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*12/10/23*

THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

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DIRECTORATE OF DEPARTMENTAL COMMITTEES  
DEPARTMENTAL COMMITTEE ON HEALTH

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REPORT ON:

THE FACILITIES IMPROVEMENT FINANCING BILL, 2023 (SENATE BILL NO. 43  
OF 2023)

12 OCT 2023 THURS  
12/10/2023  
Hon (Dr) Robert Pukose, MP  
Chair, Health Committee  
A. Shubuko

CLERKS CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
PARLIAMENT BUILDINGS  
NAIROBI

OCTOBER, 2023

## TABLE OF CONTENTS

CHAPTER ONE .....	6
1.0 PREFACE .....	6
1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE .....	6
1.2 COMMITTEE MEMBERSHIP .....	7
1.3 COMMITTEE SECRETARIAT .....	9
CHAPTER TWO .....	10
2.0 OVERVIEW OF THE FACILITIES IMPROVEMENT FINANCING BILL, 2023 (SENATE BILL NO. 43 OF 2023) .....	10
CHAPTER THREE .....	12
3.0 CONSIDERATION OF THE BILL BY THE COMMITTEE .....	12
3.1 LEGAL PROVISION ON PUBLIC PARTICIPATION .....	12
3.2 PUBLIC PARTICIPATION AND STAKEHOLDER CONSULTATION .....	12
3.3 SUBMISSIONS ON THE BILL .....	13
CHAPTER FOUR .....	18
4.0 COMMITTEE OBSERVATIONS .....	18
CHAPTER FIVE .....	20
5.0 COMMITTEE RECOMMENDATIONS .....	20

## LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings
- Annexure 2:** Report Adoption Schedule
- Annexure 3:** Copy of the Newspaper Advertisement on Public Participation on the Bill
- Annexure 4:** Letters inviting Stakeholders to submit views on the Bill
- Annexure 5:** Analysis of Submissions by Stakeholders on the Bill
- Annexure 6:** Submissions by stakeholders

## FOREWORD BY THE CHAIRPERSON

This report contains proceedings of the Departmental Committee on Health on its consideration of the Facilities Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023), by the Senate Majority Leader, Sen. Aaron Cheruiyot, which was published in the Kenya *Gazette* Supplement No. 168 of 15<sup>th</sup> September 2023. The Bill was passed by the Senate, with amendments, on Wednesday, 27<sup>th</sup> September 2023 and thereafter conveyed to the National Assembly in accordance with provisions of Article 110(4) of the Constitution. The Bill was subsequently committed to the Departmental Committee on Health on Tuesday, 3<sup>rd</sup> October 2023 for consideration and reporting to the House pursuant to the provisions of Standing Order 127.

The Bill has twenty-nine (29) clauses and seeks to provide for public health facility improvement financing and the management and administration of facility improvement financing in the country.

Following placement of advertisements in the print media on Wednesday, 4<sup>th</sup> October, 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received memoranda from several individuals and institutions as enumerated in Part III of the Report.

The Committee requested memoranda from several key stakeholders including the Ministry of Health, the Office of the Attorney-General and Department of Justice, the National Treasury, the Commission on Revenue Allocation, the Office of the Controller of Budget, the Kenya Law Reform Commission, the National Health Insurance Fund, the Kenya Medical Practitioners and Dentists Council, the Kenya National Commission on Human Rights, the National Gender and Equality Commission, the Commission on Administrative Justice, the Council of Governors, the County Assemblies Forum, the Kenya Medical Association, the Kenya Private Sector Alliance, the Consumers Federation of Kenya, the Rural Private Hospitals Association of Kenya, the Kenya AIDS NGOs Consortium and the Kenya Association of Private Hospitals vide letters REF: NA/DDC/DC-H/2023/094 and REF: NA/DDC/DC-H/2023/095 dated 4<sup>th</sup> October 2023.

The Committee received written memoranda from the State Department for Medical Services in the Ministry of Health, the County Assemblies Forum (CAF), the Council of Governors and a group of Civil Society Organizations involved in matters of health, governance and human rights comprising of the Kenya Human Rights Commission, the Amnesty International Kenya, the People's Health Movement (PHM), the Kenya AIDS NGOs Consortium (KANCO), the Institute of Public Finance (IPF) and the Scaling Up Nutrition Civil Society Alliance (SUN CSA-Kenya). The Committee also engaged the Ministry of Health from 5<sup>th</sup> to 8<sup>th</sup> October 2023 at the Weston Hotel in Nairobi County.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all stakeholders who submitted their memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee

Secretariat who made useful contributions towards the consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Health and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Facilities Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023). It is my pleasure to report that the Committee has considered the Facilities Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023) and has the honour to report back to the National Assembly with the recommendation that the Bill be **approved without amendments.**



Hon. Dr. Robert Pukose, M.P.

Chairperson, Departmental Committee on Health

## CHAPTER ONE

### 1.0 PREFACE

#### 1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Departmental Committee on Health is established pursuant to the provisions of Standing Order 216 of the National Assembly Standing Orders 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.*
2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters related to health, medical care and health insurance including universal health coverage.
3. In executing its mandate, the Committee oversees the Ministry of Health with its two State Departments namely the State Department for Medical Services and the State Department for Public Health and Professional Standards.

## 1.2 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Health was constituted by the House on 27<sup>th</sup> October 2022 and comprises of the following Members:

### **Chairperson**

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

### **Vice-Chairperson**

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

Hon. Owino Martin Peters, MP  
Ndhiwa 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**

### 1.3 COMMITTEE SECRETARIAT

5. The Committee is supported by the following Members of Staff:

Mr. Hassan Abdullahi Arale  
**Clerk Assistant I/Head of Secretariat**

Ms. Gladys Jepkoech Kiprotich  
**Clerk Assistant III**

Ms. Marlene Ayiro  
**Principal Legal Counsel II**

Ms. Abigael Muinde  
**Research Officer III**

Ms. Faith Chepkemoi  
**Legal Counsel II**

Mr. Hiram Kimuhu  
**Fiscal Analyst III**

Mr. Yakub Ahmed  
**Media Relations Officer II**

Mr. Benson Kimanzi  
**Serjeant-At-Arms III**

Ms. Rahab Chepkilim  
**Audio Recording Officer II**

Mr Salat Abdi Ali  
**Senior Serjeant-At-Arms**



## CHAPTER TWO

### 2.0 OVERVIEW OF THE FACILITIES IMPROVEMENT FINANCING BILL, 2023 (SENATE BILL NO. 43 OF 2023)

6. The Facilities Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023) (hereinafter referred to as “the Bill”) is sponsored by the Senate Majority Leader, Sen. Aaron Cheruiyot. The principal object of the Bill is to provide for public health facility improvement financing and the management and administration of facility improvement financing in the country.
7. **Part I (Clauses 1-4)** of the Bill provides for the preliminary provisions and outlines application of the Bill from level 1 to level 5 public health facilities. The Part also sets out the objects of the Bill which are to:
  - (a) provide for an efficient, secure and accountable mechanism for the collection, retention and management of revenue derived from health services rendered at public health facilities in Kenya;
  - (b) establish a governance framework that will facilitate effective planning, coordination, mobilization and access of public health facilities improvement financing in Kenya;
  - (c) provide for the appropriation, management and use of retained health services revenue to supplement operations and facilitate quality service delivery in public health facilities;
  - (d) promote equitable health facilities improvement financing including benefit sharing in accordance with the relevant laws of Kenya; and
  - (e) provide for a unified system to guide financial management in public health facilities, improving efficiency and effectiveness and ultimately quality health service delivery.
8. **Part II (Clauses 5-7)** of the Bill makes provision for the retention of public health facilities improvement financing as well as the purposes for which these retained finances will be utilized. The Bill also sets out the sources of funds for public health facilities improvement financing which includes—
  - (a) own source revenues that include monies received as user fees, charges and monies paid as reimbursement for services received from insurance firms or other relevant entities;
  - (b) money appropriated by the County Government to the health facilities from the equitable share;
  - (c) conditional grants; and
  - (d) donations and gifts.

9. **Part III (Clause 8)** of the Bill details the role of national government in policy formulation, research and development to improvement financing. The Cabinet Secretary responsible for health is obligated to—
- (a) develop policy guidelines, including on revenue management and governance to promote transparency and prudent use;
  - (b) collect, receive, collate and analyze data for facility improvement financing policy formulation and support;
  - (c) establish a repository for financial information systems facility improvement financing linking county level plans to national level health policy interventions;
  - (d) provide feedback based on data received to assist the national and county governments performance monitoring of the facility improvement financing to ensure effective implementation; and
  - (e) prescribe and assist in the setting up of a standardized facility improvement financing health data systems.
10. **Part IV (Clauses 9-19)** of the Bill details the management and administration of facility improvement financing. It sets out the role of the county governments in supporting the implementation of facility improvement financing. It also establishes various administrative structures including county health management team, sub-county health management team, hospital management team and health facility management team and sets out their functions in relation to facility improvement financing.
11. **Part V (Clauses 20-26)** of the Bill provides the financial provisions. The Bill provides for the opening of a bank account by each health facility for payment of finances under facility improvement financing. The Bill also designates the Chief Officer responsible for health in a county as the accounting officer and whom shall then issue authority to incur expenditure to the respective medical superintendent and facility in-charge. The Bill further provides for annual reporting, audit and winding up of improvement financing where the funds of a health facility that is closed shall be sent to the County Revenue Fund.
12. **Part VI (Clauses 27-29)** of the Bill provides for the miscellaneous provisions including transitional provisions, penalties and enactment of county legislation.

## CHAPTER THREE

### 3.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

#### 3.1 LEGAL PROVISION ON PUBLIC PARTICIPATION

13. 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.”

14. 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.*

15. 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.”*

#### 3.2 PUBLIC PARTICIPATION AND STAKEHOLDER CONSULTATION

16. The Facilities Improvement Financing Bill, 2023 sponsored by Senate Majority Leader was published in the Kenya Gazette Supplement No. 168 of 15<sup>th</sup> September 2023. The Bill was passed by the Senate, with amendments, on Wednesday, 27<sup>th</sup> September 2023 and thereafter conveyed to the National Assembly in accordance with provisions of Article 110(4) of the Constitution. The Bill was subsequently committed to the Departmental Committee on Health pursuant to Standing Order 127(1) of the National Assembly Standing Orders having been read the first time in the House on Tuesday, 3<sup>rd</sup> October 2023.

17. Following the committal of the Bill, the Committee invited memoranda from the public through the placement of advertisements in the print media on Wednesday, 4<sup>th</sup> October, 2023 and requested for memoranda from key stakeholders letters REF: NA/DDC/DC-H/2023/094 and REF: NA/DDC/DC-H/2023/095 dated 4<sup>th</sup> October 2023. The Committee also engaged the Ministry of Health from 5<sup>th</sup> to 8<sup>th</sup> October 2023 at the Weston Hotel in Nairobi County.

### 3.3 SUBMISSIONS ON THE BILL

18. Following the call for memoranda, the Committee received submissions through oral presentation and written memoranda from the following institutions:

1. The State Department for Medical Services in the Ministry of Health;
2. The Council of Governors (COG);
3. The County Assemblies Forum (CAF);
4. The Kenya Human Rights Commission;
5. The Amnesty International Kenya;
6. The People's Health Movement (PHM);
7. The Kenya AIDS NGOs Consortium (KANCO);
8. The Institute of Public Finance (IPF); and
9. The Scaling Up Nutrition Civil Society Alliance (SUN CSA-Kenya).

19. The **State Department for Medical Services, Ministry of Health**, whilst expressing its support for the Bill indicated that the Bill as passed by the Senate with amendments is in order and it had no further amendments to the Bill. The Ministry also indicated that it had conducted stakeholder engagement on the Bill and proposed certain amendments to the Bill when the Bill was before the Senate. The Ministry further confirmed that the Senate had considered the Ministry's comments and that the Bill as passed by the Senate with amendments on 27<sup>th</sup> September 2023 reflected the outcome of the stakeholder engagement.

