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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION- 2023

DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON:

CONSIDERATION OF THE HEALTH (AMENDMENT) (NO. 2) BILL, 2022

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 22 MAR 2023	DAY: Wed
TABLED BY:	Deputy, LOM
CLERK AT THE TABLE:	Mado

The Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

March, 2023

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ANNEXURES

1. Minutes of sittings of the Committee on consideration of the Bill and report adoption
2. Signed list of Members who attended the sitting which considered and adopted the report
3. Newspaper advertisement on public participation
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CHAIRPERSON'S FOREWORD

The health (Amendment) (No. 2) Bill, 2022 is sponsored by the Hon. Didmas Wekesa Barasa member of Parliament for Kimilili Constituency.

The Bill was published in the Kenya Gazette on 21st October, 2022 (National Assembly Bills No. 42 of 2022). The Bill underwent First Reading on Wednesday, 30th November, 2022 and was thereafter committed to the Departmental Committee on Health for review and report to the House pursuant to the provisions of Standing Order 127.

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3) the Committee through an advertisement in the local daily newspapers of 11th December, 2022 invited the public to make representations on the Bill. The Committee received written memoranda from the public and the Ministry of Health.

The Committee held a total of two sittings considering the Bill and adopting its report. The first sitting was held on 16th February, 2023 when the Committee deliberated on the Bill clause by clause. The second sitting was held on 28th February, 2023 when the Committee considered and unanimously adopted its report with rejection of the Bill in its entirety.

May I take this opportunity to commend the Committee members for their devotion and commitment to duty which made consideration of the Bill successful, express gratitude to the offices of Speaker and Clerk of the National Assembly for always providing leadership and guidance and appreciate the Committee secretariat for exemplary performance in providing technical and logistical support. Indeed, their roles were critical to the Committee in the consideration of the Bill.

On behalf of the Departmental Committee on Health and pursuant to the provisions of Standing Order 127, it is my pleasant privilege and duty to present to the House a report of the Committee on the Health (Amendment) Bill, 2022.

THE HON. DR. ROBERT PUKOSE, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

1.0 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Health is established pursuant to the provisions of Standing Order No. 216 of the National Assembly and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament.

The mandate and functions of the Committee include:

- a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- ba) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- c) *To study and review all legislation referred to it;*
- d) *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- e) *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- f) *Vet and report on all appointments where the constitution or any other law requires the national Assembly to approve, except those understanding Order 204 (Committee on appointments);*
- g) *To examine treaties, agreements and conventions;*
- h) *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- i) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- j) *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider all matters relating to the health sector. The Committee oversees the Ministry of Health with its two State Departments i.e., State Department for Medical Services and State Department for Public Health and Professional Standards.
3. The following Semi-Autonomous Government Agencies (SAGAs); Kenya National Hospital (KNH); Moi Teaching and Referral Hospital (MTRH); Kenyatta University Teaching, Research and Referral Hospital (KUTRRH); Kenya Medical Training College (KMTC); Kenya Medical Supplies Agency (KEMSA); Kenya Medical Research Institute (KEMRI); National Aids Control Council (NACC); National Hospital Insurance Fund (NHIF) fall under the Ministry of Health.

1.3 Committee Membership

4. The Committee was constituted by the House on 27th October 2022 and comprises the following Members;

Chairperson

Hon. (Dr.) Robert Pukose, MP
Endebess Constituency
UDA Party

Vice-Chairperson

Hon. Ntwiga, Patrick Munene MP
Chuka/Igambang'ombe Constituency
UDA Party

Members

Hon. Owino Martin Peters, MP
Ndthiwa Constituency
ODM Party

Hon. Julius Ole Sunkuli Lekakeny, MP
Kilgoris Constituency
KANU

Hon. Muge Cynthia Jepkosgei, MP
Nandi (CWR)
UDA Party

Hon. Maingi Mary, MP
Mwea Constituency
UDA Party

Hon. Wanyonyi Martin Pepela, MP
Webuye East Constituency
Ford Kenya Party

Hon. Mathenge Duncan Maina, MP
Nyeri Town Constituency
UDA Party

Hon. Kipngok Reuben Kiborek, MP
Mogotio Constituency
UDA Party

Hon. Lenguris Pauline, MP
Samburu (CWR)
UDA Party

Hon. Dr. Nyikal James Wambura, MP
Seme Constituency
ODM Party

Hon. Oron Joshua Odongo, MP
Kisumu Central Constituency
ODM Party

Hon. Kibagendi Antoney, MP
Kitutu Chache South Constituency
ODM Party

Hon. (Prof.) Jaldesa Guyo Waqo, MP
Moyale Constituency
UPIA Party

Hon. Mukhwana Titus Khamala, MP
Lurambi Constituency
ANC Party

1.4 Committee Secretariat

5. The committee is serviced by the following secretariat staff:

Mr. Hassan Abdullahi Arale
Clerk Assistant II/Head of Secretariat

Ms. Gladys Jepkoech Kiprotich
Clerk Assistant III

Ms. Marlene Ayiro
Principal Legal Counsel II

Ms. Faith Chepkemoi
Legal Counsel II

Ms. Rahab Chepkilim
Audio Recording Officer II

Mr. Hiram Kimuhu
Fiscal Analyst III

2.0 INTRODUCTION

2.1 Objective of the Bill

6. The Health (Amendment) (No. 2) Bill, 2022 seeks to amend the Health Act, No. 21 of 2017 to introduce a new section on referral of patients to health institutions within and outside the country. Clause 1 of the Bill provides the short title of the Bill while Clause 2 provides for the following-
 - I. Provides for the development of policy guidelines on the referral mechanisms of patients within and outside the country (Section 79(1));
 - II. Requires that the policy guidelines shall provide for consultation with the National Health Insurance Fund and Kenya Medical Practitioners and Dentists Council (Section 79(2));
 - III. Provides that the policy guidelines shall ensure that adequate measures are taken to establish if health institutions, within and outside the country, where patients are being referred have adequate health equipment and personnel (Section 79(3)); and
 - IV. Obligates public health facilities referring patients outside the country to ensure that adequate consultations are taken with the Kenyan mission in the receiving country for purposes of establishing the credibility of the health institution where a patient is being referred to (Section 79(4)).

2.2 Legal Provision on Public Participation

7. Article 118 (1) (b) of the Constitution of Kenya provides as follows —

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”

8. Standing Order 127(3) provides that —

“The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—

- (a) inviting submission of memoranda;
- (b) holding public hearings;
- (c) consulting relevant stakeholders in a sector; and
- (d) consulting experts on technical subjects.

9. Standing Order 127(3A) further provides that—

“The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

2.3 Methodology used by the Committee in Public Participation

10. The Health (Amendment) (No. 2) Bill, 2022, National Assembly Bills No. 42 of 2022 was published on 21st October, 2022. Pursuant to Standing Order 127(1), the Bill was committed to the Departmental Committee on Health for consideration having been read a First Time on 30th November 2022.
11. Pursuant to the aforementioned provisions of the Constitution and Standing Orders, the Committee through local daily newspapers of Sunday, 11th December, 2022 published an advertisement inviting the public to submit memoranda. Further, in a letter dated 13th December 2022, the Committee invited various stakeholders

including the Office of the Attorney General, Ministry of Health to submit memorandum on the Bill.

12. The Report contains the analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the amendments and the list of institutions that submitted their memoranda.
13. The Report also contains a copy of the newspaper advertisements of Sunday, 11th December 2022 inviting the public to submit memoranda on the Bill and a letter inviting the relevant stakeholders for memoranda and the minutes of the Committee sittings during the consideration of the Bill.

