *Sharīʿah* compliant health care scheme in Nigeria is a contemporary issue pestering the mind of every conscious Muslim in the country today. This should not be surprising. In one way or the other, willingly or by compulsion, consciously or unconsciously, Muslims are being dragged into the available schemes for health financing and insurance in the nation, which are neither based on the Islamic ideals nor in compliance with Islamic law in many respects. Are Muslims therefore helpless, legally, politically, intellectually, and ideologically to find alternatives to the existing schemes which are believed to be un-Islamic? In truth, Muslims cannot just make themselves to be heard complaining again and again without finding a solution to the problem. As Billah observed, "it would be unfair to oppose the entire idea of insurance, while making no efforts to come up with an alternative model of insurance, which may be justified by the *Shari'ah*".[1] Engku Ali and Odierno have also expressed a similar view to the effect that "a total rejection of insurance will not be a wise move because that will amount to a denial of the need to protect people in the event of peril or hazard".[2]

The alternative to be developed and put forward to cater for the needs of Muslims in health financing does not have to be an alternative insurance scheme (i.e., an Islamic alternative to the conventional health insurance system). Rather, there are other models of health financing which can be implemented which is not insurance-based (though such models can equally provide the desired protection against health risks). Such practical alternatives are what Muslims should get themselves busy with in advancing, implementing, and promoting a health financing set up that suits their religious taste. This even becomes more imperative and demanding in view of the strict legal requirements involved if the Islamic insurance alternative called *Takaful* were to be adopted which many Muslim organisations may not be able to explore.[3]

Therefore, it is no longer fashionable for Muslims to continue to air their common lamentations about how the available scheme for health financing and insurance are not Islamic. Rather, it has become imperatives for practical schemes which any group of Muslims, with an organised body can implement without violating any law of the land while the scheme is *Shariah* compliant. This is a new proposal which this study is putting forth a blueprint to be given a trial. Methodologically, this paper is both doctrinal and creative and innovative in nature. Thus, relevant legal instruments are critically examined, and the present health schemes are assessed on the scale of Islamic principles.

CURRENT HEALTH INSURANCE SCHEME IN NIGERIA

The current health care system in Nigeria is mostly driven by the government; though in partnership with notable private Health Managements Organisations (HMOs), making it a Public-Private Partnership project (PPPs).[4] The government-driven health care system in the country is in the form of a public healthcare scheme known as the National Health Insurance Scheme (NHIS).[5] Some States also have their own health insurance schemes.[6] Historically, the NHIS dates back to the pre-civil war period even though it became more prominent in terms of public awareness and aggressive implementation after the return of the

[1] Muhd Ma'sum Billah, *Principles and Practices of Takaful and Insurance Compared* (Kuala Lumpur: IIUM Press, 2001) p. viii.

[2] Engku Rabiah Adawiah Engku Ali and Hassan Scott P. Odierno, *Essential Guide to Takaful (Islamic Insurance)* (Kuala Lumpur: CERT Publications Sdn Bhd, 2008) pp. 22-23.

[3] See sections 1 and 3 of the Insurance Act, 2003.

[4] Abdulrahman Sambo, "Foreword" in *NHIS Operational Guidelines (Revised October 2012)* p. 10.

[5] The *National Health Insurance Scheme Act*, CAP N42, Laws of the federation of Nigeria (LFN), 2004 (initially Decree No. 35 of 1999).

[6] For example, the Kwara State Health Insurance Scheme established under the *Kwara State Health Insurance Agency Law, 2017.*

country to a democratic rule in 1999. Although NHIS also provides for participation of private individuals who are not public servants,[7] this does not change its nature as a public healthcare scheme. Besides, the scheme was designed based on the conventional insurance principles.[8] Thus, it has some *Shariah* issues to grapple with: gambling (*maisir*), uncertainty (*gharar*) and usury (*ribā*); etc.

The Islamic alternative to the conventional insurance is popularly known as *Takāful*.[9] Takāful has also been recognised in Nigeria with separate rules, regulations and structures set up for it as different from the conventional insurance system.[10] Thus, as the NHIS is not *Takaful*-based, it is difficult to credit it with a *Sharīʿah* pass mark. Accordingly, it is proposed that, for Muslims to be able to key into a public health care scheme like NHIS without Shariah issues, the government should design a Takaful-based scheme to be known as the "National Health Takaful Scheme (NHTS)".

