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14 JUN 2016



*PAPER LAD  
for the chair  
Departmental  
committee on  
Health, H  
Rachel Nyamari  
on Tuesday  
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THE NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT – FOURTH SESSION

THE DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE PROGRESS OF THE MATTER BETWEEN CLINIX HEALTH CARE, MERIDIAN MEDICAL CENTRE LTD AND NATIONAL HOSPITAL INSURANCE FUND ON THE CIVIL SERVANTS OUTPATIENT MEDICAL SCHEME.

CLERK'S CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

JUNE, 2016

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## **ABBREVIATIONS AND ACCRONYMS**

AG	-	Attorney General
BQA	-	Benefit and Quality Assurance
CEO	-	Chief Executive Officer
CSDSMS	-	Civil Service Disciplined Service Medical Scheme
EACC		Ethics and Anti-Corruption Commission
EOI	-	Expression of Interest
HISP	-	Household Insurance Subsidy Programme
NHIF	-	National Hospital Insurance Fund
UHC	-	Universal Health Coverage

## **ANNEXES**

Annex 1 – Adoption list

Annex 2 – Committee Minutes

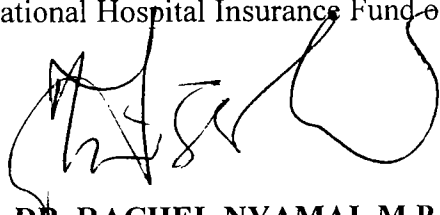
## **CHAIR'S FOREWORD**

The Committee on Health has been keen on the progress towards the Universal Health Coverage. In this regard, the Committee noted that the Health Committee in the 10<sup>th</sup> Parliament had tabled a Report on Alleged Irregularities on the Rolling out of the Civil Servants' Out-Patient Medical Insurance Scheme. Although its recommendations were not adopted, arising from the issues raised in the report, the Ministry of Health requested Ethics and Anti-Corruption Commission (EACC) to undertake investigations. Consequently, the National Hospital Insurance Fund terminated the contracts signed with the Clinix Health Care Limited and Meridian Medical Centre Limited. Further, the EACC filed criminal cases against the two health providers arising from the findings of the investigations. On the other hand, the Meridian Medical Centre Limited filed a civil case against the NHIF due to termination of the contract.

The Committee therefore invited all the relevant parties involved to brief it on the status of the issues that were raised with an aim to review mechanisms of having an all-inclusive progress to the achievement of the Universal Health Coverage. The Committee held meetings with the Ministry of Health, the National Health Insurance Fund, Attorney General, Ethics and Anti-Corruption Commission and the management of Clinix health Care and Meridian Medical Centre in order to respond to various issues raised about the contracts termination.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

On behalf of the Committee, and pursuant to Standing Order, 199 it is my pleasant duty to table in the House the Report of the Departmental Committee on Health on its consideration of Report on the progress of the matter between Clinix Health Care, Meridian Medical Centre Ltd and National Hospital Insurance Fund on The Civil Servants Outpatient Medical Scheme.



**HON. DR. RACHEL NYAMAI, M.P,**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH**

## **EXECUTIVE SUMMARY**

The purpose of this report was to establish the current status of the matter between the National Hospital Insurance Fund, Clinix Health Care and Meridian Medical Centre Limited on the termination of their contracts for services provided under the Civil Servants Outpatient Medical Scheme and whose contracts were terminated by the NHIF as the country gears towards achievement of the universal health coverage in line with Article 43(1) (a) of the Constitution.

The Committee found out that there were contracts that were entered into between the National Hospital Insurance Fund Board of Management and the Clinix Health Care Limited and Meridian Medical Centre Limited dated 1<sup>st</sup> January, 2012 for the provision of medical care and treatment services to Civil Servants and Members of the Disciplined Services and their declared dependants. The contracts were signed on 15<sup>th</sup> February, 2012 for Clinix Healthcare Ltd and on 1<sup>st</sup> March, 2012 for Meridian Medical Centre.

The two contracts were terminated in June 2012. At the time of termination, NHIF owed Kshs. 16,522,666 and Kshs.12 million to Clinix and Meridian respectively as arrears for one installment for the provision of pilot project. In addition, the Fund owed Clinix Kshs. 202,161,187.50 as capitation for the services rendered for the second quarter while Meridian had a total claim of Kshs. 815 million owed to it for the second quarter, which included the one month unpaid claim of Kshs. 12 million for the pilot project and losses incurred due to the termination of contract.

The Attorney General acknowledged that the service providers were owed payment for the second quarter of the contract period however, due to ongoing cases, there was need for all the government agencies involved in the matter to liaise for purposes of expediting the process.

The Committee based on the evidence presented recommends that the Director of Public Prosecution immediately reviews Clinix Healthcare Ltd and Meridian Medical Centre demand to be paid for the contracts that were terminated.

The Committee further recommends that the NHIF liaises with the various government agencies responsible for the ongoing investigations for purposes of expediting conclusion on the investigations and guiding on the treatment of NHIF's outstanding obligations under the two contracts.