3.0 STAKEHOLDER'S SUBMISSIONS

14. The Committee received memorandum from the following institutions following a call for memoranda through the print media on Monday, 9th December 2022 and a letter to relevant stakeholders dated 9th December, 2022:

- a) The Coalition of Blood for Africa (CoBA)
- b) The Kenya Healthcare Foundation
- c) The Ministry of Health

15. The table below highlights the stakeholder comments and the Committee resolution on the various clauses of the Bill—

THE HEALTH (AMENDMENT) (NO. 2) BILL, 2022				
	CLAUSE	STAKEHOLDER	COMMENT/ AMENDMENT	COMMITTEE RESOLUTION
1.	Clause 2	Coalition of Blood for Africa (CoBA) <i>Community of Stakeholders founded in 2020 for the coordination of a centralized advocacy approach towards adequate, safe and sustainable blood in sub-Saharan Africa.</i>	<ul style="list-style-type: none"> • Proposes that Section 79A (1) (a) should require that the policy guidelines for referral of patients within the country should provide that: “Blood and blood products are to be treated as an essential resource in terms of availability, accessibility, quality and safety in referral services”. <p>Rationale: Prioritization of blood as a key resource in strengthening health systems.</p> <ul style="list-style-type: none"> • Proposes that Section 79A(3) should require that measures of establishing whether a health facility has adequate personnel and equipment incorporates the availability of blood stock and includes the monitoring of stock levels for patients being referred for therapies that need blood for serious illnesses and emergencies. This monitoring should encompass details of available blood types, shelf life and guaranteed access to improve the efficiency of blood transfusion and blood therapy services. <p>Rationale: Prioritization of</p>	Noted. Issues of blood should be handled in the proposed Guidelines or under the law establishing the Kenya National Blood Transfusion Service under section 85 of the Health Act, 2017.

THE HEALTH (AMENDMENT) (NO. 2) BILL, 2022

	CLAUSE	STAKEHOLDER	COMMENT/ PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			blood as a key resource in strengthening health systems.	
		Kenya Healthcare Foundation (The Health Sector Board of the Kenya Private Sector Alliance -KEPSA)	<ul style="list-style-type: none"> Amend the marginal note to “Referral within and outside the country”. <p>Rationale: The proposed guidelines is intended to deal with referrals within and outside the country.</p> <ul style="list-style-type: none"> Replace the word “health institutions” with “health facility in section 79A(1) and section 79A(3). <p>Rationale: For harmony within the Health Act. Section 2 of the Health Act defines a health facility and not a health institution. The definition of referral in section 2 further uses the term “health facility”.</p> <ul style="list-style-type: none"> Include “duly registered and licensed medical insurance providers” as part of the persons to be consulted and engaged in the development of the proposed policy guidelines in section 79A(2). Remove National Health Insurance Fund (NHIF) from the listed persons to be engaged in section 79A(2). <p>Rationale: NHIF should not be a part of the overall engagement/consultation on the referral and the need or reason for the referral. What if a patient has and wants to use their private insurance? NHIF should only declare whether it would pay for or not pay for treatment abroad.</p> <ul style="list-style-type: none"> Amend reference to “health institution” or “health facility” in section 79A(4). 	<p>Noted. The entire Bill rejected as referrals within and outside the country are best handled by the Ministry through policy and not legislation.</p>

THE HEALTH (AMENDMENT) (NO. 2) BILL, 2022

	CLAUSE	STAKEHOLDER	COMMENT/ PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			<ul style="list-style-type: none"> Substitute section 79A(4) with: “A public health facility, private institutions and providers of health services that refers a patient to a health institution outside the country shall ensure that adequate consultations are undertaken with the Kenyan Mission in the country in which the referral is made to establish the credibility of the health institution”. <p>Rationale:</p> <ul style="list-style-type: none"> To make the provision applicable to private hospitals and practitioners. To ensure consistency with the objective of the Health Act of establishing a national health system which encompasses public and private institutions and providers of health services. This will protect, promote, improve and maintain the health and well-being of persons who seek health services outside of public health facilities ensuring the realization of health-related rights and interests of vulnerable groups. 	
			<ul style="list-style-type: none"> Provide that “all referrals abroad paid for using public funds must be confirmed by the KMPDC that such facilities and competencies are not available in Kenya”. Delete the title of Section 79 of the Health Act and replace it with “Referrals from practitioners of traditional 	<p>Noted. Already provided for in Rule 3 of the Medical Practitioners and Dentists Council (Referral of Patients Abroad) Rules, 2017.</p> <p>Rejected. The entire amendment rejected as referrals within and outside the country are</p>

THE HEALTH (AMENDMENT) (NO. 2) BILL, 2022				
	CLAUSE	STAKEHOLDER	COMMENT/ AMENDMENT	PROPOSED COMMITTEE RESOLUTION
			and alternative medicine” Rationale: to differentiate the existing section 79 from the new section 79A. The content of section 79 further relates to referrals from alternative and traditional medicine to conventional medicine	best handled by the Ministry through policy and not legislation.
2.	General comments	Coalition of Blood for Africa (CoBA)	<ul style="list-style-type: none"> The Bill will support patient referrals, reinforce referral guidelines and improve the quality of care for patients as set out by the public health guidelines for the promotion of wellness. 	Noted. The entire Bill rejected as referrals within and outside the country are best handled by the Ministry through policy and not legislation.
		Ministry of Health	<ul style="list-style-type: none"> The National Assembly to withhold the Bill and allow the Ministry to enforce planned interventions in ensuring an efficient and effective referral system. Referral of patients abroad is regulated by the Medical Practitioners and Dentists Council (Referral of Patients Abroad) Rules, 2017. The Rules provides for the referral circumstances, referral process, accreditation status of the receiving Practitioner and health facility abroad, responsibility and qualifications of the referring and receiving practitioner, sanctions for misconduct in the referral process among others. The Ministry has a Committee of Medical Experts which reviews and vets referrals of patients abroad. <p>Rationale:</p> <ul style="list-style-type: none"> The Ministry developed the 	Accepted. Referrals are a matter of policy that are best handled by the Ministry of Health and does not need to be legislated upon. Legislating on the same would cause unnecessary bureaucracies to the detriment of Kenyans seeking treatment abroad.

THE HEALTH (AMENDMENT) (NO. 2) BILL, 2022					
	CLAUSE	STAKEHOLDER	COMMENT/ AMENDMENT	PROPOSED	COMMITTEE RESOLUTION
			<p>Kenya Health Sector Referral Strategy in 2014 that guides the health sector in establishing an effective and responsive referral system through various strategic interventions.</p> <ul style="list-style-type: none"> The Ministry has initiated the development of guidelines on Medical Tourism that will guide the establishment of an efficient referral system for outbound and inbound patients. 		
		Kenya Healthcare Foundation	<ul style="list-style-type: none"> There is need to ensure that the proposed guidelines are not misused. Will a list of hospital institutions abroad qualifying to receive referrals from Kenya be made for purposes of Section 79A (3)? Who will oversight this and maintain such a list? There is need to ensure that the guidelines do not limit the basic human right of association. The guidelines as proposed appear to be limiting who a person can interact with outside the country. 		<p>Noted. These are policy issues which should be considered by the Ministry of Health in the development of the Guidelines on Medical Tourism.</p>

4.0 COMMITTEE OBSERVATIONS

16. The Committee having considered the Health (Amendment)(No.2) Bill, 2022, National Assembly Bills No. 42 of 2022 and submissions from stakeholders makes the following observations:

- (i) The development of guidelines for referrals within the country is already provided for within the Health Act, 2017 under Section 7 on referrals during emergencies, Sections 15 and 20 on the role of national county governments in referrals and Section 79 of the Health Act, 2017 which provides for the making of guidelines on referrals of patients within the country. The Act also has an inbuilt referral system between the two levels of government;
- (ii) There is no need to legislate on policy issues which are best handled by the relevant Ministry. Legislating on such issues presents a myriad of bureaucracies which may make it difficult for members of the public to operate with such legislation;
- (iii) Requiring the involvement of registered medical practitioners for referrals outside the country hampers the right to health guaranteed under the Constitution which encourages the patients' ability to choose a preferred hospital or medical practitioner;
- (iv) Referral of patients abroad is regulated by the Medical Practitioners and Dentists Council (Referral of Patients Abroad) Rules, 2017. The Rules provides for the referral circumstances, referral process, accreditation status of the receiving Practitioner and health facility abroad, responsibility and qualifications of the referring and receiving practitioner, sanctions for misconduct in the referral process among others;
- (v) The Ministry of Health has a Committee of Medical Experts which reviews and vets referrals of patients abroad; and
- (vi) The Kenya Health Sector Referral Strategy, 2014 guides the health sector in establishing an effective and responsive referral system through various strategic interventions. One of the said interventions is the development of guidelines on medical tourism that will guide the establishment of an efficient referral system for outbound and inbound patients, which the Ministry of Health has initiated.