The relevance of the above call can be appreciated when reference is made to the *NHIS Operational Guidelines* on the insurance companies that can be accredited to provide "appropriate insurance covers for the programmes under the Scheme".[11] Under the Guidelines, such insurance companies must be registered to practice "General Insurance Business"[12] in accordance with the provisions of the *Insurance Act.*[13] The Takaful-Insurance Business is another form of insurance business different from what is known as the General Insurance Business and the Life Insurance Business which are the two conventional insurance business models recognised under the *Insurance Act*.[14] The Takaful-insurance as another brand of insurance business in the country also has its own models[15] as well as its business divisions.[16] Thus, the Nigerian public healthcare scheme is expected to be in two forms to reflect these insurance business systems in the country. Accordingly, there ought to exist as insurance health options both NHIS and NHTS.

Aside having the NHTS as an alternative to NHIS, there are more opportunities to explore other Sharīʿah compliant health financing schemes which can be private in nature, but still secured and sustainable and as well as having no legal issues to grapple with within the Nigerian legal terrain. Therefore, such scheme will be explained in this presentation as the Islamic options for health financing which can be explored. But, before delving into that, it is necessary to appreciate how the present health financing and insurance schemes in Nigeria in the form of NHIS and the KWASHIS are not Sharīʿah compliant.

I.1. Sharīʿah Issues in the Present Health Insurance Scheme in Nigeria

It has been pointed out from the earlier analyses that the present health insurance scheme in Nigeria is the National Insurance Health Scheme popularly known by its acronym as NHIS. The scheme is regulated by the NHIS Act, 1999, now CAP N42, Laws of the Federation of Nigeria. The scheme is designed based on the conventional insurance principles so much that only

[7] Section 17 (3), NHIS Act.

[8] Under the NHIS Operational Guidelines, Paragraph 2.17.10.1, one of the grounds upon which an MHA may not be re-accredited is when it fails to conduct its operation in accordance with the health insurance principles.

[9] The commonly used term for the schemes in Arabic books on the subject however is *At-Ta'mīn (*التَّأمين*).*

[10] 2013 Guidelines for Takaful-Operators

[11] NHIS Operational Guidelines, Paragraph 2.18

[12] There are two forms of insurance businesses in Nigeria, namely Life Insurance Business and the General Insurance Business.

[13] Paragraph 2.19.1.2, *NHIS Operational Guidelines*.

[14] See section 2, *Insurance Act, 2003.*

[15] Currently there are three Takaful models recognised in Nigeria namely; the Madarabah-based Takaful, the Wakalah-based Takaful; and the Wakalah-Muḍārabah based Takaful.

[16] The Takaful-insurance business in the country can either be in the form of General Takaful Business or Family Takaful Business.

conventional insurance companies are allowed to participate in the scheme to provide it with necessary covers. This is deducible from the requirement that any insurance company to be accredited by the NHIS must have been registered for the General Insurance Business and not the Life Insurance Business or any other form of insurance business in the country, not including the Takaful-insurance as well.[17] This preference given to the general insurance business companies is still legally surprising. This is because the health insurance which is the main concern of the scheme for which insurance covers are required can only be provided under the life insurance business which has health insurance business as one of its three categories of business.[18]

In view of the foregoing, it is not disputable that the NHIS is premised on the principles of the conventional insurance. Like any other form of the conventional insurance practices, the scheme has some Sharīʿah issues which make it unsafe for Muslims *to* participate in it except under the situation of necessity (*Darūrah*). It is believed in some quarters that the Sharīʿah issues with the NHIS is minute. Truly, out of the four Sharīʿah elements, jurists permit Muslims to participate in any scheme suffering from *Gharar* (uncertainty) if it is minor (*yasīr*) and not major in nature (*fahish*). This can only be accommodated for the NHIS if it can be found to be free from the other two elements of *Ribā* and *Maisir*. Once any of these two elements can be established against the scheme, its presumed minor element of uncertainty would no longer be useful to make it permissible for Muslims to conveniently participate in the scheme. For this reason, we shall briefly demonstrate how the NHIS and, by extension, the KWASHIS, is suffering from the elements of *Gharar*, *Ribā* and *Maisir*. This will be shown with reference to the provisions of the NHIS Act, 1999; the NHIS Operational Guidelines Revised 2012; the Insurance Act, 2003; and the NAICOM Operational Guidelines for Takaful-Insurance Operators, 2013; as well as the 1999 Constitution of the Federal Republic of Nigeria (as altered).

I.1.1. *Gharar in the NHIS and the KWASHIS*

Gharar is one of the prohibited elements whose presence would make any transactions unlawful under Islamic law. It is simply translated as "uncertainty". Legally, the uncertainty may pertain to the subject matter or the price advanced as the consideration. Al-Sarakhsi of the Hanafi School has defined gharar as anything whose consequence is hidden while for the Maliki School, Al-Qarafi defines it as what is not known to exist in the future, e.g. birds in the air or fish in the water.[19] The prohibition of Gharar has been deduced from Quran 4: 29 (Surah al-Nisai).