20. The **Council of Governors** submitted as follows:

- (a) That the Council appreciates the efforts that have gone into the development of the Bill in light of the challenges and efforts by the county governments and the Council of Governors to address these challenges;
- (b) That the Bill proposes the establishment of a number of leadership and governance structures that duplicate other structures that county governments have already established in terms of the Health Act and their respective county laws which brings about unnecessary additional costs;
- (c) That the Bill is overly prescriptive denying any room for flexibility and diversity in implementation of the Bill and yet experience has shown that the same should be left for determination by individual county governments;
- (d) Deletion of Clause 8 which sets out the roles of the national governments which are unnecessary as they encroach on county functions;
- (e) Deletion of clause 20(1) of the Bill and substitution with a new subsection that cross references the Public Finance Management Act, 2012 as the operation of bank accounts should be guided by the provisions of section 119 of the Public Finance Management Act, No. 18 of 2012;
- (f) That clause 20(3) should be redrafted to make the Chair of the Health Facility management Committee a co-signatory instead of the Sub-County Account as this would reduce bureaucracy and ensure timeliness and community participation as well as alignment with the Ministry of Health's Manual on Health Facility Management committees;

- (g) That there is no need for a national legislation on FIF as the various county laws on the same are sufficient and instead guidelines may be developed to ensure uniformity within the county governments;
- (h) That the Bill should be aligned to the Public Finance Management Act, No. 18 of 2012 instead of proposing new arrangements as the former prevails on all matters relating to banking arrangements and the management and establishment of public funds;
- (i) That the County Treasuries ought to be represented in the various committees established under the Bill so as that they can provide technical expertise on matters of financial management, accounting and reporting;
- (j) Deletion of clause 7(h) as its inclusion would deny health facilities resources to improve the quality of health services and ambulance services may be supported in the other activities within the clause;
- (k) Deletion of clause 9(d) and (e) as they are contradictory and yet the role of county governments over monies allocated to the department is already clear;
- (l) Deletion of clause 10(d) and (e) as they are unnecessary and they contradict section 46 of the County Governments Act, No. 17 of 2012;
- (m) Deletion of clause 12(1) and (2) as they are unnecessary and they are over prescribing for county governments and are establishing too many duplicative structures;
- (n) Deletion of clause 16 as it is over prescribing for county governments and is establishing too many duplicative structures. The clause is further adding layers of bureaucracy hence defeating the purpose and objects of the Bill;
- (o) Deletion of clause 17 as it is over prescribing for county governments and is establishing too many duplicative structures; and
- (p) Deletion of clause 22 (3) and substitution with a new sub-cause that requires that vouchers prepared shall be prepared, verified, confirmed and preserved in accordance with the Public Finance Management Act, No. 18 of 2012 as this brings about more clarity.

21. The **County Assemblies Forum (CAF)** appreciated the opportunity to contribute to the Bill and made the following submissions:

- (a) The Forum appreciated the Ministry of Health for developing the Bill as it grants counties control over the revenue generated within their health facilities allowing for more localized decision-making. Further, by ensuring a steady revenue stream for health facilities, counties can plan and implement long-term healthcare projects without solely relying on the central government allocations;
- (b) That the establishment of various management teams and committees enhances transparency and accountability allowing county assemblies to have a clearer view of how funds are utilized within health facilities;
- (c) That clause 5 is in order save for the lack of clarity as to the persons who will have the authority to re-donate finances in a county under clause 5(3). This lack of clarity may lead to disagreements or suboptimal use of resources. To counter this, the Forum proposed that clear guidelines and protocols for the donation and re-donation of non-financial resources under clause 5(3) should be developed.

These guidelines and protocols should define what items can be donated, the process of disclosure and how decisions are made. Such transparent reporting mechanisms will enable clause 6 to empower health facilities financially enabling them to address immediate needs and enhance service delivery;

- (d) That clause 5 is also in order save for the fact that it may limit the financial autonomy of individual health centers if they have limited decision-making power over the utilization of the funds generated. There are concerns that clause 6 may centralize revenue allocation thereby diminishing the financial autonomy of health centers. County Assemblies usually emphasize the importance of local decision-making as highlighted in clause 5 to ensure that individual health facilities can manage their funds effectively in responding to local needs promptly;
- (e) That citizens generally expect transparent and accountable management of public funds in the health sector. While the Bill's intent to improve facilities is commendable, citizens are concerned about any clauses that may hinder the financial autonomy of health centers as this could impact service delivery. The transparent reporting mechanisms as proposed in clause 7 are therefore crucial in assuring citizens that their funds are utilized efficiently;
- (f) Amendment of clause 9 (f) by deleting the words "subject to the relevant financial laws" and substituting therefor the words "subject to the Public Finance Management Act" so as to specify the financial law as using the former may lead to ambiguous financial oversight allowing room for mismanagement;
- (g) Amendment of clause 11 by inserting a new paragraph (o) "submit quarterly reports to the County Assemblies on management on facility improvement financing across the County" immediately after paragraph (n) so as to provide for regular reporting mechanisms from the County Health Management Teams to the County Assemblies for enhanced transparency and public accountability. Clear provisions should be included to ensure that County Assemblies have the authority to scrutinize and monitor the utilization of funds by health centers. This reinforces the role of County Assemblies as the primary overseers of health center finances;
- (h) Amendment of clause 17 by inserting the words "nominated from the Village Council" immediately after the word "representative" appearing in sub-clause (1)(c) so that the village representative in the Health Facility Management Committee is elected from a Village Council as most counties have established Village Councils as bodies of coordination. This cures the lack of an explicit criteria for the nomination of village representatives which could lead to potential issues such as the lack of transparency, favoritism or bias in the selection process;
- (i) Supported the inclusion of clause 18 in the Bill as it outlines the specific responsibilities of Health Facility Management Committees including financial oversight, public awareness and adherence to procurement rules which if enforced effectively can ensure proper financial management at the facility level;

- (j) That the process of expenditure of facility improvement financing in clause 22 which involves multiple levels of verification and approval is complex and should be simplified as it could lead to delays in essential financial transactions potentially affecting service delivery; and
- (k) Supported the inclusion of clause 27 in the Bill as it ensures stability during the transition period by allowing existing management bodies to continue their operations until new structures are fully functional.

22. The **Kenya Human Rights Commission, the Amnesty International Kenya, the People's Health Movement (PHM), the Kenya AIDS NGOs Consortium (KANCO), the Institute of Public Finance (IPF) and the Scaling Up Nutrition Civil Society Alliance (SUN CSA-Kenya)**, civil society organizations involved in matters of health, governance and human rights, jointly submitted as follows:

- (a) Inclusion of a section on the expenditure committee defined in clause 2 setting out the following:
  - (i) composition of the Committee specifying the qualifications, expertise and roles of committee members including representation from relevant stakeholders such as healthcare professionals, financial experts and community representatives;
  - (ii) powers and responsibilities of the Committee clearly setting out the Committee's authority in scrutinizing and approving budgets, plans and expenditures as well as any reporting obligations;
  - (iii) procedures of the Committee defining the processes for budget submission, review and approval along with timelines to ensure efficiency;
  - (iv) provision of mechanisms for public access to Committee decisions and reports as well as regular audits of healthcare facilities' financial management. This will enhance transparency and accountability at all levels;
  - (v) provision of a clear timeline for the submission, review and approval of budgets and plans to prevent delays; and
  - (vi) provisions that encourage collaboration between the Expenditure Committee and healthcare facilities to facilitate efficient planning and resource allocation.
- (b) Amendment of the definition of the term "schemes" to remove any reference to the National Health Insurance Fund as the definition in the current context refers to proposed benefit packages that cover in-patient and out-patient services under the National Health Insurance Fund (NHIF). The NHIF is being abolished through another Bill that is currently under consideration and which intends to abolish the NHIF;

- (c) Amendment of clause 5 to explicitly state that the clause is subject to the provisions of the Constitution and that in cases of conflict, the Constitution shall prevail. This ensures that the constitutional order is upheld and that there is respect for the hierarchy of laws as the Constitution is the supreme law of the land;
- (d) Amendment of the Bill to provide precise definitions and provisions for “user fees” and “charges” as definitions are essential for understanding and compliance. The provisions should further clearly outline what services can be charged, the principles governing fee-setting for instance affordability and equity and any limits or guidelines for fees and charges;
- (e) Amendment of the Bill to specify reasonable and achievable deadlines for the formulation of regulations and policies and the deadlines set should take into account the complexity of the regulations and the need for thorough deliberation and stakeholder consultation. Setting clear and reasonable timeframes for formulation of regulations and policies is essential for ensuring the timely implementation of the Bill;
- (f) Amendment of the Bill to specify reasonable and clearly defined timeframes for issuing authority to incur expenditure to health facilities for instance within seven (7) days from receipt of the expenditure plans as clear timeframes are essential for clarity and predictability;
- (g) Amendment of clause 17 for enhanced specificity on the type of people being nominated by the various groups as clarifying the kind of persons to be nominated namely women, youth, persons with disability or members of a marginalised group is necessary to ensure inclusivity; and
- (h) Amendment of the Bill to include the manner in which clause 19 on the terms and conditions of appointment of the Boards and Committees established under the Bill is to be realised. If not, the Bill should recommend that regulation or guidelines be passed to guide the implementation of clause 19. Clause 19 is currently inadequate as terms and conditions generally ought to be comprehensive and leave no gaps.

23. The Report contains an analysis of the above stakeholder submissions on the Bill noting the general comments in support of or against the amendments. The analysis is presented in a table annexed to this report as Annexure 5 which highlights the stakeholder comments and the Committee resolution on the various clauses of the Bill.



## CHAPTER FOUR

### 4.0 COMMITTEE OBSERVATIONS

24. The Committee, having considered the Facilities Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023) and submissions from stakeholders, made the following observations:

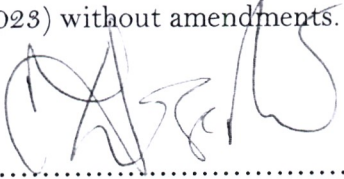
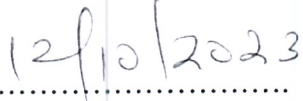
- (a) The Bill is aligned to the Constitution of Kenya, 2010 on county funds. The Constitution in Article 207(1) exempts money reasonably excluded by an Act of Parliament from being paid into the County Revenue Fund. Article 207(4) of the Constitution further recognizes that an Act of Parliament may provide for the establishment of other funds by counties and the management of those funds respectively. The Bill therefore meets this criterion as it makes provision for public health facility improvement financing and details how the same will be retained, managed and administered to ensure proper utilization of funds;
- (b) The Bill is aligned to the Health Act, No. 21 of 2017 which is the primary law on health matters in the country. Section 86(1)(c) of the Health Act, 2017 provides that the Ministry of Health shall ensure progressive financial access to universal health coverage through various measures including developing policies and strategies that ensure the realization of universal health coverage. The Bill will therefore stimulate increased revenue collection by public health facilities, significantly contributing to the realization of the Universal Health Coverage target of augmenting expenditure on healthcare infrastructure throughout the country;
- (c) The Bill is aligned to the Public Finance Management Act, No. 18 of 2012 which is the primary law on public finance matters in the country. Section 109(2)(b) of the Public Finance Management Act, 2012 provides that all money is to be paid into the County Revenue Fund except money that may, in accordance with other legislation, the Act or County legislation, be retained by a county government entity which received it for the purposes of defraying its expenses;
- (d) The Bill aims to ringfence money generated by public health facilities, ensuring a predictable, regular, and steady source of funding for public health facility operations in counties. This will guarantee that funds are utilized for the improvement of patient care at the respective public health facilities. In doing this, the Bill facilitates the realization of Article 43(1)(a) of the Constitution of Kenya, 2010 which not only guarantees the right to quality and affordable health care but also recognizes the role of the government in removing barriers to access to quality and affordable health care;
- (e) The Bill directly responds to the legal intervention proposed by the Departmental Committee on Health in the Twelfth Parliament in its exit report dated 8<sup>th</sup> June 2022. In the report, the Committee recommended that the Departmental Committee on Health in the Thirteenth Parliament establishes a Facility Improvement Fund for county public health facilities to support health function that is devolved;

- (f) Public health facilities previously retained and managed the monies they generated. However, the enactment of the Public Finance Management Act, No. 18 of 2012 took away the financial autonomy of public health facilities to retain, bank and spend revenues collected from user fees. Section 109 of the Public Finance Management Act, No. 18 of 2012 provides that all revenue collected by all county government entities is submitted to the County Revenue Fund and then these entities will request funds from the County Revenue Fund. County health facilities now draw funds generated through cash, insurance schemes and grants from the County Revenue Fund. This has occasioned numerous bureaucracies and limited funding for public health facilities as they are usually allocated less monies compared to what they remitted making them struggle to meet their operation and maintenance costs which has adversely affected their service delivery. Some counties including Kakamega, Isiolo, Mombasa and Elgeyo Marakwet, noting the challenges they have faced, have established Facilities Improvement Funds allowing their public health facilities to manage the funds they generate through Health Services Management Committees. Counties that have not established such a Fund continue to face several key challenges including demotivated health workers, delays in service delivery due to procedural difficulties in the procurement of essential supplies and poor accountability for money generated in public health facilities; and
- (g) The Bill gives county governments control over the revenue generated within their health facilities allowing for enhanced localized decision-making. County governments will now be able to plan and implement long-term healthcare projects without solely relying on the allocations by the national government as they will have steady revenue streams for their public health facilities.

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATIONS

The Committee, having considered the Bill and the submissions from stakeholders, recommends that the House passes the Facilities Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023) without amendments.

SIGNED.......... DATE..........