5.0 COMMITTEE RECOMMENDATIONS

17. Upon considering the health (Amendment) (No.2) Bill, 2022 (National Assembly) Bill (No. 42 of 2022) and the submissions from the stakeholders, **the Committee recommends that the House ~~rejects~~ the Bill in entirety.**

Justification

- (i) Referral within the country is already provided for within the Health Act, No. 21 of 2017 and is a matter of policy.
- (ii) Referral outside the country is also a matter of policy that is best handled by the Ministry of Health and does not need to be legislated upon. Legislating on the same would cause unnecessary bureaucracies to the detriment of Kenyans seeking treatment abroad.

SIGN:.....DATE: 28/2/2023.....

for THE HON. DR. ROBERT PUKOSE, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

MINUTES OF THE SITTINGS



MINUTES OF THE SEVENTEENTH (17TH) SITTING OF THE
DEPARTMENTAL COMMITTEE ON HEALTH HELD IN MEDIA CENTRE ON
TUESDAY 28TH FEBRUARY, 2023 AT 12.00 NOON.

PRESENT

1. The Hon. Dr. Pukose Robert, M.P - Chairperson.
2. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
3. The Hon. Prof. Jaldesa Guyo Waqo, M.P.
4. The Hon. Wanyonyi Martin Pepela, M.P
5. The Hon. Lenguris Pauline, M.P
6. The Hon. Dr. Nyikal James Wambura, M.P.
7. The Hon. Oron Joshua Odongo, M.P.
8. The Hon. Muge Cynthia Jepkosgei, M.P.

MEMBERS ABSENT WITH APOLOGY

1. The Hon. Ntwiga Patrick Munene, M.P -Vice-Chairperson
2. The Hon. Kipngor Reuben Kiborek, M.P
3. The Hon. Mary Maingi, MP
4. The Hon. Mathenge Duncan Maina, M.P
5. The Hon. Kibagendi Antony, M.P.
6. The Hon. Titus Khamala, M.P
7. The Hon. Owino Martin Peters, M.P.

COMMITTEE SECRETARIAT

1. Mr. Hassan A. Arale - Clerk Assistant II
2. Ms. Gladys Kiprotich - Clerk Assistant III
3. Ms. Abigel Muinde Research Officer III
4. Ms. Faith Chepkemai Rotich -Legal counsel II
5. Mr. Benson Kimanzi – Serjeant At Arms
6. Ms. Rahab Chepkilim – Audio Officer

KENYA HEALTH WORKERS CAUCUS OFFICIALS

1. Mr. Peter Wachira- Chairman
2. Ms. Faith Kendi – Member- RCO
3. Mr. Barasa Oliver- General Secretary- Kenya Union of National Laboratory
4. Mr. George Gibore- Genral Secretary Kenya Union of Clinical Officers
5. Mr. Gaudencia Boke Hambura- KUCO Admin

MIN. NO. NA/DC-H/2023/73: PRELIMINARIES/INTRODUCTION

The meeting was called to order at 12 o'clock with a word of prayer by the Hon. Dr. Pukose Robert, M.P.-Chairperson. Introductions were then done-by honorable members, secretariat followed by Kenya Health Workers Caucus Officials.

MIN. NO. NA/DC-H/2023/74: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by The Hon. Dr. Nyikal James Wambura, M.P. and Seconded by the The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P

MIN. NO. NA/DC-H/2023/75: CONFIRMATION OF THE 13th AND 14th SITTING MINUTES

The Minutes of the 13th Sitting were confirmed having been proposed by The Hon. Wanyonyi Martin Pepela, M.P and seconded by The Hon. Oron Joshua Odongo, M.P.

The Minutes of the 14th Sitting were confirmed having been proposed by The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, and M.P and seconded by The Hon. Oron Joshua Odongo, M.P.

MIN. NO. NA/DC-H/2023/76: ADOPTION OF REPORTS

The following reports were adopted;

Report on the Consideration of the Statutory Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bills No. 60 of 2022 on Mental Health Act.CAP.248 and pharmacy and poisons act.CAP.244.was adopted having been proposed by The Hon. Oron Joshua Odongo, M.P. and Seconded by The Hon. Dr. Nyikal James Wambura, M.P.

Report on the consideration of the health (amendments) (NO.2) bill, 2022 which seeks to amend the health act, no.21 of 2017 to introduce a new section on referral of patients of health institutions within and outside the country, Was adopted Having been proposed by The Hon. Wanyonyi Martin Pepela, M.P and seconded by The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P

MIN. NO. NA/DC-H/2023/77: KENYA WORKERS UNION CAUCUS CHAIR PRESENTATION

The health sector workers presented as follows;

That The Health Sector Caucus convened the first ever health workers convention on 16th and 17 of March 2022, that brought together all stakeholders in health sector including Ministry of Health, Ministry of Labour and social services, Council of Governors, Health Sector Unions, Associations, Societies, Federations, NGOs and patient organizations who deliberated on the challenges and reached resolutions geared to address them as listed below;

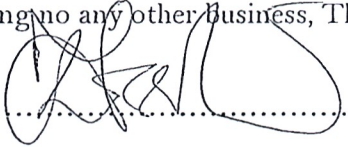
The Kenya Health Care Workers Annual Convention (KEHWAC) 2022 resolved as follows;

1. Develop a model Strategy for the implementation of annual employment of health care workers to meet the WHO 2013 recommendation for employment of 12000 health care workers for attainment of UHC.
2. Prioritization by the Government to increase in budgetary allocation funds for health Ministry towards the realization of the 15% baseline envisioned by Abuja declaration 2001.
3. Development of a joint Strategy for effective HRH management and harmonization across the county governments.
4. Timely Conclusion, registration and implementation of pending CBAs
5. Quarterly meetings between workers' representatives and employers to discuss challenges before they become disputes.

6. Embracing Social Dialogue and stakeholders' participation with a view to avert perennial industrial actions.
7. Formation of a National Joint Task Force on Health bringing together Ministry of Health, Council of Governors and Health sector unions to assess human resource management challenges across the 47 County Governments and Ministry of Health and recommend policy and legal interventions to address them.

MIN. NO. NA/DC-H/2023/78: ADJOURNMENT

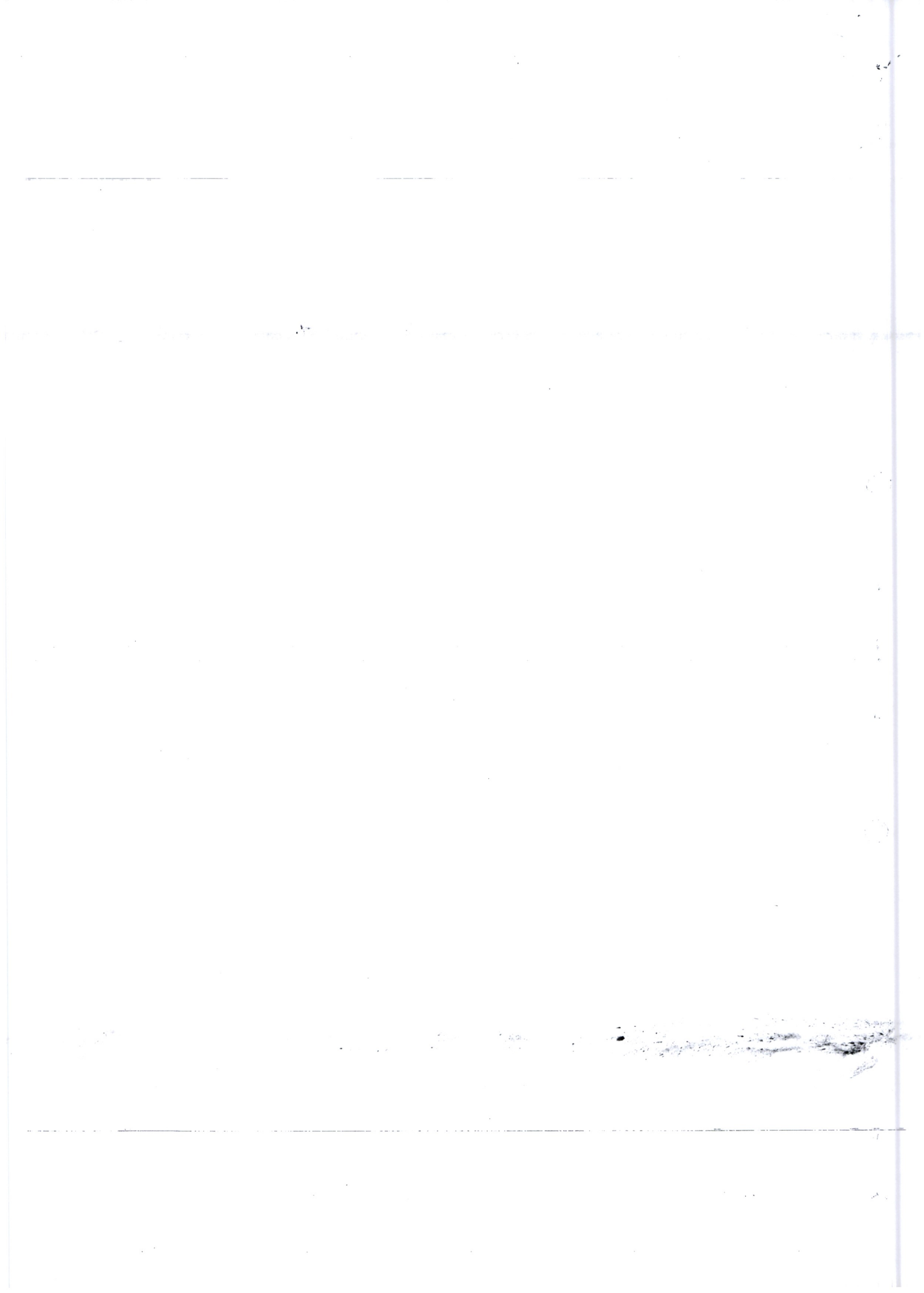
There being no any other business, The Chairperson, adjourned the meeting at exactly 2.00 p.m.