When we critically study the NHIS, it would be appreciated that there are uncertainty about the total amount of premium payable by the participants (the enrolees) just as the health issues for which they are to enjoy the health services are equally not certain. This can be seen from the definition of capitation payment to be made to the health care providers under the scheme. Statutorily, the capitation payment is defined as "a payment to a health care provider in ***respect of services to be provided*** by him to an insured person registered by the health care provider, ***whether the insured person uses the services or not***".[20]

It is clear from this provision that the services to be provided by the health providers and which the enrolees are to receive are not certain. The degree of this uncertainty appears to be major and excessive in nature. It is therefore in the nature of *Gharar Fahish*. By law, the implication of an excessive *Gharar* like this has been well spelt out. According to Engku Ali and Odierno, "excessive and major *gharar* affects the validity of trading and exchange contracts (*mu'awadāt*)

[17] See the NHIS Operational Guidelines
[18] Section 2 (2), Insurance Act, 2003
[19] Engku Ali and Odierno, op cit. p. 9
[20] Section 49 NHIS Act and section; section 31 KWASHISA Law 2017

generally".[21] It should be stated that the insurance transaction is in the form of exchange contract.

Apart from the minor uncertainty (*gharar yasīr*) which is generally tolerated if present in a contract by which it cannot affect the validity of the contract, it is only in the contract of charity, such as gift (*hibah*) and endowment (waqf), that uncertainty in both forms, whether minor or major, does not strictly apply. This therefore presents to us with some level of relief where any scheme, such the models being proposed in this presentation, are premised on the contract of charity.

Based on the foregoing, it can be concluded that the NHIS has failed the Sharīʿah validity test with respect to the element of *gharar* and therefore stands un-Islamic. Like the banking and other earlier insurance practices, this awareness must be created among the Muslims while they strive to get alternative scheme that will be free from this element approved for them. The NHTS earlier suggested will be worthy of consideration in this regard. With this finding, it is now very imperative to also decide if the scheme is equally afflicted with the remaining two elements of *Ribā* and *Maisir* of not.

I.1.2. *Ribā in the NHIS and the KWASHIS*

Ribā literally means increase, addition, augmentation, growth, expansion, excess. Technically, it is defined as "every excess in return of which no reward or equivalent counter value is paid".[22] If it cannot be contended that the NHIS is not based on the Islamic insurance principles and practices, noting that the conventional insurance upon which it is based is generally adjudged un-Islamic for being unavoidably embedded in *Ribā* is enough to conclude that the scheme is not Sharīʿah compliant. This research will however not stop at that general reasoning but demonstrate in clearer terms how the NHIS Act and the KWASHIA Law safeguards the practice of *ribā* in their respective schemes.

In terms of classifications and distinctions, six groups of distinguishing twin categories of *ribā* have been identified, namely; (1) Ribā al-Nasiah/ Ribā al-Fadl; (2) Ribā al-Nasiah/Ribā al-Naqd; (3) Ribā al-Jāhilliyyah/Ribā al-Khafi; (4) Ribā al-Duyun/Ribā al-Buyu'; (5) Ribā al-Nasiah/Ribā al-Duyun; and (6) Ribā al-Fadl/Rba al-Buyu'.[23] Other classes of *Ribā* which have equally been identified are tagged as *Ribā al-Jahiliyyah* and *Ribā al-Quran* which are both terms used otherwise to refer to *Ribā al-Duyun*.[24] Despite these wide classifications of *ribā,* they have been trimmed down into *Ribā al-Nasiah* otherwise called *Ribā al-Duyun* and *Ribā al-Fadl* otherwise known as *Ribā al-Buyu'*. Thus, *ribā* is usually discussed and analysed with these two categories in focus.[25]

Briefly put, *Ribā al-Nasiah* (i.e. *Ribā al-Duyun* or *Ribā al-Quran* or *Ribā al-Jahiliyyah*) is the actual concept of *ribā* mentioned and prohibited expressly in the Quran.[26] It is seen as relate to loan transactions. Thus it "occurs whenever the creditor advanced loans on some monthly interest in addition to the principal sums".[27] On the other hand, *Ribā al-Fadl* (i.e. *Ribā al-Buyu'*) is regarded as the excess that occurs in trading transactions "involving the exchange of ribā-bearing commodities without observing the required rules".[28] This type of *ribā* occurs in exchange contracts which is typical of the conventional insurance. Once what is being exchanged is not at par from the two parties, then, the element of *Ribā al-Fadl* has crept in and therefore renders the transaction un-Islamic.