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

# ANNEXURE 1: MINUTES OF COMMITTEE SITTINGS

**MINUTES OF HUNDRED AND THIRTEENTH (113<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN WESTON HOTEL ON FRIDAY 6<sup>TH</sup> OCTOBER, 2023 AT 10.00 A.M**

**PRESENT**

1. The Hon. Dr. Pukose Robert, M.P – **Chairperson**
2. The Hon. Prof. Jaldesa Guyo Waqo, M.P
3. The Hon. Kibagendi Antony, M.P
4. The Hon. Lenguris Pauline, M.P
5. The Hon. Mary Maingi, MP
6. The Hon. Mathenge Duncan Maina, M.P
7. The Hon. Titus Khamala, M.P
8. The Hon. Muge Cynthia Jepkosgei, M.P
9. The Hon. Kipngor Reuben Kiborek, M.P

**ABSENT WITH APOLOGY**

1. The Hon. Ntwiga Patrick Munene, M.P -**Vice-Chairperson.**
2. The Hon. Dr. Nyikal James Wambura, M.P.
3. The Hon. Owino Martin Peters, M.P
4. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
5. The Hon. Oron Joshua Odongo, M.P.
6. The Hon. Wanyonyi Martin Pepela, M.P

**COMMITTEE SECRETARIAT**

- |                         |                        |
|-------------------------|------------------------|
| 1. Mr. Hassan A. Arale  | - Clerk Assistant I    |
| 2. Ms. Gladys Kiprotich | - Clerk Assistant III  |
| 3. Ms. Faith Chepkemoi  | - Legal Counsel II     |
| 4. Mr. Eric Lungai      | - Hansard Officer III  |
| 5. Ms. Abigel Muinde    | - Research Officer III |
| 6. Mr. Hiram Kimuhu     | -Fiscal Analyst        |
| 7. Mr. Benson Kimanzi   | - Serjeant-At-Arms     |

**INATTENDANCE-MINISTRY OF HEALTH**

1. Mr. Harry Kimutai-Ps Medical Services
2. Ms. Halima K,Yusuf-DHCF-FIF
3. Dr. Maurine Kimani-Moh-DCH-PHC Bill

**MIN. NO. NA/DC-H/2023/439: PRELIMINARIES/INTRODUCTION**

The meeting was called to order at 10.00 a.m. with a word of prayer by The Hon. Dr. Pukose Robert, M.P – Chairperson, introductions were then done.

**MIN. NO. NA/DC-H/2022/440: CONFIRMATION OF MINUTES OF PREVIOUS MINUTES**

Minutes of the previous sittings were confirmed as true records proceedings as follows;

1. Minutes of the 91<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the The Hon. Muge Cynthia Jepkosgei, M.P M.P Seconded by the the Hon. Lenguris Pauline, M.P.
2. Minutes of the 92<sup>nd</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Mary Maingi, M.P Seconded by the Hon. Mathenge Duncan Maina, M.P
3. Minutes of the 93<sup>rd</sup>sitting was confirmed as a true deliberation of the Committee after it was proposed by the Mathenge Duncan Maina, M.P and Seconded by the Hon. Lenguris Pauline, M.P.
4. Minutes of the 94<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Prof. Jaldesa Guyo Waqo, M.P Seconded by Hon. Mary Maingi, M.P.
5. Minutes of the 95<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by Oron Joshua Odongo, M.P M.P Seconded by the Hon. Dr. Pukose Robert, M.P.
6. Minutes of the 96<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Mathenge Duncan Maina, M.P and Seconded by the Hon. Lenguris Pauline, M.P.
7. Minutes of the 97<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Mary Maingi, M.P and Seconded by the Hon. Wanyonyi Martin Pepela, M.P
8. Minutes of the 98<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Wanyonyi Martin Pepela, M.P and Seconded by the Mathenge Duncan Maina, M.P
9. Minutes of the 99<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by Hon. Prof. Jaldesa Guyo Waqo, M.P and Seconded by the by the Hon. Mary Maingi, MP.
10. Minutes of the 100<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the The Hon. Muge Cynthia Jepkosgei, M.P M.P Seconded by the Hon. Mary Maingi, MP.
11. Minutes of the 101<sup>st</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Prof. Jaldesa Guyo Waqo, M.P and Seconded by Hon. Mary Maingi, MP.
12. Minutes of the 102<sup>nd</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Prof. Jaldesa Guyo Waqo, M.P and Seconded by Hon. Mary Maingi, MP.
13. Minutes of the 103<sup>rd</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Prof. Jaldesa Guyo Waqo, M.P and Seconded by Hon. Mary Maingi, MP.
14. Minutes of the 104<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Lenguris Pauline, M.P and Seconded by the Hon. Mary Maingi, MP.
15. Minutes of the 105<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Lenguris Pauline, M.P and Seconded by the Hon. Mary Maingi, MP.

16. Minutes of the 106<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Lenguris Pauline, M.P and Seconded by the Hon. Mary Maingi, MP.
17. Minutes of the 107<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Mathenge Duncan Maina, M.P and Seconded by the the Hon. Mary Maingi, MP.
18. Minutes of the 108<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Wanyonyi Martin Pepela, M.P Seconded by the Hon. Mary Maingi, MP.
19. Minutes of the 109<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Mary Maingi, MP Seconded by the Hon. Lenguris Pauline, M.P.
20. Minutes of the 110<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the the Hon. Lenguris Pauline, M.P and Seconded by the Mathenge Duncan Maina, M.P.
21. Minutes of the 111<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the the Hon. Lenguris Pauline, M.P and Seconded by the Mathenge Duncan Maina, M.P.
22. Minutes of the 112<sup>th</sup> sitting was confirmed as a true deliberation of the Committee after it was proposed by the Hon. Prof. Jaldesa Guyo Waqo, M.P and Seconded by Hon. Mary Maingi, MP.

**MIN. NO. NA/DC-H/2023/441: CONSIDERATION THE FACILITIES IMPROVEMENT FINANCING BILL (SENATE BILL NO.43 OF 2023)**

1. The Committee was informed that, the Facilities improvement financing bill, 2023 (hereinafter referred to as “the Bill”) is sponsored by the Senate Majority Leader. The principal object of the Bill is to provide for public health facility improvement financing and the management and administration of facility improvement financing in the country.
2. **Part I (Clauses 1-4)** of the Bill provides for the preliminary provisions and outlines application of the Bill from level 1 to level 5 public health facilities. The Part also sets out the objects of the Bill which are to:
  - (a) provide for an efficient, secure and accountable mechanism for the collection, retention and management of revenue derived from health services rendered at public health facilities in Kenya;
  - (b) establish a governance framework that will facilitate effective planning, coordination, mobilization and access of public health facilities` improvement financing in Kenya;
  - (c) provide for the appropriation, management and use of retained health services revenue to supplement operations and facilitate quality service delivery in public health facilities;
  - (d) promote equitable health facilities improvement financing including benefit sharing in accordance with the relevant laws of Kenya; and

- (e) provide for a unified system to guide financial management in public health facilities, improving efficiency and effectiveness and ultimately quality health service delivery.
- 3. **Part II (Clauses 5-7)** of the Bill makes provision for the retention of public health facilities improvement financing as well as the purposes for which these retained finances will be utilized. The Bill also sets out the sources of funds for public health facilities improvement financing which includes—
  - (a) own source revenues that include monies received as user fees, charges and monies paid as reimbursement for services received from insurance firms or other relevant entities;
  - (b) money appropriated by the County Government to the health facilities from the equitable share;
  - (c) conditional grants; and
  - (d) donations and gifts.
- 4. **Part III (Clause 8)** of the Bill details the role of national government in policy formulation, research and development to improvement financing. The Cabinet Secretary responsible for health is obligated to—
  - (a) developing policy guidelines, including on revenue management and governance to promote transparency and prudent use;
  - (b) collecting, receiving, collating and analyzing data for facility improvement financing policy formulation and support;
  - (c) establishing a repository for financial information systems facility improvement financing linking county level plans to national level health policy interventions;
  - (d) providing feedback based on data received to assist the national and county government performance monitoring of the facility improvement financing to ensure effective implementation; and
  - (e) prescribing and assisting in the setting up of a standardized facility improvement financing health data system.
- 5. **Part IV (Clauses 9-19)** of the Bill details the management and administration of improvement financing. It sets out the role of the county governments in supporting the implementation of facility improvement financing. It also establishes various administrative structures including county health management team, sub-county health management team, hospital management team and health facility management team and sets out their functions in relation to facility improvement financing.
- 6. **Part V (Clauses 20-26)** of the Bill provides the financial provisions. The Bill provides for the opening of a bank account by each health facility for payment of finances under facility improvement financing. The Bill also designates the Chief Officer responsible for health in a county as the accounting officer and whom shall then issue authority to incur expenditure to the respective medical superintendent and facility in-charge. The Bill



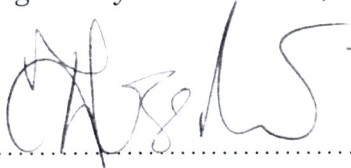
further provides for annual reporting, audit and winding up of improvement financing where the funds of a health facility that is closed shall be sent to the County Revenue Fund.

7. **Part VI (Clauses 27-29)** of the Bill provides for the miscellaneous provisions including transitional provisions, penalties and enactment of county legislation.

Finally, the members were taken through the Bill clause by clause in all the 29 clauses of the the Facilities Improvement Financing Bill (Senate Bill No.43 Of 2023) as referred from the Senate.

**MIN. NO. NADC-H/2023/442: ADJOURNMENT**

There being no any other business, the Chairperson, adjourned the meeting at exactly 1.30 p.m.

Sign..........Date.....12/10/2023.....

**HON. DR. ROBERT PUKOSE, M.P.**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH**

**MINUTES OF HUNDRED AND FOURTEENTH (114<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN WESTON HOTEL ON FRIDAY 6<sup>TH</sup> OCTOBER, 2023 AT 2.30 P.M**

**PRESENT**

1. The Hon. Dr. Pukose Robert, M.P – **Chairperson**
2. The Hon. Prof. Jaldesa Guyo Waqo, M.P
3. The Hon. Kibagendi Antony, M.P
4. The Hon. Lenguris Pauline, M.P
5. The Hon. Mary Maingi, MP
6. The Hon. Mathenge Duncan Maina, M.P
7. The Hon. Titus Khamala, M.P
8. The Hon. Muge Cynthia Jepkosgei, M.P
9. The Hon. Kipngor Reuben Kiborek, M.P

**ABSENT WITH APOLOGY**

1. The Hon. Ntwiga Patrick Munene, M.P -**Vice-Chairperson.**
2. The Hon. Dr. Nyikal James Wambura, M.P.
3. The Hon. Owino Martin Peters, M.P
4. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
5. The Hon. Oron Joshua Odongo, M.P.
6. The Hon. Wanyonyi Martin Pepela, M.P

**COMMITTEE SECRETARIAT**

1. Mr. Hassan A. Arale - Clerk Assistant I
2. Ms. Gladys Kiprotich - Clerk Assistant III
3. Ms. Faith Chepkemoi - Legal Counsel II
4. Mr. Eric Lungai - Hansard Officer III
5. Ms. Abigel Muinde - Research Officer III
6. Mr. Hiram Kimuhu -Fiscal Analyst III
7. Mr. Benson Kimanzi - Serjeant-At-Arms.

**INATTENDANCE-MINISTRY OF HEALTH**

1. Mr. Harry Kimutai-Principal Secretary for the state department of Medical Services
2. Ms. Halima K, Yusuf-DHCF -FIF
3. Dr. Maurine Kimani-MOH-DCH-PHC Bill

**MIN. NO. NA/DC-H/2023/443: PRELIMINARIES/INTRODUCTION**

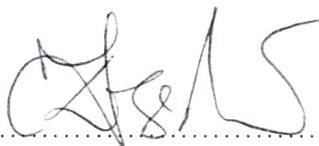
The meeting was called to order at 2.30 p.m. with a word of prayer by the Chairperson the Hon. Dr. Pukose Robert, M.P, introductions were then done.

**MIN. NO. NA/DC-H/2023/444: CONSIDERATION OF THE FACILITIES IMPROVEMENT FINANCING BILL (SENATE BILL NO.43 OF 2023)**

The Committee in its consideration was taken through the Facilities Improvement Financing Bill (Senate Bill No.43 Of 2023) clause y clause and also did consider stakeholders submission from the Ministry of Health that agreed with all the senate amendments.

**MIN. NO. NADC-H/2023/445: ADJOURNMENT**

There being no any other business, the Chairperson, adjourned the meeting at exactly 4.30 p.m.