SIGN.......... DATE...28/2/2023.....

HON. DR. ROBERT PUKOSE, M.P – CHAIRPERSON



ADOPTION LIST OF THE MEMBERS





KENYA NATIONAL ASSEMBLY

13TH PARLIAMENT- SECOND SESSION (2023)

DIRECTORATE OF THE DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON HEALTH

ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE REPORT ON THE CONSIDERATION OF THE HEALTH (AMENDMENT) (NO. 2) BILL, 2022 WHICH SEEKS TO AMEND THE HEALTH ACT, NO. 21 OF 2017 TO INTRODUCE A NEW SECTION ON REFERRAL OF PATIENTS TO HEALTH INSTITUTIONS WITHIN AND OUTSIDE THE COUNTRY.

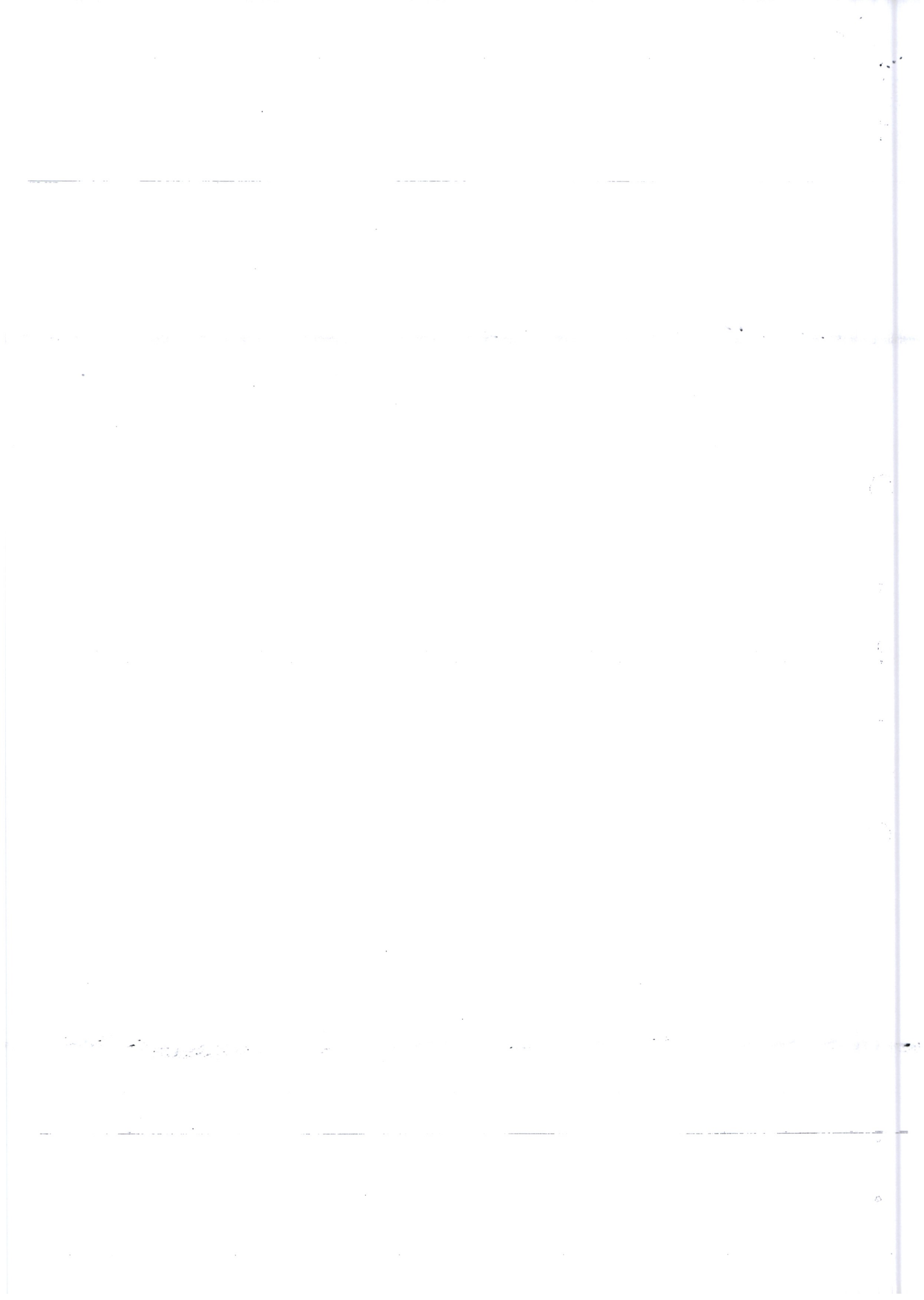
DATE 28/2/2023

VENUE Media Centre

NO.	NAME	SIGNATURE
1.	The Hon. Dr. Pukose Robert, M.P.- Chairman	
2.	The Hon. Ntwiga Patrick Munene, M.P.-Vice-Chairman	
3.	The Hon. Maingi Mary, M.P.	
4.	The Hon. Muge Cynthia Jepkosgei, M.P	
5.	The Hon. Kipngor Reuben Kiborek, M.P.	
6.	The Hon. Wanyonyi Martin Pepela, M.P	
7.	The Hon. Mathenge Duncan Maina, M.P.	
8.	The Hon. Lenguris Pauline, M.P.	
9.	The Hon. Oron Joshua Odongo, M.P.	

10.	The Hon. Dr. James Nyikal Wambura, M.P.	/
11.	The Hon. Kibagendi Antoney, M.P.	/
12.	The Hon. Sunkuli Julius Lekakeny ole, EGH, EBS M.P.	<i>[Handwritten signature]</i>
13.	The Hon. Prof. Jaldesa Guyo Waqo, M.P.	<i>[Handwritten signature]</i>
14.	The Hon. Titus Khamala, M.P	/
15	The Hon. Owino Martin Peters, M.P.	/

**NEWSPAPER ADVERTISEMENT ON PUBLIC
PARTICIPATION**



Discussions Today, President Ruto will hold talks in Nairobi with leaders from various technology companies

State to hold ICT heavy Jamhuri

A tech conference is ongoing at KICC and ICT scholarships will be issued at Nyayo

BY NDUBI MOTURI

President William Ruto will today host tech experts from across the globe as part of celebrations for this year's Jamhuri Day.