[21] Engku Ali and Odierno, p. 11
[22] Engku Ali and Odierno, p. 15
[23] Husniyat Ali et al, *Islamic Financial Services* (Kuala Lumpur: University Publication Centre, UiTM, 2008) pp. 21-22
[24] Engku Ali and Odierno, p.18
[25] Muhammad Bikr Ismail, *Baina As-Sail wal-Faqih* (darul-Manar, 1999) p. 61
[26] Quran 30: 39; 4: 160-161; 3; 130; and 22: 275-281.
[27] Husniyat Ali et al, p. 22
[28] Engku Ali and Odierno, p. 19

An objective examination of the NHIS Act (as well as the KWASHIA Law) would reveal that *ribā* in its two popular forms of *ribā al-nasiah* (ربا النسيئة) and *ribā al-fadl* (ربا الفضل) are present in the scheme. There are three ways and manners in which *ribā* commonly occurs in the conventional. These are in the matters of investment of the insurance fund; premiums payments and the corresponding benefits to the insured and the forbearance from the insurer. The issue to be addressed therefore is to see if *ribā* reflects in these matters in the scheme or not.

The subject of investment of fund is treated in section 11 (4) of the NHIS Act and section 24 of the KWASHIA Law, respectively. In the NHIS Act, it is stated that "the Scheme shall invest any money not immediately required by it in the Federal Government Securities or in such other securities". In the KWASHIA Law, such money is to be invested in bonds, treasury bills, equities and other securities issued by the Federal Government and the Central Bank of Nigeria.[29] These certainly give no restrictions on freedom of such securities from *ribā*. More revealing of *ribā* is the listing of "dividends and ***interests*** on investments and stocks" as one of the sources of the fund of the Scheme.[30] No one needs further amplification to be convinced that truly the element of *ribā* is involved in the NHIS scheme with respect to investment of its fund. This is a form of *Ribā al-Fadl*. Another variable of this *ribā* can also be seen in the capitation payment system of the scheme. As earlier noted, this is the payment to a health provider in respect of services to be rendered by him to an insured person whether the insured person uses the services or not.[31] This reflects an imbalanced exchange contractual relationship/transaction which is the bane of *Ribā al-Fadl*.

Ribā al-Nasiah has also featured in the scheme. This reflects in the provision made by the law empowering the court to order payment of contributions due and payable ***with interest*** and penalty. This is a way of legalising *ribā al-duyun*. The Islamic prohibition of *ribā* is so encompassing that Muslims must avoid any means by which they can be involved, directly or indirectly. The Prophet Muhammad (peace be upon him) has educated Muslims that all eaters, recorders, witnesses, and all parties in any form engaged in *ribā* transactions are cursed. Thus, it is not a matter which can be condoned by Muslims with levity. Like *gharar*, it is also clear from the foregoing analyses that the NHIS and its sister schemes at the state levels (e.g., the KWASHIS) are laced with the *ribā* element. Should Muslims therefore fold their arms and continue to participate in it without finding an alternative? Certainly, no. This is the essence of this presentation. But before getting to that crux of this, let us also clarify the issue of *Maisir* in the Scheme as well.

I.1.3. *Maisir in the NHIS and the KWASHIS*

Maisir is another fundamental element prohibited in contracts and transactions by Islamic law. Its presence in any contract renders it unlawful and therefore invalid. It is commonly translated as Gambling. It has an express prohibition through the Quran.[32] It is closely similar to *gharar* so much that is presumed to be the "excessive side of *Gharar*".[33]It is therefore believed that where a major *gharar* is established in any transaction, *maisir* will automatically follow.

Based on the above and in view of the existence of *gharar fahish* (excessive uncertainty) already demonstrated to exist in the NHIS, it can be reasonably concluded that *Maisir* is also present in the scheme. The nature of capitation involved in the NHIS makes it romancing with *maisir*. This is especially so since the healthcare provider is to receive the capitation whether the insured uses the services or not. Also, if the insured does not use the services, he would get nothing in return

[29] Section 24 (1), NHIS Act
[30] Section 22 (g), KWASHIA Law; section 11 (2) (d)
[31] Section 49 NHIS Act
[32] Quran 5: 90
[33] Muhaimin Iqbal, *General Takaful Practice* (Jakarta: GEMA INSANI, 2005) p.2

while there is also possibility for the insured to also use services that exceed the worth of his contributions notwithstanding the limitation claimed to be attached to each health package to be enjoyed by the insured.