Sign.  Date. 12/10/2023

**HON. DR. ROBERT PUKOSE, M.P.**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH**

**MINUTES OF HUNDRED AND EIGHTEENTH (118<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN COMMITTEE ROOM 12 ON THURSDAY 12<sup>TH</sup> OCTOBER, 2023 AT 9.30 A.M**

**PRESENT**

1. The Hon. Dr. Pukose Robert, M.P – **Chairperson**
2. The Hon. Dr. Nyikal James Wambura, M.P.
3. The Hon. Owino Martin Peters, M.P
4. The Hon. Kibagendi Antony, M.P
5. The Hon. Lenguris Pauline, M.P
6. The Hon. Mathenge Duncan Maina, M.P
7. The Hon. Wanyonyi Martin Pepela, M.P
8. The Hon. Muge Cynthia Jepkosgei, M.P
9. The Hon. Oron Joshua Odongo, M.P

**ABSENT WITH APOLOGY**

1. The Hon. Ntwiga Patrick Munene, M.P -**Vice-Chairperson.**
2. The Hon. Titus Khamala, M.P
3. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
4. The Hon. Prof. Jaldesa Guyo Waqo, M.P
5. The Hon. Kipngor Reuben Kiborek, M.P
6. The Hon. Mary Maingi, MP

**COMMITTEE SECRETARIAT**

1. Mr. Hassan A. Arale - Clerk Assistant I
2. Ms. Gladys Kiprotich - Clerk Assistant III
3. Ms. Faith Chepkemoi - Legal Counsel II
4. Mr. Eric Lungai - Hansard Officer III
5. Ms. Abigel Muinde - Research Officer III
6. Mr. Hiram Kimuhu -Fiscal Analyst III
7. Mr. Benson Kimanzi - Serjeant-At-Arms

**MIN. NO. NA/DC-H/2023/452: PRELIMINARIES/INTRODUCTION**

The meeting was called to order at 2.00 p.m. with a word of prayer by the Chairperson Hon. Dr. Pukose Robert, M.P.

**MIN. NO. NA/DC-H/2023/453: MEETING NHIF AG. CEO ON THE ALLEGED FRAUDULENT PAYMENTS OF HOSPITAL BY NHIF**

Dr. Samson Kuhora, ag. CEO and head of Beneficiary design presented as follows;

The structure of the Department, the roles of the different offices and the office holders. As a point of note, the name of the Department is the Department of Benefits Design and Claims Management, under the Directorate of Beneficiary and Provider Management.

The utilization per year has been on an upward trend, with the 2022/23 FY surpassing the 100% utilization. This is attributable to the fraud risk especially with the outpatient cover (provider payment mechanism; PPM; is FFFS which overproduces the hospital

visit rate), increased awareness through sensitizations platforms, and uncontrolled pricing for this benefit.

Surveillance has been increased to reduce the risk of fraud and suspend contracts for providers engaged in fraud, and mitigate the risks related to staff and process induced fraud.

The retirees' scheme is a high utilization account due to the age and disease related risk factors. The average utilization per member is high, and the loss ratio is also high, despite the risk-adjusted premiums adopted in 2020/21.

The mitigation measure is to have a post-retirement medical scheme for former government workers, where contributions start in the pre-retirement ages. The other mitigation measure is the roll-out of the essential benefit package that has a chronic/critical illness financing from the exchequer. The dip in 2021/22 is attributed to an increase in costing for the premiums which reduced the numbers willing to enroll in the scheme.

The cover for the Police and Prisons services has a utilization of more than the 85% threshold. This is attributed to variations in the pricing related to schemes where the cover is based on limits. To address this, the gap was presented to the board in October 2021 and the resolution was to cost services through the Ministry of Health. This was partially achieved in 2022/24 contracts and is being done for the Essential Benefits Package (EBP) in the planned UHC roll-out. Additionally, the scheme's PPM for outpatient services exposed the Fund to overproduction risk. The utilization data was used to estimate the risk and calculate premiums in 2022/23, and on presentation of the data, the scheme opted to exit cover by the Fund.

The loss ratio for the national scheme have been on a downward trend in the 3 years. This is largely due to controls in the informal sector of the national scheme, including price, scope and access controls in the benefits. The formal sector retention also increased from 72% to Overall, when computed against accrued premiums, the utilization ratio reduced to 88% in 2021/22. 78% on the post-COVID period, and the utilization was retained below 60%.

**MIN. NO. NA/DC-H/2023/454: CONSIDERATION AND ADOPTION OF THE REPORT ON THE FACILITIES IMPROVEMENT FINANCING BILL (SENATE Bill NO. 43 of 2023)**

The Committee, having considered the Facilities Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023) and submissions from stakeholders, made the following observations:

- (a) The Bill is aligned to the Constitution of Kenya, 2010 on county funds. The Constitution in Article 207(1) exempts money reasonably excluded by an Act of Parliament from being paid into the County Revenue Fund. Article 207(4) of the Constitution further recognizes that an Act of Parliament may provide for the establishment of other funds by counties and the management of those funds

respectively. The Bill therefore meets this criterion as it makes provision for public health facility improvement financing and details how the same will be retained, managed and administered to ensure proper utilization of funds;

- (b) The Bill is aligned to the Public Finance Management Act, No. 18 of 2012 which is the primary law on public finance matters in the country. Section 109(2)(b) of the Public Finance Management Act, 2012 provides that all money is to be paid into the County Revenue Fund except money that may, in accordance with other legislation, the Act or County legislation, be retained by a county government entity which received it for the purposes of defraying its expenses;
- (c) The Bill is aligned to the Health Act, No. 21 of 2017 which is the primary law on health matters in the country. Section 86(1)(c) of the Health Act, 2017 provides that the Ministry of Health shall ensure progressive financial access to universal health coverage through various measures including developing policies and strategies that ensure the realization of universal health coverage. The Bill will therefore stimulate increased revenue collection by public health facilities, significantly contributing to the realization of the Universal Health Coverage target of augmenting expenditure on healthcare infrastructure throughout the country;
- (d) The Bill aims to ringfence money generated by public health facilities, ensuring a predictable, regular, and steady source of funding for public health facility operations in counties. This will guarantee that funds are utilized for the improvement of patient care at the respective public health facilities. In doing this, the Bill facilitates the realization of Article 43(1)(a) of the Constitution of Kenya, 2010 which not only guarantees the right to quality and affordable health care but also recognizes the role of the government in removing barriers to access to quality and affordable health care;
- (e) The Bill directly responds to the legal intervention proposed by the Departmental Committee on Health in the Twelfth Parliament in its exit report dated 8<sup>th</sup> June 2022. In the report, the Committee recommended that the Departmental Committee on Health in the Thirteenth Parliament establishes a Facility Improvement Fund for county public health facilities to support health function that is devolved; and
- (f) Public health facilities previously used to retained and manage the monies generated however, this ended in the advent of devolution and the enactment of the Public Finance Management Act, No. 18 of 2012 took away the financial autonomy of public health facilities to retain, bank and spend revenues collected from user fees;
- (g) Section 109 of the Public Finance Management Act, No. 18 of 2012 provides that all revenue collected by all county government entities is submitted to the County Revenue Fund and then these entities will request funds from the County Revenue Fund. County health facilities now draw funds generated through cash, insurance schemes and grants from the County Revenue Fund;

- (h) This has occasioned numerous bureaucracies and limited funding for public health facilities as they are usually allocated less monies compared to what they remitted making them struggle to meet their operation and maintenance costs which has adversely affected their service delivery. Some counties including Kakamega, Isiolo, Mombasa and Elgeyo Marakwet, noting the challenges they have faced, have established Facilities Improvement Funds allowing their public health facilities to manage the funds they generate through Health Services Management Committees; and
- (i) Counties that have not established such a Fund continue to face several key challenges including demotivated health workers, delays in service delivery due to procedural difficulties in the procurement of essential supplies and poor accountability for money generated in public health facilities.

## **COMMITTEE RECOMMENDATIONS**

The Committee, having considered the Bill and the submissions from stakeholders, recommends that the House passes the Facilities Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023) without amendments.

The adoption of the report was proposed by the **Hon. Lenguris Pauline, M. P** and seconded by the **Hon. Mathenge Duncan Maina M.P.**

### **MIN. NO. NA/DC-H/2023/455: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PRIMARY HEALTH CARE BILL (SENATE BILL NO.44 OF 2023)**

The Committee, having considered the Primary Health Care Bill, 2023 (Senate Bill No. 44 of 2023) and submissions from stakeholders, made the following observations:

- (a) The Bill promotes the attainment of Universal Health Coverage as it seeks to ensure that all Kenyans have access to affordable and comprehensive quality health services from the primary level of care. This will reduce the disease burden and the current high costs of out-of-pocket expenditure on healthcare as there will be early detection of diseases especially chronic illnesses. In doing this, the Bill makes the two levels of government responsive to the health needs of Kenyans as envisioned in the Kenya Health Policy, 2014-2030 and the Kenya Universal Health Coverage Policy, 2020-2030;
- (b) The Bill is in line with the government's priority of using Primary Health Care as the key driver of Universal Health Coverage. Primary Health Care is essential in ensuring that all Kenyans not only access good quality health care but also fully participate in the management of their specific health needs. This is why the Bill provides for community healthcare services commencing at the household level and facility healthcare services starting from the community, dispensaries and health centers with all linking to the hospitals to form a network of practice;

- (c) The Bill aims to establish a framework for the delivery of, access to, and management of primary health care through creation of an elaborate primary healthcare network at each county and sub-county level for equitable distribution of resources and health services. This is in line with the Kenya Health Financing Strategy, 2020-2030 which is aimed at ensuring that the financing of health services is done in a fair and efficient manner for the benefit of all Kenyans;
- (d) The Bill, in relation to community health promoters, is aligned to the Health Act, No. 21 of 2017 which is the principal law on health matters in the country. The First Schedule to the Health Act, No. 21 of 2017 recognizes community health services at level 1 managed by community health extension workers. The Bill therefore strengthens these level 1 services as community health promoters are important players in the health sector as they deal directly with the community. They are also familiar with the households in their areas of residence as well as the language of the people. Community health promoters will therefore greatly assist in preventive care as, by going door to door, they will be able to identify the people in need of healthcare services before their health conditions escalate; and
- (e) The Bill is aligned to the Constitution of Kenya, 2010 as it facilitates the progressive realization of the right to the highest attainable standard of health including the right to health care services guaranteed under Article 43(1)(a). Article 21(2) of the Constitution requires the state to take legislative, policy and other measures to achieve the progressive realization of the rights guaranteed in Article 43. The Bill therefore facilitates the fulfilment of this obligation by both levels of government as it makes health care frameworks in the country responsive to the unique health needs of the Kenyan population in each county and sub-county in furtherance of devolution.

#### COMMITTEE RECOMMENDATIONS

The Committee, having considered the Bill and submissions from stakeholders, recommends that the House passes the Primary Health Care Bill, 2023 (Senate Bill No. 44 of 2023) **without amendments.**

The adoption of the report was proposed by the **Hon. Mathenge Duncan Maina, M. P** and seconded by the **Hon. Lenguris Pauline, M.P.**

#### MIN. NO. NADC-H/2023/456: ADJOURNMENT

There being no any other business, the Chairperson, adjourned the meeting at exactly 11.30 a.m.

Sign.....

Date.....

12/10/2023

**HON. DR. ROBERT PUKOSE, M.P.**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH**

12 OCT 2023

THURS  
12-10-2023

HON(DR) ROBERT PUKOSE M.P  
CHAIR, HEALTH COMMITTEE  
A-SITIGUKU



# ANNEXURE 2: REPORT ADOPTION SCHEDULE



THE NATIONAL ASSEMBLY  
13TH PARLIAMENT - SECOND SESSION - 2023  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
DEPARTMENTAL COMMITTEE ON HEALTH,  
ADOPTION LIST FOR THE REPORT ON THE FACILITIES IMPROVEMENT  
FINANCING BILL 2023 (SENATE BILL NO. 43 OF 2023)

DATE: 12-10-2023

VENUE: Committee Room 12

NO.	NAME	SIGNATURE
1.	The Hon. Dr. Pukose Robert, M.P.- Chairperson	
2.	The Hon. Ntwiga Patrick Munene, M.P.-Vice-Chairperson	
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.	
13.	The Hon. Prof. Jaldesa Guyo Waqo, M.P.	
14.	The Hon. Titus Khamala, M.P	
15.	The Hon. Owino Martin Peters, M.P.	

**ANNEXURE 3: COPY OF THE NEWSPAPER  
ADVERTISEMENT ON PUBLIC PARTICIPATION ON  
THE BILL**

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**PUBLIC NOTICE**

## SCAM ALERT

It has come to the attention of Nairobi City Water & Sewerage Company Ltd (NCWSC) that unscrupulous individuals have invited the public to apply for vacancies in the company through an email [nairobi.city.water.and.sewerage.047@gmail.com](mailto:nairobi.city.water.and.sewerage.047@gmail.com)


NCWSC would like to inform the general public that the vacancies in Technical & Legal Directorates were advertised in December 2021 and the positions are already filled. Further, the public should note that NCWSC emails have the domain [nairobiwater.co.ke](http://nairobiwater.co.ke), NCWSC does not use Gmail addresses for recruitment or any other purpose. Should there be any vacancies, the same shall be posted in our website [www.nairobiwater.co.ke](http://www.nairobiwater.co.ke)

The Public is also notified that NCWSC does not charge any facilitation fees when recruiting staff including temporary labourers (casuals). The company bears no responsibility for any personal loss arising from fraudulent job offers or related transactions.