Dr Ruto's administration has harnessed the December 12 holiday around innovation and has since rolled out programmes targeting tech-savvy youth.

An incentive for youth to attend tomorrow's celebrations at Nyayo Stadium, the government says those in attendance will get scholarships.

In the last couple of days, the focus has been on exhibitions, including the presidential launch of the Innovation Outlook for Kenya at the Sarit Centre Expo Centre in Nairobi.

A two-day high level discussion on technology and innovation kicked off yesterday at the Kenyatta International Convention Centre (KICC).

"On Sunday, global tech leaders from various companies will be in the country and, together with President William Ruto, will discuss various partnerships and opportunities for Kenyans and thereafter meet innovators at the

25,000

Number of public hotspots the government plans to provide in the next five years

KICC for further engagement," State House Press Secretary Emmanuel Talam said in a dispatch.

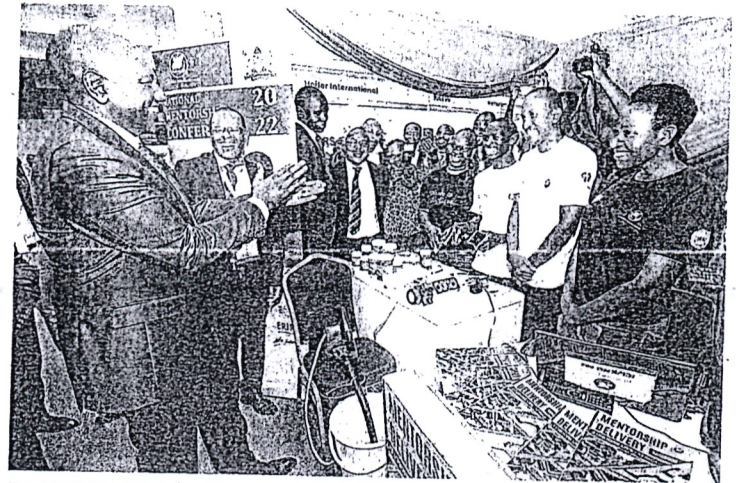
Several cabinet secretaries and senior government officials will headline the events. The officials will discuss various challenges and plans for the sector.

In his speech at the launch of the high-level tech discussions yesterday at KICC, ICT Cabinet Secretary Eliud Owalo announced that the government is rolling out programmes to support tech-savvy youth.

Mr Owalo said the government is working with both local and international partners to expand the national fibre optic network by 100,000 kilometres.

The new administration, he said, has also begun to provide government-funded internet to the public through state-funded hotspots.

"We expect to provide up to 25,000 of these over the next five years. These hotspots are going to



President William Ruto attends the Innovation Week at the Sarit Center in Nairobi on December 6, 2022 ahead of the Jamhuri Day celebrations tomorrow. PHOTO | PCS

convert villages and marketplaces into digital hubs," said Mr Owalo.

He said the government plans for Public-Private-Partnerships (PPPs) in the ICT and innovation spaces to address all issues within the tech and innovation ecosystem, including training, talent development, placement and

creation of digital jobs.

"Even as Konza comes up, the government is, meanwhile, in the process of deploying 23,000 computer devices to all technical and vocational training institutions in the country and also connecting them to high-speed quality internet to ensure that young Kenyans, wherever they are, are

equipped – and fit for purpose – to service the digital market demand," he added.

Meanwhile, the newly refurbished Uhuru Park is set to open tomorrow for the annual Nairobi festival that will run until Saturday.

jmoturi@ke.nationmedia.com



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIRST SESSION

In the Matter of Article 118(1) (b) of the Constitution
And
In the Matter of Consideration by the National Assembly of:-

1. The Health (Amendment) (No. 2) Bill (National Assembly Bill No. 42 of 2022) and
2. The Equalization Fund Bill (National Assembly Bill No. 47 of 2022).

PUBLIC PARTICIPATION SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

The Health (Amendment) (No. 2) Bill (National Assembly Bill No. 42 of 2022) is sponsored by Hon. Didimus Wekesa Baraza, MP and was read a First Time on 30th November, 2022 and committed to the Departmental Committee on Health for review and reporting to the House. The principal object of the Bill is to amend the Health Act, No. 21 of 2017 to introduce a new section which provides for the development of policy guidelines to regulate the referral of patients to health institutions both within and outside the country.

The Equalization Fund Bill (National Assembly Bill No. 47 of 2022) is sponsored by Hon. Kassalt Kamet, MP and was read a First Time on 30th November, 2022 and committed to the Departmental Committee on Finance and National Planning for review and reporting to the House. The principal object of the Bill is to operationalize the equalization Fund as established under article 204 of the Constitution. The Bill also seeks to establish a board to administer the Fund in instances where the Fund is directly used for the provision of basic services to marginalized areas.

IN COMPLIANCE with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Departmental Committees on Health and that on Finance and National Planning hereby invite the general public and stakeholders to submit memoranda on the Bills. Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building or on www.parliament.go.ke/the-national-assembly/house-business/bills.

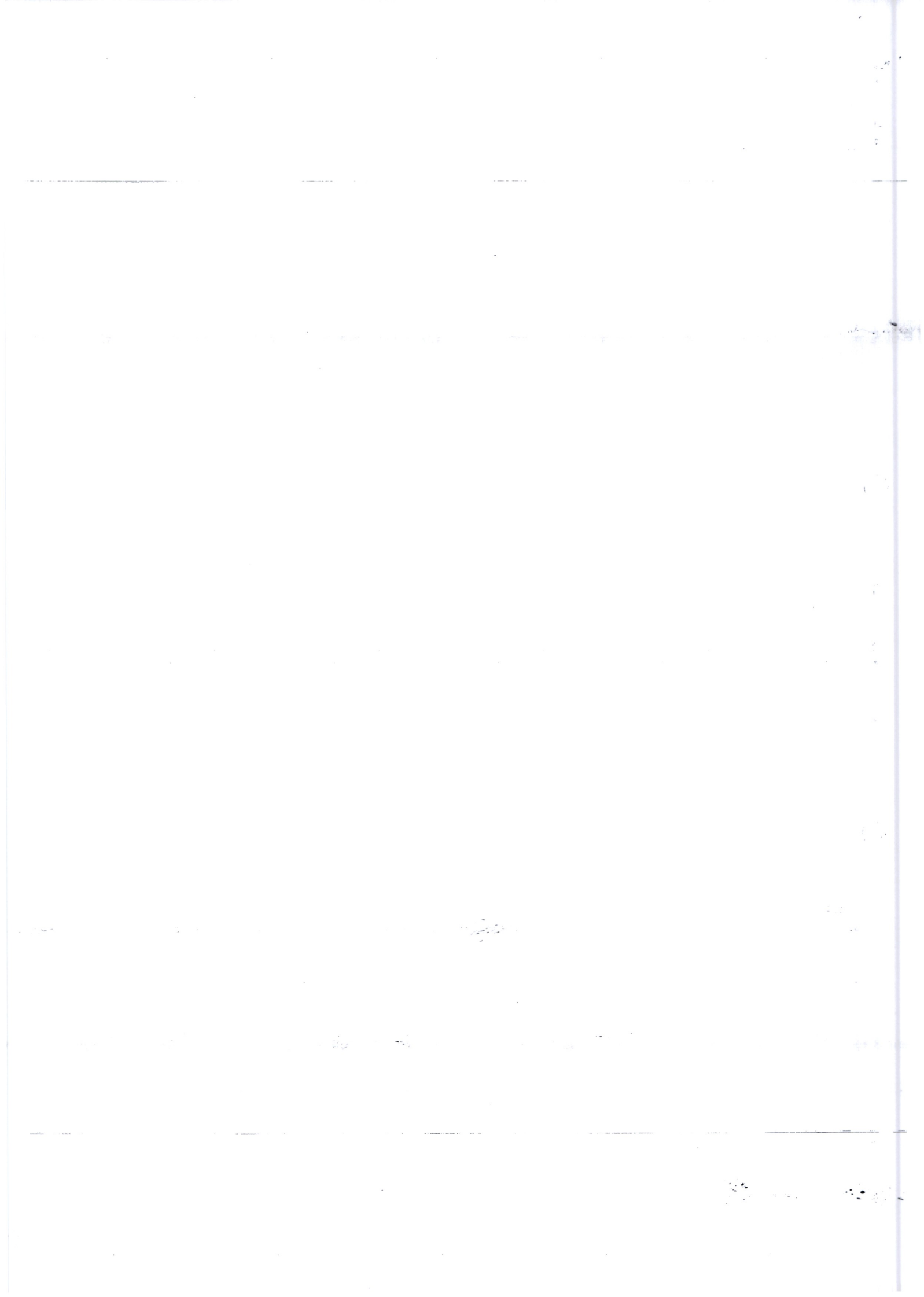
The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to ena@parliament.go.ke; to be received on or before Tuesday, 20th December, 2022 at 5.00 p.m.