It is therefore clear that like *gharar* and *ribā*, *maisir* is also a factor that makes the NHIS un-Islamic. Muslims cannot therefore continue to comfortably participate in the scheme without either making a case for a similar national scheme that would be Sharīʿah compliant or design another scheme at the private level to cater for their health financing needs within the legally permissible orbit. This second option is what this presentation addresses in below through the proposal put forward.

II. ISLAMIC OPTIONS FOR HEALTH FINANCING IN NIGERIA: THE DESIRED ALTERNATIVE MODELS FOR MUSLIMS

The Key Terms that must be carefully chosen to describe the desired Islamic options for health financing are that the scheme must be: "Private"; "Secured"; "Sustainable"; and, "Sharīʿah Compliant". The chief term which all these key terms are chosen to qualify are the words "healthcare scheme". It is presumed that a healthcare scheme may be public while the focus here is the one that is "Private"; a healthcare scheme may not be secured, sustainable and Sharīʿah Compliant while the focus of the desired healthcare scheme being proposed is for it to be secured; sustainable; and Sharīʿah compliant.

II.1. Nature of the Proposal: The Islamic Options in Perspectives

The proposed schemes would be actualised through three indices of Platform, Structures, and Models. The components of each of these indices are as spelt out below.

A. **The Platform:**

i. *Islamic Cooperative Societies*
ii. *Muslim Organisations and Societies*
iii. *Islamic Health Management Company*
iv. *Muslim Educational Institutions and Schools*

B. **Structures/Implementation Approach:**

i. *Partnership Approach:* Muslim Hospital/Cooperative Society Partnership Structure
ii. *Subsidiary Approach:* Muslim Hospital's establishes Cooperative Society (e.g., MUNFIQ Health Care Cooperative Society Ltd).

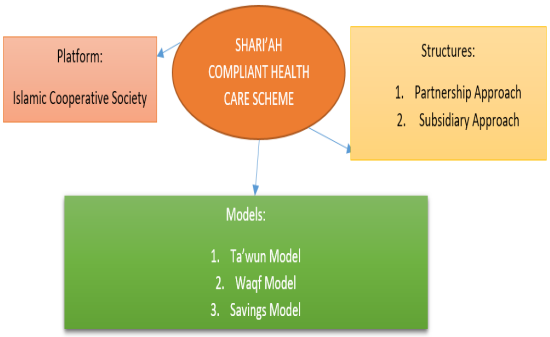
C. **Relevant Contracts and Legal Documents**

1. *Wakālah* (Agency): Between the Platform and Participants
2. *Muḍārabah* (Joint Ventures): Between the Platform and the Healthcare Fund for Investment
3. *Murābaḥah* (Cost-Plus): Between the Platform and the Healthcare Provider
4. MOU: Memorandum of Understanding between Platform and Health Provider
5. Participation Agreement Form (PAF) between the Platform and Participants

D. **Models = Products:**

1. *Taʿāwun Model* = Taʿāwun Contributory Healthcare Scheme (TCHS Product)
2. *Waqf Model* = Healthcare Waqf Fund Scheme – (HWFS Product)
3. *Savings Model* = Members Healthcare Savings Scheme (MHSS Product)

Figure 1:
A Typical Shariah Compliant Private Health Care Scheme



Source: Author

2.1. Understanding the Platform

The proposed Private Sharīʿah Compliant Healthcare Scheme shall be implemented through the platform of an Islamic Cooperative Society or an Islamic Organisation as the Scheme Manager. This will enable the scheme to be secured and sustainable as the corporate approach to the scheme would be achieved through this. There is a very strong legal basis for the scheme to be implemented through the Platform of an Islamic Cooperative Society. A research finding has shown that Islamic cooperative society provides a good platform for Muslims to implement many schemes without exposing themselves to the challenge of legal and Sharīʿah issues.[34]

2.2. Understanding the Structures of the Scheme

In using the Cooperative platform for the implementation of the scheme, two approaches can be explored. These are the Partnership Approach and the Subsidiary Approach. These structures imply that the concerned Muslim hospital or any other healthcare facility (public or private) can partner with any interested Islamic Cooperative Society in providing its members with the desired and available healthcare services or the concerned Muslim Hospital itself can create a Cooperative Society as its subsidiary, so to say, for the purpose of implementing the Sharīʿah Compliant Health Care Scheme depending on the Models subscribed to by the participants.

2.3. An Insight into the Models

There are three models being proposed which will give birth to three Sharīʿah Compliant Healthcare products to be made available to the interested prospective members of the concerned cooperative society as participants and beneficiaries except for the Waqf Model whose beneficiaries may and may not be members of the implementing cooperative society, depending on the stipulations spelt out in the Waqf Deed (*Dastūr-l-Waqf*).[35] These models are the *Taʿāwun Model; Waqf Model*; and *Savings Model*. Each of these Models is explained in much more details in the next segment. But before doing this, it is necessary to clarify the terminologies to be adopted as the coded language to be used in the Scheme.