Please call our plot line 0703 080 000 for any clarification.

Eng. Nahason Muguna  
Managing Director

## COUNTY GOVERNMENT OF NANDI



### NANDI COUNTY ASSEMBLY

Telephone Number: 0780 000 029 / 0412 000 029  
E-mail: [info@nandiassembly.go.ke](mailto:info@nandiassembly.go.ke)

P.O. Box 673-30300,  
KAPSABET, KENYA

### PUBLIC PARTICIPATION / SUBMISSION OF MEMORANDA

The Nandi County Annual Development Plan (CADP) for FY 2024-2025 has been tabled at the County Assembly.

Pursuant to Article 196(1)(b) and 201 of the Constitution, read together with section 87 of the County Government Act, provides for public participation and involvement in the legislative and other business of the Assembly and its Committees.

In compliance with the laws, the County Assembly of Nandi invites members of the public and stake holders for public hearings as per the schedule below.

Date	Sub-County	Venue	Time
Monday, 16 <sup>th</sup> October, 2023	Mosop	Kabiyot Ward Office	10.00 a.m.
Tuesday, 17 <sup>th</sup> October, 2023	Chesumei	Chemundu Deputy County Commissioner's Ground	10.00 a.m.
	Engwen	Eliud Kipchoge Complex Hall	
Wednesday, 18 <sup>th</sup> October, 2023	Aldai	Kobujoi CDF Hall	10.00 a.m.
	Nandi Hills	Nandi Hills Town Hall	
	Tindiret	Maraba Social Hall	

Copies of the Nandi County Annual Development Plan (CADP) for FY 2024-2025 is accessible at the County Assembly website [www.nandiassembly.go.ke](http://www.nandiassembly.go.ke).

Members of the public can make their submission at the venue indicated on the schedule or submit written memoranda to:

Clerk of the County Assembly  
P.O Box 673-30300  
Kapsabet.

Memoranda can be hand-delivered to the Office of the Clerk, County Assembly buildings at Kapsabet, or emailed to [info@nandiassembly.go.ke](mailto:info@nandiassembly.go.ke) to be received on or before Thursday 19<sup>th</sup> October, 2023.

Earnaba G.K Kosgei  
Clerk, Nandi County Assembly



**The Standard**  
KENYA'S BOLD NEWSPAPER

Ad Center  
Open Weekdays: 8:00am - 5:00pm  
Saturday: 9:00am - 2:30pm

18M Building, Banda Street, Ground floor  
Email: [classifiedads@standardmedia.co.ke](mailto:classifiedads@standardmedia.co.ke) Tel: 0719-012555/2909790/2901

REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118(1)(b) OF THE CONSTITUTION  
AND  
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:  
**THE FACILITIES IMPROVEMENT FINANCING BILL, 2023 AND THE PRIMARY HEALTH CARE BILL, 2023**

### INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS, the Facilities Improvement Financing Bill, 2023 (Senate Bill, No. 43 of 2023) and the Primary Health Care Bill, 2023 (Senate Bill, No. 44 of 2023) were read a First Time on Tuesday, 3<sup>rd</sup> October, 2023 and pursuant to National Assembly Standing Order 127(1) committed to the Departmental Committee on Health for consideration and reporting to the House;

IT IS NOTIFIED that—

- The Facilities Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023) is a Bill sponsored by the Senate Majority Leader, Sen. Aaron Cheruiyot, MGH, MP. The Bill seeks to provide for public health facility improvement financing and management and administration of the improvement financing. The Bill further aims to ringfence money generated by health facilities, ensuring a predictable, regular and steady source of funding for health facility operations in counties.
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NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites members of the public to submit memoranda on the Bills.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Buildings and on [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The memoranda should be addressed 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](mailto:ena@parliament.go.ke) to be received on or before Wednesday, 11<sup>th</sup> October, 2023 at 5:00 pm.

SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY  
4<sup>th</sup> October, 2023

For the Welfare and Socio-economic Development of the People



## TENDER NOTICE

The Kenya Red Cross Society (KRCS) invites applications from eligible Service Providers for the tender below:

ITEM No.	TENDER NO.	DESCRIPTION
1	GFPREQ01910	SUPPLY AND DELIVERY OF FABRICATED MOTOR VEHICLE (MOBILE CLINIC VAN)

Detailed tender document can be downloaded FREE OF CHARGE from the websites <https://www.redcross.or.ke/Tenders> or <https://reliefweb.int>

Bids should reach [tenders@redcross.or.ke](mailto:tenders@redcross.or.ke) on or before **18<sup>th</sup> October 2023** at **11.00 a.m.** Bids received after the above-specified date and time shall not be considered.

Bidders should provide **soft copies** of technical and financial proposal in two separate folders clearly Marked **"Technical Proposal"** and **"Financial Proposal"** both of which should then be sent to [tenders@redcross.or.ke](mailto:tenders@redcross.or.ke) with the subject-reading **"Tender No: GFPREQ01910: Supply and delivery of Fabricated Motor Vehicle (Mobile Clinic Van)"**

Tenders will be opened immediately thereafter in the presence of the bidders who choose to attend the **online tender opening**, a meeting link will be shared to all eligible bidders who register through [tenders@redcross.or.ke](mailto:tenders@redcross.or.ke)

Procurement Manager

Accusations Governor faced 12 charges, including illegal recruitment of staff, favouritism and nepotism

# Nyaribo survives impeachment attempt

Only 16 members of Nyamira County Assembly voted in support of the motion to remove the governor yesterday

BY RUTH MBULA

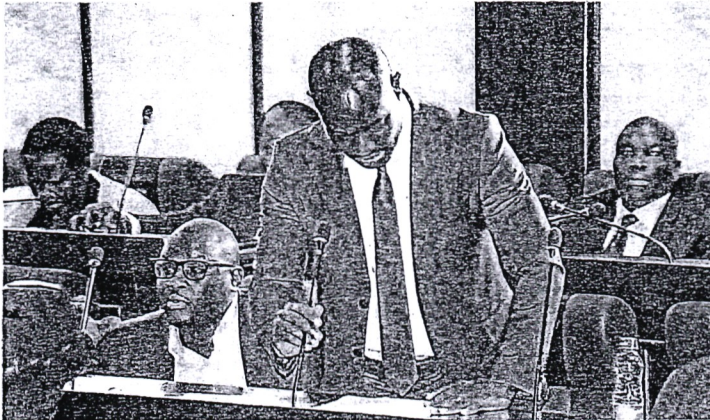
Nyamira Governor Amos Nyaribo yesterday survived impeachment after the motion to remove him failed to garner support from at least two-thirds of the members of the county assembly.

The votes in favour of impeachment were 16 against a target of 23 announced by the Assembly Speaker Enock Okero. There were 16 votes against the motion.

The motion did not meet the threshold, so it was defeated. It can only be brought back to the House after six months," said Mr Okero.

The impeachment motion was officially tabled at the Nyamira County Assembly last week Tuesday according to the 19-page report, Mr Nyaribo faced 12 charges, including illegal recruitment of staff, failure to remit statutory dues, favouritism and nepotism.

"This was the most blatant abuse of power by a county assembly where your opponents are ganging up with other lead-



ers in the devolved unit to remove you from power to take over," said Rigoma ward rep Nyambega Gisesa. The move by Mr Nyaribo's United Progressive Alliance (UPA) party on Monday to whip its members to vote against the impeachment motion appears to

have worked in the governor's favour: The party has a majority in the assembly.

Nyamira has 20 elected and 15 nominated MCAs. UPA has six elected ward reps, followed by ODM with four, Jubilee (2) and Ford Kenya (2). Wiper, United Democratic Alliance, Amani Na-

Esise ward rep Josiah Mang'era tabled the impeachment motion against Governor Amos Nyaribo on September 26. FILE INATION

23

Number of votes that were required to impeach Governor Amos Nyaribo

tional Congress, PPOK and KNC have one each, while one is independent. Combined with nominated MCAs, UPA has a total of nine. However, the party lost its majority leader, Elijah Osiemo, in a road accident last month.

In a letter to all party members in the Nyamira County Assembly, UPA Secretary-General Jacob Bagaka had threatened disciplinary action against anyone who did not vote to save the party leader.

"The party hereby directs all UPA party members in the Nyamira County Assembly to oppose and/or vote down the above motion sponsored by Mr Reuben Miinda Riechi for the removal of Mr Amos Kimwoni Nyaribo," Mr

Bagaka wrote.

The Nation has established that UPA had also approached other Azimio la Umoja One Kenya coalition member parties such as ODM to help them rescue Mr Nyaribo.

The impeachment motion, moved by Esise ward rep Josiah Mang'era, sought to remove Mr Nyaribo under Article 8(1)(a), (b), (c) of the Constitution of Kenya, Section 33 of the County Government Act 2012 and Standing Order No. 62 of the Nyamira County Assembly. He accused Mr Nyaribo of subverting the law by allegedly cherry-picking Godfrey Nyang'au and Elmelda Nyaberi as the director of human resource management and human resource officer, respectively.

The governor was also accused of disobeying a court order by Justice Christine Baari that made the appointment of Mr Nyang'au and Ms Nyaberi illegal.

Mr Nyaribo was also accused of bypassing the assembly when he suspended the CEO of the County Public Service Board in the middle of an active recruitment exercise.

rmmbula@ke.nationmedia.com



Kenya Red Cross

## TENDER NOTICE

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Procurement Manager



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118(1)(b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

THE FACILITY IMPROVEMENT FUND BILL, 2023 AND THE PRIMARY HEALTH CARE BILL, 2023

### INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS, the Facility Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023) and the Primary Health Care Bill, 2023 (Senate Bill No. 44 of 2023) were read a First Time on Tuesday, 3<sup>rd</sup> October, 2023 and pursuant to National Assembly Standing Order 127(7) committed to the Departmental Committee on Health for consideration and reporting to the House;

IT IS NOTIFIED that—

1. The Facility Improvement Financing Bill, 2023 (Senate Bill No. 43 of 2023) is a Bill sponsored by the Senate Majority Leader, Sen. Aaron Chersiyot, MGH, MP. The Bill seeks to provide for public health facility improvement financing and management and administration of the improvement financing. The Bill further aims to reinforce money generated by health facilities, ensuring a predictable, regular and steady source of funding for health facility operations in counties.
2. The Primary Health Care Bill (Senate Bill No. 44 of 2023) is a Bill sponsored by the Senate Majority Leader, Sen. Aaron Chersiyot, MGH, MP. The Bill seeks to establish a framework for the delivery of, access to and management of primary health care. The framework creates an elaborate primary healthcare network at each county and sub-county level to ensure equitable distribution of resources and health services. The Bill further proposes the establishment of a Primary Healthcare Advisory Council to advise the national government and county governments on the implementation of primary healthcare services. Additionally, the Bill establishes County Primary Health Care Advisory Committees at the county level which are tasked to ensure the effective implementation of primary healthcare through resource mobilization, advocacy and the planning and development of primary healthcare service delivery.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites members of the public to submit memoranda on the Bills.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Buildings and on [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The memoranda should be addressed 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 [cnas@parliament.go.ke](mailto:cnas@parliament.go.ke) to be received on or before Wednesday, 11<sup>th</sup> October, 2023 at 5:00 pm.

SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY  
3<sup>rd</sup> October, 2023

For the Welfare of Society and the just Government of the People

**ANNEXURE 4: LETTER INVITING STAKEHOLDERS  
TO SUBMIT VIEWS ON THE BILL**



THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK

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

Telephone: +254202848000 ext. 3300

Email: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)

[www.parliament.go.ke/the-national-assembly](http://www.parliament.go.ke/the-national-assembly)

When replying please quote

Ref. NA/DDC/DC-H/2023/ (094)

4<sup>th</sup> October, 2023

**Hon. Shadrack Mose,**  
Solicitor General,  
Office of the Attorney-General and Department of Justice,  
Sheria House, Harambee Avenue,  
**NAIROBI**

**Mr. Harry Kimutai, CBS**  
Principal Secretary  
State Department for Medical Services  
Ministry of Health  
Afya House  
**NAIROBI**

**Ms. Mary Muthoni Muriuki, HSC**  
Principal Secretary  
State Department for Public Health and professional Standards  
Ministry of Health  
Afya House  
**NAIROBI.**

**Dr. Chris K. Kiptoo**  
Principal Secretary  
The National Treasury and Economic Planning  
Treasury Building  
Harambee Avenue  
**NAIROBI**

**Mr. James Katule**  
Chief Executive Officer  
Commission on Revenue Allocation  
14 Riverside Drive, Grosvenor Suite,  
2<sup>nd</sup> Floor,  
P. O. Box 1310-00200  
**NAIROBI**

**Dr. Margret Nyakang'o**  
Controller of Budget  
Office of the Controller of Budget  
Bima House, 12<sup>th</sup> Floor Harambee Avenue  
P.O. Box 35616-00100  
**NAIROBI**

**Mr. Joash Dache,**  
Secretary /Chief Executive Officer,  
Kenya Law Reform Commission (K.L.R.C),  
P.O Box 34999-00100.  
**NAIROBI,**

**Dr. Samson Kuhora,**  
Ag. Chief Executive Officer  
National Health Insurance Fund  
P.O. Box 30195-00100,  
**NAIROBI.**

**Dr. David G. Kariuki**  
Chief Executive Officer,  
Kenya Medical Practitioners and Dentists Council,  
KMP & DC House,  
Woodlands Rd, off Lenana Rd  
P.O. Box 44839-00100  
**NAIROBI**

**Mr. Benard Mogesa PhD, CPM**  
Commission Secretary/Chief Executive Officer  
Kenya National Commission on Human Rights (KNCHR)  
P.O. Box 74359-00200  
**NAIROBI**

**Ms. Betty Sungura, MBS**  
Commission Secretary /CEO  
National Gender and Equality Commission (NGEC)  
P.O Box 27512-00506  
**NAIROBI**

**Ms. Mary Wambua**  
Commission of Administrative Justice  
2<sup>nd</sup> floor, West End Towers  
Opposite Aga Khan High School  
Off Waiyaki Way, Westlands  
P.O. Box 20414-00200  
**NAIROBI**



Ms. Mary Mwiti  
Chief Executive Officer  
Ms. Council of Governors  
P.O Box 40401-00100  
**NAIROBI**

Ms. Judy Oduma  
Chief Executive Officer  
County Assembly Forum  
Flamingo Towers, 5<sup>th</sup> Floor Wing B, Mara Road  
P.O. Box 73552-00200,  
**NAIROBI**

Dear Hon. Mose

**RE: CONSIDERATION OF THE FACILITIES IMPROVEMENT FINANCING BILL (SENATE BILL NO. 43 OF 2023) AND THE PRIMARY HEALTH CARE BILL (SENATE BILL NO. 44 OF 2023) BY THE DEPARTMENTAL COMMITTEE ON HEALTH**

The Departmental Committee on Health is established under Standing Order 216 (5) (c) and is mandated to "*study and review all legislation referred to it*"

The Facilities Improvement Financing Bill (Senate Bill No. 43 of 2023) and the Primary Health Care Bill (Senate Bill No. 44 of 2023) are before the Committee for consideration and reporting to the House in line with the provisions of standing order 127.

The principal objective of the Facilities Improvement Financing Bill (Senate Bill No. 43 of 2023) is to provide for public health facility improvement financing and management and administration of the improvement financing. The Bill also seeks to ring-fence money generated by health facilities, ensuring a predictable, regular and steady source of funding for health facility operations in counties.

The principal objective of the Primary Health Care Bill (Senate Bill No. 44 of 2023) is to establish a framework for the delivery of, access to and management of primary health care. The framework creates an elaborate primary healthcare network at each county and sub-county level to ensure equitable distribution of resources and health services.

The Bill also proposes the establishment of a Primary Healthcare Advisory Council that advises the national government and county governments on implementation of primary health care services.

Pursuant to Article 118(1) (b) of the Constitution and National Assembly Standing Order 127(3), the Committee hereby invites you to submit memoranda on the said 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](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

In view of short timeline within which the Committee is required to consider the Bills and report to the House, it will be appreciated if the memoranda reaches the Office of the Clerk of the National Assembly, First Floor, Main Parliament Buildings not later than Wednesday, 11<sup>th</sup> October, 2023 at 5.00 pm. Soft copies of the memoranda may be emailed to [cna@parliament.go.ke](mailto:cna@parliament.go.ke).

Our Liaison Officers on this subject are **Mr. Hassan A. Arale**, Committee Clerk who may be contacted on Tel No. 0721480578 or email: [hassan.arale@parliament.go.ke](mailto:hassan.arale@parliament.go.ke) and **Ms. Gladys Kiprotich**, Tel No. 0718721253 or email: [gladys.kiprotich@parliament.go.ke](mailto:gladys.kiprotich@parliament.go.ke)

Yours



**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

**Copy to: - Hon. Justin B. N. Muturi, E.G.H**  
The Attorney-General of the Republic of Kenya  
Office of the Attorney General and Department of Justice  
Sheria house  
Harambee Avenue  
**NAIROBI.**

**Ms. Susan Wafula**  
Cabinet Secretary,  
Ministry of Health.  
Afya, House.

**Prof. Njuguna Ndungu**  
Cabinet Secretary  
The National Treasury and Economic Planning  
Treasury Building  
Harambee Avenue  
**NAIROBI**

**Mr. Stanley Kahinga**  
Chairperson  
Kenya Medical and Dentists Council Board  
P.O. Box 44839-00100  
**NAIROBI**

**Eng. Michael S.M. Kamau, HSC, CBS**  
Board Chairperson  
National Health Insurance Fund  
P.O Box 27512-00506  
**NAIROBI**

**CPA Mary Wanyonyi**  
Chairperson  
Commission on Revenue Allocation  
14 Riverside Drive, Grosvenor Suite,  
2<sup>nd</sup> Floor,  
P. O. Box 1810-00200  
**NAIROBI**



THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK

P. O. Box 41842-00100  
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Main Parliament Buildings  
When replying please quote

Telephone: +254202848000 ext. 3300  
Email: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)  
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Ref. NA/DDC/DC-H/2023/ (095)

4<sup>th</sup> October, 2023

**Dr. Simon Mucara Kigundu**  
The President  
The Kenya Medical Association  
KMA Centre, 4th Floor, Chyulu Road, Upper Hill  
P.O. Box 48502-00100  
**NAIROBI**

**Ms. Carole Kariuki**  
Chief Executive Officer  
Kenya Private Sector Alliance  
5<sup>th</sup> Floor, Shelter Afrique House, Mamlaka Road  
P.O. Box 3556-00100  
**NAIROBI**  
[info@kepsa.or.ke](mailto:info@kepsa.or.ke)

**Mr. Stephen Mutoro**  
Secretary General  
Consumers Federation of Kenya  
Rehema Place, Block F-45 Ngong Road/Ring Rd Kilimani Junction  
P.O. Box 28053-00200 City Square  
**NAIROBI**

**Dr. Makamu Lishenga**  
Chairman  
Rural Private Hospitals Association of Kenya  
2<sup>nd</sup> Floor Lungalunga Square, Off Lungalunga Street, Industrial Area  
**NAIROBI**  
[info@rupha.co.ke](mailto:info@rupha.co.ke)

**Mr. Allan Ragi**  
Executive Director,  
Kenya Aids NGOs Consortium and Transform Health (KANCO)  
Nkoroi, Merisho Past O/Rongai Off Magadi Road  
onto Acacia-Matasia Road then Plains view North Road,  
Opposite Merisho Police Post  
P.O Box 69866 – 00400  
**NAIROBI**

Dr. Tomothy Olweny  
Secretary General  
Kenya Association of Private Hospitals  
Hurlingham Medicare Plaza, 5<sup>th</sup> floor, Suite 517  
**NAIROBI**  
[info@kaph.co.ke](mailto:info@kaph.co.ke)

Dear *M. Arale*

RE: CONSIDERATION OF THE FACILITIES IMPROVEMENT FINANCING BILL (SENATE BILL NO. 43 OF 2023) AND THE PRIMARY HEALTH CARE BILL (SENATE BILL NO. 44 OF 2023) BY THE DEPARTMENTAL COMMITTEE ON HEALTH

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Our Liaison Officers on this subject are Mr. **Hassan A. Arale**, Committee Clerk who may be contacted on Tel No. 0721480578 or email: [hassan.arale@parliament.go.ke](mailto:hassan.arale@parliament.go.ke) and Ms. Gladys Kiprotich, Tel No. 0718721253 or email: [gladyskiprotich@parliament.go.ke](mailto:gladyskiprotich@parliament.go.ke).

Yours



**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

**ANNEXURE 5: ANALYSIS OF SUBMISSIONS BY  
STAKEHOLDERS ON THE BILL**

**ANALYSIS OF STAKEHOLDER MEMORANDA RECEIVED BY THE COMMITTEE ON THE FACILITIES IMPROVEMENT FINANCING BILL, 2023 (SENATE BILL NO. 43 OF 2023)**

<b>THE FACILITIES IMPROVEMENT FINANCING BILL, 2023</b>					
<b>NO.</b>	<b>CLAUSE</b>	<b>STAKEHOLDER</b>	<b>PROPOSED AMENDMENT/COMMENT</b>	<b>RATIONALE</b>	<b>COMMITTEE RESOLUTION</b>
1	Clause 2	The Kenya Human Rights Commission, the Amnesty International Kenya, the People's Health Movement (PHM), the Kenya AIDS NGOs Consortium (KANCO), the Institute of Public Finance (IPF) and the Scaling Up Nutrition Civil Society Alliance (SUN CSA-Kenya)	<p>Inclusion of a section on the expenditure committee defined in clause 2 setting out the following:</p> <p>(a) Composition of the Committee: Specifying the qualifications, expertise and roles of committee members including representation from relevant stakeholders such as healthcare professionals, financial experts and community representatives;</p> <p>(b) Powers and Responsibilities of the Committee: Clearly setting out the Committee's authority in scrutinizing and approving budgets, plans and expenditures</p>	<p>The Bill lacks clarity and specificity on the composition, powers and procedures of the expenditure committee.</p> <p>The absence of detailed provisions on the expenditure committee leaves room for ambiguity and misinterpretation. Stakeholders including health institutions may struggle to understand the committee's role, responsibilities and authority.</p> <p>Clarity on the composition and functions of the expenditure committee is essential</p>	<p><b>Rejected.</b> The definition of an expenditure committee in clause 2 adequately sets out the mandate of this committee which is to receive, interrogate and approve the plans and budgets from county and sub-county hospitals, health centers and dispensaries. The other issues of composition, rules of procedures and timelines for the Committee are administrative in nature and are best handled in the respective county legislation that may, with the advice of the County Executive</p>

		<p>as well as any reporting obligations;</p> <p>(c) Procedures of the Committee: Defining the processes for budget submission, review and approval along with timeliness to ensure efficiency;</p> <p>(d) Provision of mechanisms for public access to Committee decisions and reports as well as regular audits of healthcare facilities' financial management. This will enhance transparency and accountability at all levels;</p> <p>(e) Provision of a clear timeline for the submission, review and approval of budgets and plans to prevent delays; and</p> <p>(f) Provisions that encourage collaboration between the Expenditure Committee and healthcare facilities to facilitate efficient</p>	<p>for ensuring transparency and accountability in the allocation and utilisation of healthcare resources. Without a clear framework, there is a risk of financial mismanagement or favouritism.</p> <p>A well-defined committee with a clear mandate can streamline the budgeting and planning process for healthcare facilities. In the absence of such clarity, decision-making processes may be delayed, impacting the timely delivery of healthcare services.</p>	<p>Committee Member, be developed pursuant to clause 29 of the Bill.</p>
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			<p>planning and resource allocation.</p> <p>Amendment of the definition of the term "schemes" to remove any reference to the National Health Insurance Fund.</p>	<p>The definition of "schemes" in the current context refers to proposed benefit packages that cover in-patient and out-patient services under the National Health Insurance Fund (NHIF). However, there is a Bill under consideration that intends to abolish the NHIF which creates an inconsistency within the definition as it commits to the existence of the NHIF while the broader legislative framework seeks to dismantle the same.</p>	<p><b>Noted.</b> The definition of the term "schemes" was already deleted by the Senate.</p>
2	Part II	The Kenya Human Rights Commission and 5 Others	<p>Amendment of clause 5 to explicitly state that the clause is subject to the provisions of the Constitution and that in cases of conflict, the Constitution shall prevail.</p>	<p>This ensures that the constitutional order is upheld and that there is respect for the hierarchy of laws as the Constitution is the supreme law of the land.</p>	<p><b>Noted.</b> The clause on conflict of laws was already deleted by the Senate.</p>