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
9th December, 2022

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STAKEHOLDER'S SUBMISSIONS



The Voice of Private Sector in Kenya

Ref: 006/01-PPD/2023

January 20, 2023

Clerk of the National Assembly
Clerk's Chambers National Assembly
Parliament Buildings
P.O Box 41842-00100
NAIROBI, Kenya

Attn: Jeremiah W. Ndongi, MBS

Dear Sir,

**RE: SUBMISSION OF MEMORANDA ON THE HEALTH (AMENDMENT) (NO.2) BILL
(NATIONAL ASSEMBLY BILL NO. 42 OF 2022)**

Receive warm greetings from Kenya Private Sector Alliance (KEPSA).

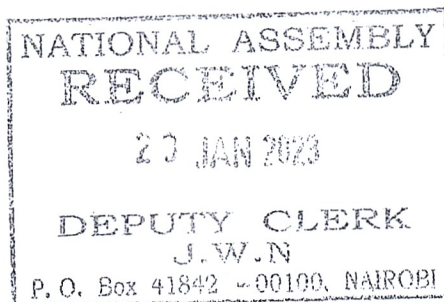
We refer to your letter (Ref. NA/DC-H/2022/005) dated 13th December 2022 requesting for submission of memoranda on consideration of the Health (Amendment) (No.2) Bill (National Assembly Bill No. 42 of 2022). Please find attached the private sector submissions as compiled by KEPSA's Health Sector Board, Kenya Health Federation.

We thank you and look forward to working together through this process.

Yours Sincerely,

Carole Kariuki, EBS, MBS, HSC
Chief Executive Officer

Enc. (1)



*DD controller
27/01/23*

*Hassan Arabe
pls facilitate
6/2/23*

The Health Sector Board of KEPSA

22nd December 2022.

Ref. NA/DC-H/2022/005

Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

Attn: Jeremiah W. Ndombi, MBS

Dear Sir,

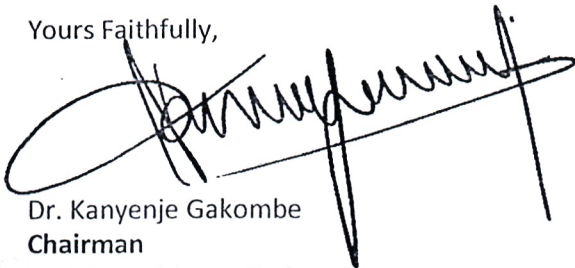
RE: CONSIDERATION OF THE HEALTH (AMENDMENT) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO.42 OF 2022)-

Kenya Healthcare Federation (KHF) is the Health Sector Board of the Kenya Private Sector Alliance (KEPSA). Founded in 2004, the Federation works with commercial healthcare institutions, professional associations, and non-state healthcare firms (including Faith Based Organizations) to support quality and affordable healthcare for all through Public-Private Partnerships and is dedicated to engaging the government and all relevant stakeholders in achieving quality healthcare by maximizing the contribution of the Private Sector.

We write to you in reference to the Bill in subject. We are pleased to submit our memoranda, enclosed herewith, in relation to the following Bill of the National Assembly for due consideration by the Department Committee on Health.

We look forward to your kind consideration.

Yours Faithfully,



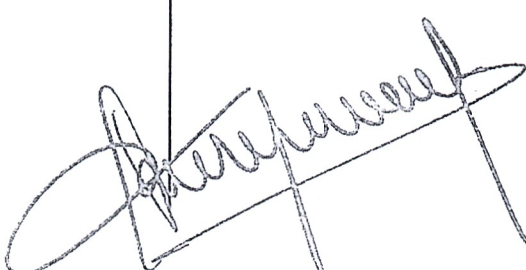
Dr. Kanyenje Gakombe
Chairman
Kenya Healthcare Federation

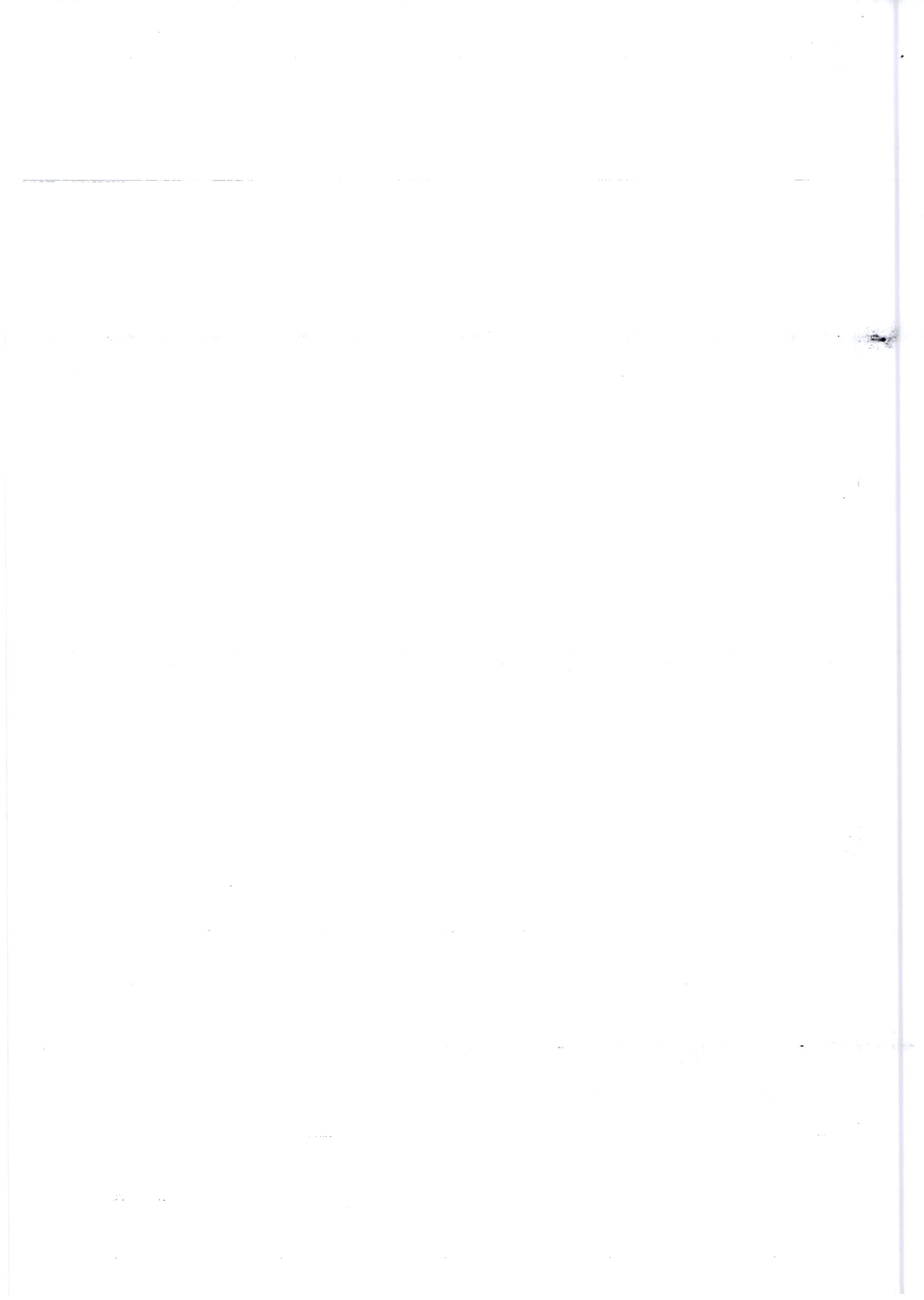
SUBMISSION MEMORANDUM
PROPOSED AMENDMENTS TO THE HEALTH (AMENDMENT) (NO. 2) BILL (NATIONAL ASSEMBLY BILLS
NO. 42 OF 2022)