III. DICTION AND TERMINOLOGIES OF THE SCHEME

Parties to the Scheme would be (1) *the Health Provider* which would be a Muslim Hospital or any other health facility (public or private) that can provide the desired health package for the participant; (2) *the Platform/Scheme Manager* (e.g., Muslim Cooperative Society, Muslim Organisation and Bodies [e.g., Supreme Council for Islamic Affairs]); and (3) *the Participants* who are members of the Platform/Scheme Manager.

The Health Provider shall be known as the *"Participating Health Provider" (PHP);*

[34] See Abdullahi Saliu Ishola, "The Viabilty of Cash Waqf Models under the Existing Laws in Nigeria: A Focused Study on Corporate, Takaful and Cooperative Models," *Unpublished PhD Thesis* (International Islamic University Malaysia, 2018).

[35] Other names by which Waqf Deed is called technically in Arabic are *Hujatul-Waqf* and *Waqfiyyah*.

while the Cooperative or organisation implementing the Scheme shall be called the *"Participating Cooperative Society" (PCS)* or the *"Participating Organisation Body" (POB)* or *The Scheme Manager (The-SM)*; members who subscribe to the scheme shall be known as the *"Participants"*. A scheme may be designed differently for different members depending on the life span of the scheme and the amount to be subscribed by the Participants. Thus, a *PHC/POB/The-SM* may have a scheme with six months (recommended minimum); One Year; Two Years; Three Years; Four Years and Five Years (recommended maximum) as the life span with different subscription amounts. The whole bundle of each scheme is to be called a *"STREAM"*. The life span of each Stream will be called *STREAM'S LIFE CIRCLE (SLC)*. There would be a maximum threshold amount which each participant can benefit from the stream during an *SLC,* and this is to be called *Maximum Treatment Threshold Amount* (MaxTTA) while such amount may be divided into monthly maximum threshold amount which each member can benefit depending on the months of the *SLC* of a *Stream*. The monthly maximum threshold amount is to be called *Monthly Treatment Threshold Amount* (MonTTA). Thus, to calculate the MonTTA, the formula is as follows:

MonTTA = MaxTTA/SLC Months

For example, if the MaxTTA is ₦240, 000: 00k (Two Hundred and Forty Thousand Naira) and the SLC of a Stream is One Year which is twelve months, the MonTTA for each Participant would be ₦240, 000: 00k/12 = ₦20, 000: 00k (Twenty Thousand Naira). Once the Participant receives a treatment beyond his MonTTA, he will pay the balance which is to be known in this scheme as the *Excess Treatment Bill* (ETB). For instance, if in a month, the Participant receives a treatment billed at ₦25, 000: 00k (Twenty-Five Thousand Naira), it means that his ETB would be ₦5, 000: 00k which he would have to balance up.

For proper implementation of the scheme, it is required that there should be an expert appointed for each stream to be implemented and this is to be known as the *Stream's Implementation Expert Consultant* (SIEC). The expert, SIEC, would be responsible for proper design, implementation, and necessary technical guides on successful execution of each scheme. Thus, there may be different SIEC for different streams of a PCS.

For each Participant, the PHP will open a file to be known as the *Sharīʿah Compliant Healthcare Scheme* (SCHCS File like there are NHIS Files in the public conventional health care system) or simply as Islamic Healthcare Plan File (IHP File). Each Participant will be assigned with an "SCHCS/IHP Number" (e.g., SCHCS/IHP 00001/TAWAKKUL PCS) which is to be reflected on the SCHCS File with the PHP.

The foregoing explanations on the language and terminologies of the Stream should aid in properly understanding the models to be explained in the next segment.

IV. ANALYSES OF THE MODELS

As earlier noted, three models are being proposed to implement the *Sharīʿah* Compliant Contributory Private Health Care Scheme in the country. Each of these would be briefly explained.

IV.1. Model One: Taʿāwun Model

This is an informal way of developing and implementing a Takaful-based Private Health Care Scheme through the cooperative platform. Calling it by the name "Takaful" may bring up some legal issues because there are stringent rules and regulatory requirements for engaging in Takaful practices.[36] Thus, to avoid such legal issues that may call for explanations, it is better to adopt the name *Taʿāwun Scheme*. As at now, there is no scheme or financial product known as *Taʿāwun Scheme* in the country so far and there are no legal prohibitions for designing any private scheme and calling it by that name. So, there is no fear for legal contraventions. Accordingly, the product to be implemented through this model is proposed to be called

[36] NAICOM Operation Guidelines for Takaful-Insurance Operators, 2013

Taʿāwun Contributory Healthcare Scheme (THCS).