		<p>Ensure that the Bill does not claim supremacy over existing laws but instead operates within the legal framework established by the Constitution and other relevant laws.</p> <p>Conduct a thorough review of the Bill to identify and eliminate any provisions that may conflict with existing laws or create duplications.</p>	<p>Legal systems rely on a hierarchical structure for consistency.</p> <p>Legal coherence and consistency are essential.</p>	
3	Clause 5	<p>The County Assemblies Forum</p> <p>Clause 5 is in order save for the lack of clarity as to the persons who will have the authority to re-donate finances in a county under clause 5(3). Clear guidelines and protocols for the donation and re-donation of non-financial resources under clause 5(3) should be developed. These guidelines and protocols should define what items can be donated, the process of disclosure and how decisions are made.</p> <p>Clause 5 is further in order save for the fact that it might limit the financial autonomy of individual health centers if they have limited decision-making</p>	<p>The lack of clarity may lead to disagreements or suboptimal use of resources.</p> <p>Transparent reporting mechanisms will empower health facilities financially enabling them to address immediate needs and enhance service delivery.</p> <p>There are concerns that clause 6 might centralize revenue allocation thereby diminishing the</p>	<p><b>Noted.</b> Clause 5 is in order as drafted. The person that authorises retention of funds is the one that authorizes donation of funds as he or she is the overall administrator of funds generated and retained under the Facilities Improvement Financing framework.</p>

			<p>power over the utilization of the funds generated.</p>	<p>financial autonomy of health centers. County Assemblies usually emphasize the importance of local decision-making as highlighted in clause 6 to ensure that individual health facilities can manage their funds effectively in responding to local needs promptly.</p>	
4	Clause 6	The Kenya Human Rights Commission and 5 Others	<p>Amendment of the Bill to provide precise definitions and provisions for "user fees" and "charges". The provisions should clearly outline what services can be charged for, the principles governing fee-setting (e.g., affordability, equity) and any limits or guidelines for fees and charges.</p>	<p>There is a lack of clarity and yet clear definitions are essential for understanding and compliance.</p>	<p><b>Rejected.</b> The terms "user fees" and "charges" in clause 6(a) are used in their ordinary sense and are linked to the revenue collected by public health facilities and which then constitute facilities' improvement financing that is defined in clause 2 of the Bill.</p>
5	Clause 7	Council of Governors	<p>Deletion of clause 7(h).</p>	<p>Its inclusion would deny health facilities resources to improve the quality of health services and ambulance services may be supported in</p>	<p><b>Rejected.</b> Ambulance services are critical for the provision of effective emergency health care.</p>

				the other activities within the clause.	
6	Clause 8	The Kenya Human Rights Commission and 5 Others	Amendment of the Bill to specify reasonable and achievable deadlines for the formulation of regulations and policies required for the implementation of the Bill.  The deadlines should take into account the complexity of the regulations and the need for thorough deliberation and stakeholder consultation.	There are no timelines and yet setting clear and reasonable timeframes for formulating regulations and policies is essential for ensuring the timely implementation of the Bill.	<b>Rejected.</b> The power to make regulations and guidelines is a preserve of the Executive in the exercise of delegated power accorded to it by the legislature.
		Council of Governors	Deletion of Clause 8 which sets out the roles of the national governments.	The roles are unnecessary as they encroach on county functions.	<b>Rejected.</b> The clause is in line with the delineation of health functions of the national government and county governments under the Fourth Schedule to the Constitution.
7	PART IV	The County Assemblies Forum	The establishment of various management teams and committees enhances transparency and accountability allowing county assemblies to have a clearer view of how funds are utilized within health facilities.		<b>Noted.</b> The establishment of various management teams and committees indeed enhances transparency and accountability.

8	Clause 9	Council of Governors	County Treasuries ought to be represented in the various committees established under the Bill so as that they can provide technical expertise on matters of financial management, accounting and reporting.	Amendment of the Bill to specify reasonable and clearly defined timeframes for issuing authority to incur expenditure to health facilities for instance within seven (7) days from receipt of the expenditure plans.	County Treasuries ought to be represented in the various committees established under the Bill so as that they can provide technical expertise on matters of financial management, accounting and reporting.	<b>Rejected.</b> The Bill requires that the CEC in charge of the County Treasury shall attach accountants to each health facility.
		The Kenya Human Rights Commission and 5 Others		There are no timelines and yet clear timeframes are essential for clarity and predictability.	<b>Rejected.</b> The setting of timelines for issuance of authority to incur is administrative in nature and is best handled in the respective county legislation that may, with the discretion of the County Executive Committee Member, be developed pursuant to clause 29 of the Bill.	<b>Rejected.</b> The setting of timelines for issuance of authority to incur is administrative in nature and is best handled in the respective county legislation that may, with the discretion of the County Executive Committee Member, be developed pursuant to clause 29 of the Bill.
		The County Assemblies Forum	Amendment of clause 9 (f) by deleting the words "subject to the relevant financial laws" and substituting therefor the words "subject to the Public Finance Management Act".	To specify the financial law as using the former may lead to ambiguous financial oversight allowing for room mismanagement;	<b>Rejected.</b> The Public Finance Management Act, No. 18 of 2012 is the primary law on public finance management in the country however it is not the only law. Other laws such as the Constitution also deals	<b>Rejected.</b> The Public Finance Management Act, No. 18 of 2012 is the primary law on public finance management in the country however it is not the only law. Other laws such as the Constitution also deals

		Council Governors	of	Deletion of clause 9(d) and (e).	They are contradictory and yet the role of county governments over monies allocated to the department is already clear.	with matters of public finance.	The <b>Rejected.</b> provisions are necessary for prudent financial management.
9	Clause 10	Council Governors	of	Deletion of clause 10(d) and (e).	They are unnecessary and they contradict section 46 of the County Governments Act, No. 17 of 2012;		
10	Clause 11	The County Assemblies Forum		Amendment of clause 11 by inserting a new paragraph (o) "submit quarterly reports to the County Assemblies on management on facility improvement financing across the County" immediately after paragraph (n).	To provide for regular reporting mechanisms from the County Health Management Teams to the County Assemblies for enhanced transparency and public accountability. Clear provisions should be included to ensure that County Assemblies have the authority to scrutinize and monitor the utilization of funds by health centers. This reinforces the role of County Assemblies as	<b>Rejected.</b> The County Health Management Teams reported to their appointing authority that is the County Executive Committee Member in charge of health matters in the counties. The latter then reports to the County Assembly.	

11	Clause 12	Council of Governors	Deletion of clause 12(1) and (2).	<p>the primary overseers of health center finances.</p> <p>They are unnecessary and they are over prescribing for county governments and are establishing too many duplicative structures.</p> <p>The clause is over prescribing for county governments and is establishing too many duplicative structures. The clause is further adding layers of bureaucracy hence defeating the purpose and objects of the Bill.</p>	<p><b>Rejected.</b> The provisions are necessary for prudent financial management.</p>
12	Clause 17	Council of Governors	Deletion of clause 16.	<p>The clause over prescribing for county governments and is establishing too many duplicative structures. The clause is further adding layers of bureaucracy hence defeating the purpose and objects of the Bill.</p> <p>The clause over prescribing for county governments and is establishing too many duplicative structures.</p>	<p><b>Noted.</b> The clause was amended by the Senate to specify that two members of the Health Facility Management Committee will represent the interests of the vulnerable and</p>
	Clause 17	Council of Governors	Deletion of clause 17.	<p>There is no clarity and yet clarifying the kind of persons to be nominated i.e. women, youth, persons with disability, or members of a marginalised group is necessary to ensure inclusivity.</p>	<p><b>Noted.</b> The clause was amended by the Senate to specify that two members of the Health Facility Management Committee will represent the interests of the vulnerable and</p>
		The Kenya Human Rights Commission and 5 Others	Amendment of clause 17 for enhanced specificity on the kind of people being nominated by the various groups.		

						<p>marginalized communities and that one of the two members must be a person with disability.</p> <p><b>Rejected.</b> Safeguards on the appointment of the members of the Health Facility Management Committee under clause 17(3). Further, Village Councils are yet to be fully recognized as the official coordination units in the counties.</p>
13	Clause 18	The County Assemblies Forum	In support of clause 18.	<p>The clause outlines the specific responsibilities of Health Facility Management Committees including financial oversight, public awareness and adherence to</p>	<p>To provide that the village representative in the Health Facility Management Committee is elected from a Village Council as most counties have established Village Councils as bodies of coordination. This cures the lack of an explicit criteria for the nomination of village representatives which could lead to potential issues such as the lack of transparency, favoritism or bias in the selection process.</p>	<p><b>Rejected.</b> Safeguards on the appointment of the members of the Health Facility Management Committee under clause 17(3). Further, Village Councils are yet to be fully recognized as the official coordination units in the counties.</p>

14	Clause 19	The Kenya Human Rights Commission and 5 Others	Amendment of the Bill to include the manner in which clause 19 on the terms and conditions of appointment of the Boards and Committees established under the Bill is to be realised. If not, the Bill should recommend that regulation or guidelines be passed to guide the implementation of clause 19.	procurement rules which if enforced effectively can ensure proper financial management at the facility level. The clause is inadequate as terms and conditions ought to be comprehensive and leave no gaps.	<b>Rejected.</b> The clause as drafted is in order as it sets out the tenure of office of the the Boards and Committees established under Part IV of the Bill.
15	Clause 20	Council of Governors	Deletion of clause 20(1) and substitution with a new subsection that cross references the Public Finance Management Act.	The operation of bank accounts should be guided by the provisions of section 119 of the Public Finance Management Act, No. 18 of 2012.	<b>Rejected.</b> The clause is in line with section 119 of the Public Finance Management Act, No. 18 of 2012.
			Clause 20(3) should be redrafted to make the Chair of the Health Facility management Committee a co-signatory instead of the Sub-County Accountant.	This would reduce bureaucracy and ensure timeliness and community participation as well as alignment with the Ministry of Health's Manual on Health	<b>Rejected.</b> The clause is in order and the Sub-County Accountant is the best placed person due to their technical



				Facility Management committees.	expertise in accounting matters.
16	Clause 22	The County Assemblies Forum	The process of expenditure of facility improvement financing in clause 22 which involves multiple levels of verification and approval is complex and should be simplified.	The current process could lead to delays in essential financial transactions potentially affecting service delivery.	<b>Rejected.</b> The multiple levels of verification and approval are necessary for prudent financial management as required in the Constitution of Kenya, 2010 and the Public Finance Management Act, No. 18 of 2012.
		Council of Governors	Deletion of clause 22 (3) and substitution with a new sub-cause that requires that vouchers prepared shall be prepared, verified, confirmed and preserved in accordance with the Public Finance Management Act, No. 18 of 2012.	as this brings about more clarity	<b>Rejected.</b> The clause as drafted is in line with the Public Finance Management Act, No. 18 of 2012.
17	Clause 27	The County Assemblies Forum	In support of clause 27.	The clause ensures stability during the transition period by allowing existing management bodies to continue their operations until new structures are fully functional.	<b>Noted.</b> The clause is indeed necessary for proper transition.

18	General comments	The Ministry of Health	<p>The Ministry submitted that the Bill as passed by the Senate on 27<sup>th</sup> September 2023 is in order and that it had no further amendments to the Bill.</p> <p>The Ministry also submitted that it had conducted stakeholder engagement on the Bill and proposed amendments to the Senate which had considered the same as the Bill reflects the outcome of the said stakeholder engagement.</p>		<p><b>Noted.</b> The Committee adopted the Bill without amendments.</p>
		The County Assemblies Forum	<p>The Forum appreciated the opportunity to contribute to the Bill.</p> <p>The Forum appreciated the Ministry of Health for developing the Bill as it grants counties control over the revenue generated within their health facilities allowing for more localized decision-making. Further, by ensuring a steady revenue stream for health facilities, counties can plan and implement long-term healthcare projects without solely relying on the central government allocations.</p>		<p><b>Noted.</b> The Bill guarantees transparent and accountable management of public funds in the health sector in line with the Constitution of Kenya, 2010 and the Public Finance Management Act, No. 18 of 2012.</p>

		<p>Citizens generally expect transparent and accountable management of public funds in the health sector. While the Bill's intent to improve facilities is commendable, citizens are concerned about any clauses that might hinder the financial autonomy of health centers as this could impact service delivery. The transparent reporting mechanisms as proposed in clause 7 are therefore crucial in assuring citizens that their funds are utilized efficiently.</p>		<p>The Committee <b>noted</b> the general comments and appreciated that the Bill is necessary for the improved function of health at the counties.</p>
	<p>Council of Governors</p>	<p>The Council appreciates the efforts that have gone into the development of the Bill in light of the challenges and efforts by the county governments and the Council of Governors to address these challenges. The Bill proposes the establishment of a number of leadership and governance structures that duplicate other structures that county governments have already established in terms of the Health Act and their respective county laws which brings</p>		

about unnecessary additional costs.

The Bill is overly prescriptive denying any room for flexibility and diversity in implementation of the Bill and yet experience has shown that the same should be left for determination by individual county governments.

There is no need for a national legislation on FIF as the various county laws on the same are sufficient and instead to ensure uniformity within the county governments.