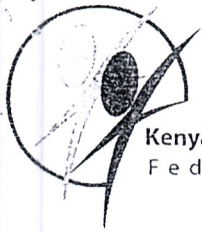
The Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
Section 79(A)	The title of the clause is "referral outside the country"–	Amend the title of the section to read: <i>"Referral within and outside the country"</i>	The Amendment Act seeks to provide for policy guidelines on referrals within <u>and</u> outside the country as provided for under in Section 79(A) (1) of the proposed Amendment Act and the proposed change seeks to amend the title accordingly.
Section 79(A) (1)	The Cabinet secretary shall develop policy guidelines on mechanisms for referral of patients from health institutions – (a) within the country; and (b) outside the country	Amend the reference to "health institution" in the proposed Section 79 (A) (1) to "health facility"	The proposed amendment is to provide clarity and reference to the terms as defined in the Act. There is no definition of health institution. Secondly, the definition of 'referral' in Section 2 of the Health Act is "referral" means the process by which a given health facility transfers a client service, specimen and client parameters to another facility to assume responsibility for consultation, review or further management; How do we ensure that basic human right of association is not impeded upon? The CS can give guidelines but is it not similar to giving guidelines on who to interact with outside the country? How do we ensure the law cannot be misused?
Section 79(A) (2)	Despite subsection (1), the policy guidelines for referral mechanisms developed under subsection (1) shall provide for consultations with – a. The body responsible for the registration of medical practitioners and dentists	Based on proposed clarification of subsection 1, the proposal is to include consultations with • Duly registered and licensed medical insurance providers	Section 79(A) (3) refers to engagements with medical insurance providers and the rationale for this inclusion is to have medical insurance providers engage in the development of the policy guidelines as they may be impacted by the policy guidelines. While the KMPDC aspect makes sense, it is preposterous for NHIF to be a party to this discussion. All NHIF should declare is whether they would pay for it or not and NOT overall consultations on the referral and the need or reason for it. What would happen if the patient has wants to use their private insurance? Or pay by themselves?

Chairman: Dr. Kanyenje Gakombe Vice-Chair: Dr. Elizabeth Wala Treasurer: Mr. Stephen Maina

Directors: Dr. Francis Karanja Mr. Vinod Gupta Dr. Walter Obita Dr. Linus Ndegwa Dr. Dhiella Munene Mr. Isaiah Okoth Mr. Antony Jaccoc

	b. The National Hospital Insurance Fund		
Section 79(A) (3)	The policy guidelines referred in this section shall ensure that a public health facility that refers a patient to a health institution outside the country shall ensure that adequate consultations are undertaken with the Kenyan mission in the country in which the referral is made to establish the credibility of the health institutions	Amend reference to Health institution to Health Facility	<p>The proposed amendment is to provide clarity and reference to the terms as defined in the Act. There is no definition of health institution.</p> <p>Secondly, the definition of 'referral' in Section 2 of the Health Act is "referral" means the process by which a given <u>health facility</u> transfers a client service, specimen and client parameters to another facility to assume responsibility for consultation, review or further management;</p> <p>The policy guidelines referred to in this section shall ensure that adequate measures are taken to establish whether the health institutions to which a patient is referred within or outside the country possess the adequate health equipment and health personnel. Will a list be made? Who will have purview of this? Who will maintain it?</p>
Section 79(A) (4)	A public health facility that refers a patient to a health institution outside the country shall ensure that adequate consultations are undertaken with the Kenyan mission in the country in which the referral is made to establish the credibility of the health institution	Amend reference to Health institution or Health Facility.	<p>To make the provision applicable to private hospitals and practitioners</p> 





Kenya Healthcare
Federation



The Health Sector Board of KEPSA

Section 79 of the Act	The title of this section is "referral" The detail in the section relates to referral for patients on alternative of traditional medicine.	Amend title of Section 79 to read <i>"Referrals from practitioners of traditional and alternative medicine"</i>	The amendment is to provide clarity and differentiation in relation to the existing Section 79 and the proposed Section 79A
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ADDITIONAL INPUT

The Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
79A (4)	A public health facility that refers a patient to a health institution outside the country shall ensure that adequate consultations are undertaken with the Kenyan mission in the country in which the referral is made to establish the credibility of the health institution.	A public health facility, private institutions and providers of health services that refers a patient to a health institution outside the country shall ensure that adequate consultations are undertaken with the Kenyan mission in the country in which the referral is made to establish the credibility of the health institution.	This change is consistent with the objective of the Health Act Number 21 of 2017 to establish a national health system which encompasses public and private institutions and providers of health services. This will protect, promote, improve and maintain the health and well-being of persons who seek health services outside of public health facilities ensuring the realization of the health-related rights and interests of vulnerable groups within society, including persons with disabilities, older members of society women, among others.
79A (4)		We should add that all referrals abroad that are paid for with public funds MUST be confirmed by the Board that such facilities and competencies are not available in Kenya.	



Mr. Samuel Njoroge
The Clerk of the National Assembly,
Parliament Buildings,
P.O Box 41842-00100,
Nairobi, Kenya.

DD C-Head
8
22/12/22

Dear Mr. Njoroge,

RE: MEMORANDUM ON THE CONSIDERATION OF THE HEALTH (AMENDMENT BILL) (NO. 2) (NATIONAL ASSEMBLY BILL NO. 42 OF 2022).

The Coalition of Blood for Africa (CoBA) is a community of stakeholders founded in 2020 aimed at coordinating a centralized advocacy approach towards adequate, safe, and sustainable blood in sub-Saharan Africa. As such, CoBA is set up in a multi-sectoral and multi-stakeholder context in which we seek to complement the strategic actions of various industry and beyond industry actors towards the blood agenda for Africa.

The Coalition is keen to build a mutually beneficial partnership with the Kenya Parliamentary Departmental Committee on Health premised on the significant role that it plays in developing and reviewing laws and policies impacting the sector.

That said, we appreciate the opportunity to make our submissions on the legislative proposal the Health (Amendment Bill)(No. 2) (National Assembly Bill No. 42 of 2022), which is seeking to amend the Health Act by inserting an additional clause, 79A. We believe that clause 79A will support patient referrals, reinforce referral guidelines and improve the quality of care for patients as set out by the public health guidelines to promote wellness and achieve societal healthcare goals.

To this end, CoBA wishes to respond to the request on the consideration of the bill. Below are our submissions on the memorandum of the bill:

Under clause 79A (1), the Cabinet Secretary shall develop policy guidelines on the mechanisms for referrals of patients to health institutions, a) within the country, CoBA is requesting for consideration to be made prioritizing blood as a key resource in strengthening health systems by making the following submission: That in the policy guidelines,

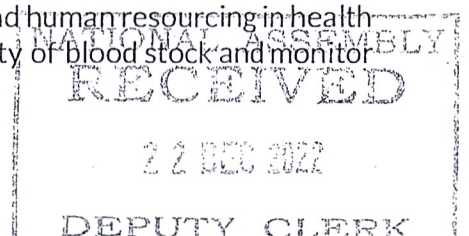
Blood and blood products are to be treated as an essential resource in terms of availability, accessibility, quality & safety in referral services.

Under clause 79A (3), the policy guidelines referred to in this section shall ensure that adequate measures are taken to establish whether the health institutions to which a patient is referred within or outside the country possess the adequate health equipment and health personnel. CoBA wishes to submit that:

The measures taken to ensure adequate infrastructural and human resourcing in health institutions prior to referral should incorporate availability of blood stock and monitor

Mr. Hassan Anole

Pls TNA. 23/12/22





stock levels for patients being referred for therapies that need blood for serious illnesses and emergencies. The checks should encompass details of available blood types, shelf life and guaranteed access to improve the efficiency of blood transfusion and blood therapy services.

To provide further clarification or information, CoBA would be happy to meet with the Committee to make oral submissions and provide further data to support our written submissions on a date and time of their convenience.

For more information please contact Magdalene Kariuki at mkariuki@aficapractice.com or 0724969710.