A Cooperative Society is legally permitted to be established to cater for the economic, welfare and other favourable interests of its members. It can however only extend its benefits to its members and friends. This explains why the beneficiaries must first become a member of the platform cooperative society.

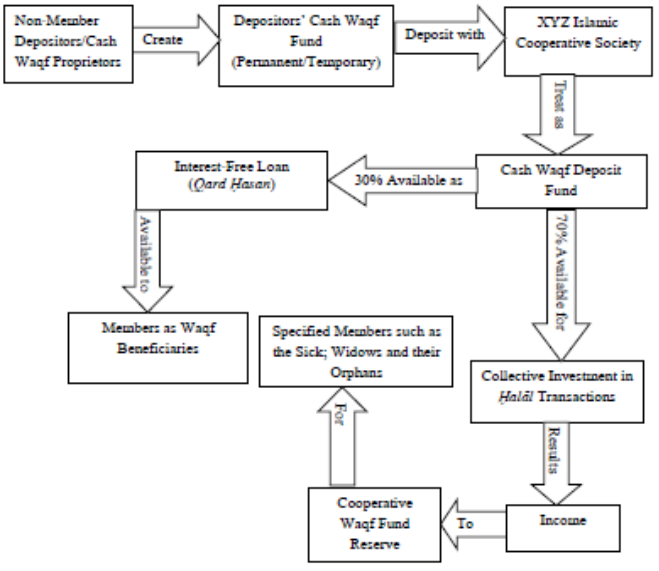
IV.1.1. *Processes, Procedures and Working Modalities:*

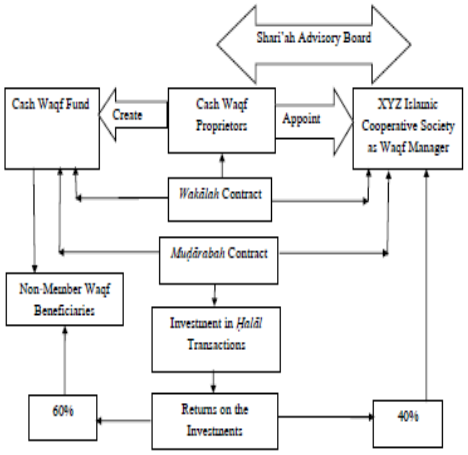
Members of the Participating Cooperative Society (PCS) contribute on monthly basis a uniform fixed amount to be known as THCS Savings. Though payment of lump sum by the able members can be allowed for the SLC of the relevant stream. The Participant is to have a file opened with the PHP and the benefits is to be attached to the user of the file for any treatment. Thus, in each SCHS file, the Participant is to expressly spell out five names of persons that may benefit from the scheme and only those beneficiaries can be allowed to be treated through the file.

There would be MaxTTA attached to each Participant to be divided into MonTTA. The Participant will bear the ETB. At the end of the tenure of the STREAM, the surplus amount will be distributed among members who did not undergo treatment. Alternatively, they may allow the Surplus to be transferred to the Healthcare Waqf Fund of the PCS and thereafter be invested with proceeds used for the stipulated beneficiaries. Accordingly, the participants whose surplus benefits are transferred to the Healthcare Waqf Fund become both the endower and the beneficiaries of the proceeds of the Waqf. The waqf would be like a self-benefitting waqf (*al-waqf ʿalā nafs*). Alternatively, the surplus may be engaged in *Muḍārabah* or *Murābaḥah* transactions by the PCS on behalf of the Participants, if it is not made as waqf. For example, a medical equipment may be purchased with the Surplus and made available to the partnering Healthcare Provider (Hospital or any other Health Facility Centre) on Hire (*Ijārah*) or *Murābaḥah* or as Waqf for the free use of the Participants or upon payment of a nominal fee for the maintenance purposes.

IV.2. **Model Two: Waqf Model**

The PCS/POB will establish a Healthcare Waqf Fund (HealthWaqF: HWF) which can be subscribed to by members and non-members. This will be in the form of Cash Waqf. The Cash Waqf will be generated through Monthly Waqf Contributions from members. Non-members can also donate to the Waqf Fund through the channel of what is tagged in the Cooperative Law as the Non-Member Deposit. Then, the Cash Waqf will be invested in Health Facilities and made available to the Healthcare provider as Waqf Equipment for the use of members or it may be made available on Hire (*Ijārah*) or *Murābaḥah* (Cost-Plus-Sale) basis. As earlier suggested, the Surplus from the *Taʿāwun* Health Scheme can also be a good source for the Healthcare Waqf Fund. This shows that the two models could be implemented side by side. The diagrams below demonstrate how non-Members can create cash waqf with the Society and how it would be managed and invested.