The Bill should be aligned to the Public Finance Management Act, No. 18 of 2012 instead of proposing new arrangements as the former prevails on all matters relating to banking arrangements and the management and establishment of public funds.

**ANNEXURE 6: SUBMISSIONS BY STAKEHOLDERS**



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

Telephone: Nairobi 254-020-2717077  
Fax: 254-2719008  
Email: [ps.medical@health.go.ke](mailto:ps.medical@health.go.ke)  
When replying please quote:

AFYA HOUSE  
CATHEDRAL ROAD  
P. O Box 30016-00100

**Ref: MOH/ADM/1/2**

**6<sup>th</sup> October, 2023**

**Mr. Samuel Njoroge**  
Clerk of the National Assembly,  
Parliament Buildings,  
P.O. Box 41842-00100  
**NAIROBI**

**RE: CONSIDERATION OF THE FACILITIES IMPROVEMENT FINANCING  
BILL (SENATE BILL NO. 43 OF 2023) AND THE PRIMARY  
HEALTHCARE BILL (SENATE BILL NO.44 OF 2023) BY THE  
DEPARTMENTAL COMMITTEE ON HEALTH**

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We make reference to the above subject matter.

The National Assembly has invited for submission of Memoranda on The Facilities Improvement Financing Bill (Senate Bill No. 43 of 2023) and The Primary Healthcare Bill (Senate Bill No.44 of 2023).

The Ministry conducted Stakeholder Engagement on the Proposed Bills and proposed certain amendments to the Bills when the Bills were before the Senate. The Senate considered our comments together with those of various other stakeholders and we note that the Bills, as passed by the Senate, with amendments, on 27<sup>th</sup> and 28<sup>th</sup> September, 2023 reflect the outcome of the Stakeholder Engagement.

The Ministry therefore, notes that the Bills as passed by the Senate, with amendments are in order and has no further amendments to propose.

Harry K. Kimtai, CBS  
**PRINCIPAL SECRETARY**

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

**ANALYSIS OF STAKEHOLDER MEMORANDA RECEIVED BY THE COMMITTEE ON THE FACILITIES IMPROVEMENT FINANCING BILL, 2023 (SENATE BILL NO. 43 OF 2023)**

<b>THE FACILITIES IMPROVEMENT FINANCING BILL, 2023</b>				
<b>CLAUSE</b>	<b>STAKEHOLDER</b>	<b>PROPOSED AMENDMENT/COMMENT</b>	<b>RATIONALE</b>	<b>COMMITTEE RESOLUTION</b>
1 General comments	Ministry of Health	The Ministry submitted that the Bill as passed by the Senate on 27 <sup>th</sup> September 2023 is in order and that it had no further amendments to the Bill.  The Ministry also submitted that it had conducted stakeholder engagement on the Bill and proposed amendments to the Senate which had considered the same as the Bill reflects the outcome of the said stakeholder engagement.		<b>Noted.</b> The Committee adopted the Bill without amendments.

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11/10/23

NATIONAL ASSEMBLY  
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Hassan Aade  
to Jaaahade  
4/10/23

**Memorandum on the Facilities Improvement Financing Bill, 2023**

Presented to The Clerk of the National Assembly

P.O. Box 41842 - 00100, Nairobi, Email: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)

5<sup>th</sup> October 2023

We the undersigned Civil Society Organisations working on health, governance and human rights have analysed the above proposed law and make our recommendations pursuant to the notice issued on the 4<sup>th</sup> October 2023.

We submit as follows and ask for reconsideration of the following clauses:

Clause	Issue of Concern	Justification	Recommendation
Clause 2 Definition of Expenditure Committee	The Bill introduces the concept of an "expenditure committee" tasked with receiving, interrogating, and approving plans and budgets from county and sub-county hospitals, health centres, and dispensaries. However, the Bill lacks clarity and specificity on the composition, powers, and procedures of this committee.	Lack of Clarity: The absence of detailed provisions on the expenditure committee leaves room for ambiguity and misinterpretation. Stakeholders, including health institutions, may struggle to understand the committee's role, responsibilities, and authority.	The Bill should include a section dedicated to defining the composition, powers, and procedures of the expenditure committee. This section should outline the following:  a. Composition: Specify the qualifications, expertise, and roles of committee members, including representation from relevant stakeholders such as healthcare professionals, financial experts, and community representatives  b. Powers and Responsibilities: Clearly state the committee's authority in scrutinising and approving budgets, plans, and expenditures, as well as any reporting obligations.  c. Procedures: Define the processes for budget submission, review, and approval, along with timelines to ensure efficiency.  Implement mechanisms for public access to committee decisions and reports, as well as regular audits of healthcare

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11 OCT 2023  
DEPUTY CLERK S. KIOKO  
P.O. Box 41842 - 00100, NAIROBI

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CLERK'S OFFICE  
P.O. Box 41842, NAIROBI

DIRECTOR  
PROBATION  
11 OCT 2023



		<p>Transparency and Accountability: Clarity regarding the composition and functions of the expenditure committee is essential for ensuring transparency and accountability in the allocation and utilisation of healthcare resources. Without a clear framework, there is a risk of financial mismanagement or favouritism.</p> <p>Efficiency and Effectiveness: A well-defined committee with a clear mandate can streamline the budgeting and planning process for healthcare facilities. In the absence of such clarity, decision-making processes may be delayed, impacting the timely delivery of healthcare services.</p>	<p>as regular audits of healthcare facilities' financial management. This will enhance transparency and accountability at all levels.</p> <p>Establish a clear timeline for the submission, review, and approval of budgets and plans to prevent delays. Encourage collaboration between the expenditure committee and healthcare facilities to facilitate efficient planning and resource allocation.</p>
Clause 2 Definition of Schemes	Inconsistency	The definition of "schemes" in the current context refers to proposed benefit packages that cover in-patient and out-patient services under the National Health Insurance Fund (NHIF). However, there are Bills or legislation under consideration that intend to abolish the NHIF. This creates an inconsistency within	Revise the definition of "schemes" to remove any reference to the NHIF.

		the definition, as it commits to the existence of the NHIF while the broader legislative framework seeks to dismantle it.	
Clause 5	Supremacy of the Bill	<p>The Constitution is the supreme law of the land.</p> <p>Legal systems rely on a hierarchical structure for consistency.</p> <p>Legal coherence and consistency are essential.</p>	<p>Amend the clause to explicitly state that it is subject to the provisions of the Constitution and that in cases of conflict, the Constitution shall prevail. This ensures that the constitutional order is upheld and respects the hierarchy of laws.</p> <p>Ensure that the Bill does not claim supremacy over existing laws but instead operates within the legal framework established by the Constitution and other relevant laws.</p> <p>Conduct a thorough review of the Bill to identify and eliminate any provisions that may conflict with existing laws or create duplications.</p>
Clause 7 [a]	Lack of clarity	Clear definitions are essential for understanding and compliance.	Amend the Bill to provide precise definitions and provisions for "user fees" and "charges." The provisions should clearly outline what services can be charged for, the principles governing fee-setting (e.g., affordability, equity), and any limits or guidelines for fees and charges.
Clause 9 National Government Formulating Regulations	Lack of timelines	Setting clear and reasonable timeframes for formulating regulations and policies is essential for ensuring the timely	Amend the Bill to specify reasonable and achievable deadlines for the formulation of regulations and policies required for the implementation of the

		implementation of the Bill.	legislation. These deadlines should take into account the complexity of the regulations and the need for thorough deliberation and stakeholder consultation.
Clause 10 [c]	Lack of timelines	Clear timeframes are essential for clarity and predictability.	Amend the Bill to specify reasonable and clearly defined timeframes for issuing authority to incur expenditure to health facilities. For instance, 7 days from receipt of the expenditure plans.
Clause 18	Lack of Clarity	Clarifying the kind of persons to be nominated i.e. women, youth, PWD, or members of a marginalised group, will be necessary to ensure inclusivity.	Amend the clauses to be more specific as to the kind of people being nominated by the various groups.
Clause 20	Inadequate	Terms and conditions ought to be comprehensive, leaving no gaps.	Amend the Bill to include the proposed manner in which clause 20 is to be realised. If not, the Bill should recommend that regulation/guidelines be passed to guide the implementation of clause 20.

Submitted by the following organisations:

1. Kenya Human Rights Commission
2. Amnesty international Kenya
3. People's Health Movement (PHM)
4. Kenya AIDS NGOs Consortium (KANCO)
5. Institute of Public Finance (IPF)
6. Scaling Up Nutrition Civil Society Alliance (SUN CSA-Kenya)



# COUNCIL OF GOVERNORS

Doc. No  
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Westlands Delta House 2<sup>nd</sup> Floor, Waiyaki Way.  
P.O. BOX 40401-00100,  
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**Our Ref. COG/6/40 Vol. 87**

9<sup>th</sup> October 2023

*Hassan Asale*  
*to facilitate*  
*12/10/23*

**Mr. Samuel Njoroge**  
Clerk of the National Assembly  
Parliament Buildings  
**NAIROBI**

Dear Mr. Njoroge

**COUNCIL OF GOVERNORS MEMORANDUM ON THE PRIMARY HEALTH CARE SERVICES BILL, 2023 AND THE FACILITIES IMPROVEMENT FINANCING BILL, 2023**

The above subject matter refers.

The Council of Governors appreciates the legislative work of the National Assembly through the Standing Committee on Health and appreciates the invitation from the committee to present memorandum on the referenced Bills.

In view of the above and in execution of its mandate of bringing County Governments together to advance matters of their common interest, we have reviewed and consolidated comments from the Counties on the draft Primary Health Care Services Bill, 2023 and the Facilities Improvement Financing Bill, 2023 and prepared a memorandum of comments and proposals.

The purpose of this letter is therefore to submit written memoranda on the two bills for your consideration.

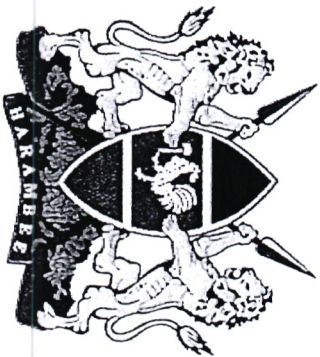
We remain available for further discourse on the subject.

Yours sincerely

**Mary Mwiti**  
**Chief Executive Officer**

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12 OCT 2023  
Directorate of Departments and Committees

NATIONAL ASSEMBLY  
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★ 11 OCT 2023 ★  
CLERK'S OFFICE  
P O Box 41842, NAIROBI



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE FACILITIES IMPROVEMENT FINANCING BILL, 2023

FROM

THE COUNCIL OF GOVERNORS

TO

THE SENATE

## Introduction

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the National level and the County level;

In further recognition of Article 6 (2) that Governments at the National and County levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

**Conscious** that Government at either level ought to perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of government at the other level, and respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level.

The Council hereby notes as follows on the **Facilities Improvement Financing Bill of 2023** (the Bill).

- 1) The Council of Governors appreciates the efforts that have gone into putting together the Bill and wishes to make the following observations about it and the process followed in arriving at the same.
- 2) This Bill has been introduced against a background of a number of struggles, challenges and efforts by both county governments and the Council of Governors to address them.

#### A. HIGHLIGHTS OF KEY ISSUES IN THE BILL

- 1) The Bill proposes the establishment of a number of additional leadership and governance structures that duplicate other structures that county governments have already constitutionally established in terms of the Health Act and their own Health laws, which come with unnecessary additional costs.
- 2) The bill is overly prescriptive for county governments, denying them room for flexibility and diversity in terms of details for implementation which, experience has shown, are better left to individual county governments. We propose that the bill should restrict itself to providing a broad framework of uniform norms and standards and leave county governments with discretion to provide their own unique details of implementation about things such as who should be signatories to the accounts of various health facility bank accounts.
- 3) Section 8 of the bill provides for roles of the National Government which we consider unnecessary as they are over prescriptive for counties on matters such as monitoring of implementation at the facility level and encroach upon the county government functions. It is recommended that the section should be deleted from the bill.
- 4) Section 20 of the bill provides for the opening and operating of a bank account for every entity. COG notes that this should be guided by the provisions of Section 119 of the Public Finance Management Act, 2012.
- 5) The various Counties' legislation of FIF are sufficient and in accordance with Section 109 (2) of the Public Finance Management (PFM) Act, 2012 and therefore no need for a national legislation. In case of any desired uniformity and in place of the National legislation, there should be guidelines on establishing FIF in Counties.
- 6) The PFM Act, 2012 prevails on all matters relating to banking arrangements and establishment and management of public funds. The Bill should therefore align with the provisions of the PFM Act, 2012 and its regulations, 2012 as opposed to proposing new arrangements.
- 7) The establishment of various Committees overseeing management and resources relating to FIF has excluded the representation of County Treasuries who should be providing technical expertise on matters financial management, accounting and reporting. Therefore, there is need to have representation from the County Treasuries in each of the Committees and Sub-committees established.