Your consideration of the above submissions is highly appreciated.

Yours Faithfully,

Caroline Wesonga Wangamati,
Lead- Coalition of Blood for Africa,
cwesonga@aficapractice.com
P.O Box 40868 - 00100,
Mitsumi Business Park,
Nairobi, Kenya.

cc

Hassan A. Arale,
Committee Clerk,
Parliament Buildings,
P.O Box 41842-00100,
Nairobi, Kenya.

Gladys Kiprotich,
Parliament Buildings,
P.O Box 41842-00100,
Nairobi, Kenya.

② Mr. Aale
ZAK
2/1/23



① D/Deputy
Commissioner
for attention of
committee on
Health
5/01/23

**MINISTRY OF HEALTH
OFFICE OF THE PRINCIPAL SECRETARY
STATE DEPARTMENT FOR MEDICAL SERVICES**

Telephone: Nairobi 254-020-2717077
Fax: 254-2719008
Email: psmedical@health.go.ke
When replying please quote:

AFYA HOUSE
CATHEDRAL ROAD
P. O Box 30016-00100

Ref: MOH/ADM/NA/01/93 VOL. VII

29th December, 2022


Mr. Samuel Njoro
Clerk of the National Assembly
Parliament Buildings
NAIROBI

**RE: CONSIDERATION OF THE HEALTH (AMENDMENT) (NO.2)
BILL (NATIONAL ASSEMBLY BILL NO.42 OF 2022)**

Reference is made to your letter Ref: NA/DC-H/2022/005 on the above subject matter.

Attached find the Ministry's Memoranda on the Bill.

Thank you for your continued support and collaboration.

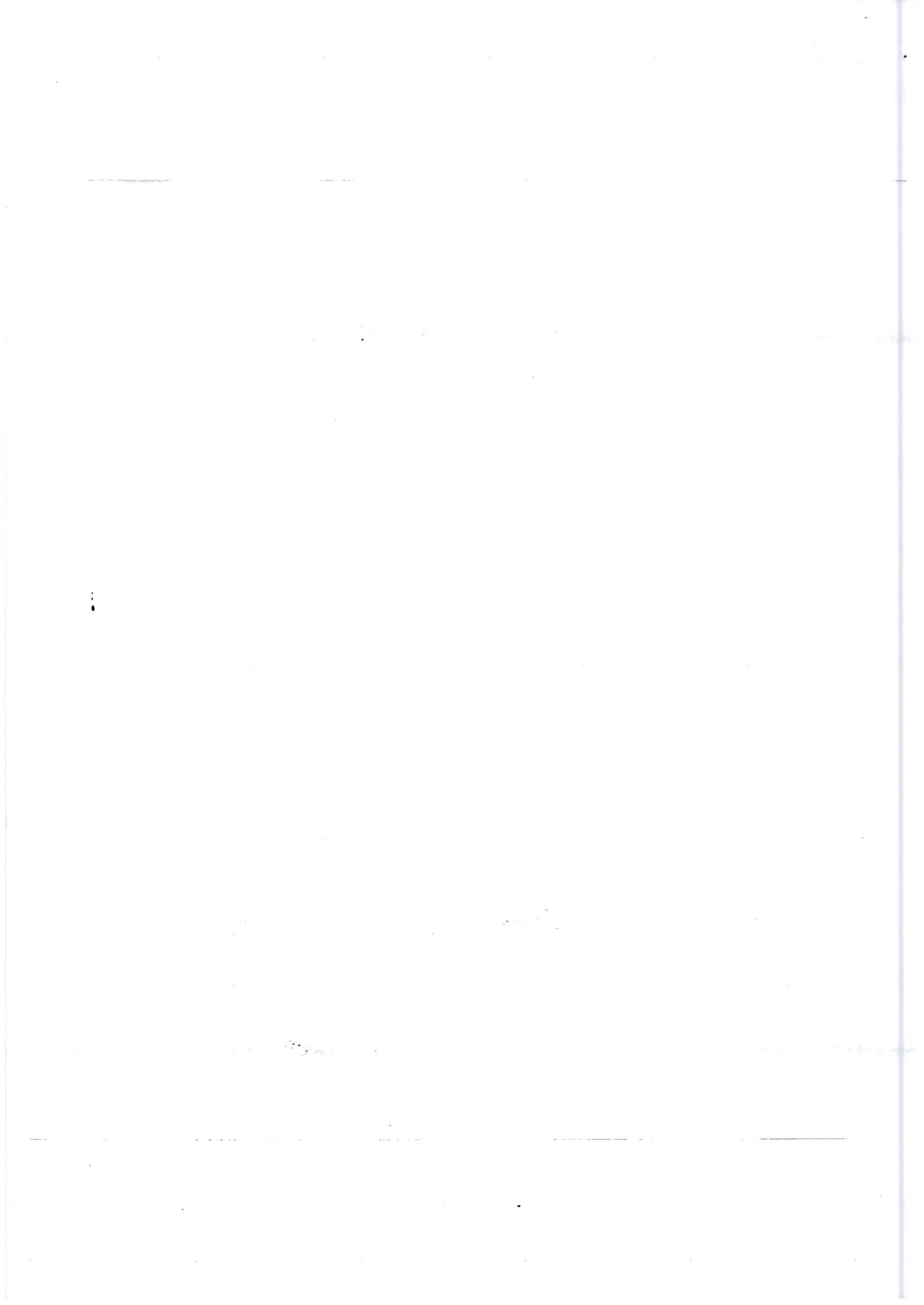

~~Principal Secretary~~
Peter K. Tum, CBS
PRINCIPAL SECRETARY

Copy to: **Cabinet Secretary**
Ministry of Health

Principal Secretary
State Department for Health and Professional Management

Ag. Director General
Ministry of Health

<p>DIRECTOR GENERAL</p> <p>RECEIVED</p> <p>06 JAN 2023</p> <p>Directorate of Departmental Committees</p>	<p>NATIONAL ASSEMBLY RECEIVED</p> <p>05 JAN 2023</p> <p>CLERK'S OFFICE</p> <p>P O Box 41842, NAIROBI</p>
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**MINISTRY OF HEALTH
OFFICE OF PRINCIPAL SECRETARY
STATE DEPARTMENT FOR MEDICAL SERVICES**

**MEMORANDUM ON THE PROPOSED HEALTH (AMENDMENT)
(NO.2) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2022)**

Ministry refers to a letter from The Clerk of The National Assembly Ref: NA/DC-H/2022/005 dated 13th December, 2022 and responds as follows:

The Proposed Health (Amendment) Bill NO.42 of 2022 seeks to amend the Health Act 2017 and introduce a new section which provides for the development of Policy guidelines to regulate the referral of Patients to health institutions both within and outside the Country.

The new section will ensure that relevant Stakeholders are involved in the process of developing such Policy guidelines to ensure the referral process to hospitals outside the Country is not abused.

In Kenya, referral of Patients for treatment abroad is regulated through the Medical Practitioners and Dentists Council (Referral of Patients abroad) Rules, 2017.

The Rules provide for the circumstances under which a Patient/Client should be referred by a Medical or Dental Practitioner abroad for treatment, Qualifications and responsibility of the referring Practitioner, Category and Accreditation Status of the receiving Practitioner, the health facility abroad and the referral process.


In addition, the Rules provide guidance on how to address Professional misconduct in the process of referral of Patients abroad including; referral of Patients whose health outcome may not improve, disclosure of Patient information to a third party without consent and referral of Patients for personal or financial gain.

The Ministry has also established a committee comprised of Medical Experts to review and vet referrals for medical treatment abroad to ensure compliance to the Rules.

Further, the process of developing a Policy Guideline on Medical Tourism has been initiated and will guide the establishment of an efficient Referral System for both outbound and inbound clients/patients.

The Ministry in 2014, developed the Kenya Health Sector Referral Strategy aiming to provide guidance to Health Sector in building an effective referral system that responds to the needs of Kenyans. The Strategy also provides the strategic interventions needed to improve efficiency and responsiveness of a referral system.

In view of the above, the Ministry requests the National Assembly to withhold the Proposed Bill and allow the Ministry to enforce planned interventions in ensuring an efficient and effective Referral System for the Health Sector.


Peter K. Tum, CBS
Principal Secretary