Source: Author

The significant of this Waqf Model is that it will open opportunities to well-to-do members of any Muslim organisation looking for an organised way to invest in the hereafter in something that could be attracting them benefits in form of *Sadaqah Jāriyah* (perpetual charity) to do so without the burden of repeated resorts to them for similar supports. The same opportunity will be opened to non-Members who also have similar good hearts. As Waqf, the fund must be perpetually preserved while the proceeds from its investment are what will be used to support the needy members for their health challenges. Rather than depleting huge amount gathered from members and non-members, receiving them as Waqf will make it imperative for the money to be reasonably and prudently managed through investment. There are many Islamic investment outlets to be explored but *Sukuk* is one of the most secured of them which could be engaged for that purpose.

IV.3. **Model Three: Savings Model**

The Muslim Cooperative Society or other Organisations will create a special Savings Scheme for their members to cater for their health need whenever it arises. The savings may be gathered into a Fund to be known as Healthcare Savings Fund (HSF). Their members shall be required to make monthly contributions to this Fund.

Members would appoint the Society/Organisation as the Manager of the Fund thereby creating a *Wakālah (agency)* Contract. The Society would also be given an *Amānah (trust)* to engage the Fund prudently in investment through *Muḍārabah*, *Mushārakah* or other investment outlets such as in the real estate. The Society will get commissions for the services. The proceeds from the investment will be distributed to the member-participants based on the amounts invested. The more income generated and added to the Savings of each member, the more the Fund in each account of the Participant.

The special initiative here is that, unlike the common practice where most savings of the members would be stagnant, the savings in this scheme would be constituted into a fund and must be invested. The arrangement may however be made on the percentage to be invested at a time to cater for the contingency that may arise. Thus, 70% of the Fund may be invested while the remaining 30% is always retained.

The scheme would also make it a term for each member to surrender certain percentage of its savings for the micro *Taʿāwun* scheme within this Scheme as well. Such will be used as voluntary donations to support a member whose fund is not enough to cater for his/her healthcare financial needs at any time.

V. **CONCLUSION**

An attempt has been made in this practical oriented study to demonstrate that the current healthcare scheme in Nigeria, popularly known as NHIS, is not Islamic oriented or *Shariah* compliant. The scheme is laden with notable prohibited elements of *gharar*, *maisir* and *ribā*. This can be seen from the provisions of the NHIS Act and the NHIS Operation Guidelines. Involuntary participation of Muslims in the scheme made possible by the law therefore has serious human rights implications which call for the scheme to be reviewed. Besides, it will hamper healthcare inclusion which the scheme aims to achieve especially from the informal private sectors. Therefore, a call is made for the NHIS to design a *Sharīʿah* compliant scheme that will be attractive to the Muslims to be called the "National Health *Takaful* Scheme (NHTS)" as

an alternative to the existing NHIS for Muslims and other ethically minded Nigerians.

At the private level, it is believed that Muslims can also implement their own-designed healthcare financing scheme devoid of the prohibited elements. To this end, this study has put forth a proposal for such private health financing schemes to be in three models of *Taʿāwun* Model, *Waqf* Model, and *Savings* Model. While Savings Models can also be helpful, it is less attractive because it may not provide a strong relief and support for the participants. Therefore, to answer the query on the Islamic options for Islamic Health Financing and Insurance, the respond would be either the Takaful or the proposed models advanced in this study.

Allah has expressly stated in the Quran that He would not change the situation of any people until and unless they change their attitudes and conducts.[37] Therefore, the desired change that will afford Muslims access to a *Shariah* compliant health financing scheme lies in their hands. As some successes have been achieved in the areas of banking and insurance businesses in Nigeria, Muslims in the country should begin to advocate for a *Sharīʿah* compliant national healthcare scheme (SCNHS). They should begin to agitate for the National Health Takaful Scheme (NHTS) as an alternative to the existing National Health Insurance Scheme (NHIS) for Muslims. This is a fundamental right to freedom of religion guaranteed for the Muslims. While this advocacy continues, Muslims can explore the *Taʿāwun*, the *Waqf* and the *Savings* Models at their private Organisational levels. Even if the proposed NHTS is achieved, the private engagements would still be relevant. Those who are forced to participate in the NHIS could console themselves with the concept of *Darūrah* (necessity), but they should not cease to seek forgiveness from Allah while they fervently pray for a change in the scheme in the nearest future. They could explore the private schemes proposed in this study.

[37] Quran 13: 11

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