## **1.0 PREFACE**

Arising from a Committee Report on Alleged Irregularities on the Rolling out of the Civil Servants' Out-Patient Medical Insurance Scheme whose recommendations were rejected by the House, the Committee observed that there were key issues cited in the said report that were not resolved and that were likely to impede the achievement of the Universal Health Coverage.

The Committee took cognizance of the fact that the Ministry of Health had requested for investigations into the rolling out of the Civil Servants' Out-patient Medical Insurance Scheme by the Ethics and Anti-Corruption Commission (EACC). Subsequently, EACC in its findings filed criminal cases in court against Clinix Health Care Ltd and Meridian Medical Centre Ltd.

In this regard, the Committee requested to be apprised on the progress of the matters regarding the National Hospital Insurance Fund, the Clinix Health Care Ltd and Meridian Medical Centre Ltd over the termination of the Civil Servants' Out-patient Medical Insurance Scheme contract.

## 1.1 MANDATE OF THE COMMITTEE

The Committee on Health is one of the Departmental Committees of the National Assembly established under Standing Order 216 with the following terms of reference;

- i) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- ii) study the programme and policy objectives of Ministries and Departments and the effectiveness of the implementation;
- iii) study and review all legislation referred to it;
- iv) study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;
- v) **investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to it by the House;**
- vi) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments) ; and
- vii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

1.1.1 The Committee is mandated to consider matters related to health, medical care and Health Insurance



## **1.2 OVERSIGHT**

In executing its mandate, the Committee oversees the Ministry of Health, and the Semi- Autonomous Government Agencies and regulatory bodies under the Ministry.

### 1.3 MEMBERS OF THE COMMITTEE

<b>Chairperson</b>	The Hon. Dr. Rachel Nyamai, M.P.
<b>Vice Chairperson</b>	The Hon. Dr. Robert Pukose, MP
<b>Members</b>	The Hon. Alfred Agoi, M.P.
	The Hon. Alfred Sambu, M.P.
	The Hon. David Karithi, M.P.
	The Hon. Dr. Dahir Duale Mohamed, M.P.
	The Hon. Jared Opiyo, M.P.
	The Hon. Dr. Enoch W. Kibunguchy, M.P.
	The Hon. Dr. James Murgor, M.P.
	The Hon. Dr. James Nyikal, M.P.
	The Hon. Dr. James O. Gesami, M.P.
	The Hon. Dr. Naomi Shaban, M.P.
	The Hon. Dr. Patrick Musimba, M.P.
	The Hon. Dr. Stephen Wachira, M.P.
	The Hon. Dr. Susan Musyoka, M.P.
	The Hon. Eng. Stephen Mule, M.P.
	The Hon. Fred Outa, M.P.
	The Hon. Hassan Aden Osman, M.P.
	The Hon. James Gakuya, M.P.
	The Hon. John Nyaga Muchiri, M.P., HSC
	The Hon. Joseph O. Magwanga, M.P.
	The Hon. Kamande Mwangi, M.P.
	The Hon. Leonard Sang, M.P.
	The Hon. Robert Mbui, M.P.
	The Hon. Michael Onyura, M.P.
	The Hon. Mwinga Gunga, M.P.
	The Hon. Paul Koinange, MP
	The Hon. Raphael Milkau Otaalo, M.P.
	The Hon. Zipporah Jesang Kering, M.P.

#### **1.4 COMMITTEE SECRETARIAT**

<b>Clerk Assistant</b>	Ms. Esther Nginyo
<b>Clerk Assistant</b>	Mr. Dennis Mogare
<b>Clerk Assistant</b>	Ms. Ruth Mwihaki
<b>Legal Counsel</b>	Ms. Merlin Ayiro
<b>Research &amp; Policy Analyst</b>	Ms. Marale Sande
<b>Fiscal Analyst</b>	Mr. Joash Kosiba

## **1.5 ADOPTION OF THE REPORT**

We, the members of the Departmental Committee on Health have, pursuant to Standing Order 199, adopted this Report on the Progress of the Matter between the Clinix Health Care Ltd, Meridian Medical Centre Ltd and the National Hospital Insurance Fund (NHIF) on the Civil Servants Medical Insurance Scheme and affix our signatures (Annex 1) to affirm our approval and confirm its accuracy, validity and authenticity today Thursday 21<sup>st</sup> April 2016.

## 2.0 INTRODUCTION

- 2.1 Universal Health Coverage is defined as the provision of quality, affordable healthcare across the population. Recently, the Government has made steps towards achieving the universal health coverage through eradicating fees for birth deliveries in public health facilities. The introduction of household insurance subsidy program (HISP), (an insurance scheme for the old and vulnerable) through NHIF and waiver of user fee for public health centres and dispensaries are major steps towards attainment of the UHC.
- 2.2 The Kenyan Constitution in Article 43(1)(a) states that every Kenyan has a right to quality and affordable health care, and recognizes the role of the government in removing barriers to access. This is also affirmed in Sessional Paper No. 7 of 2012 on Universal Health Care. The Kenya government's commitment to providing health care for all of its citizens is clearly moving in the right direction, despite the challenges of an inherited challenging health system and dissatisfied workforce notwithstanding.
- 2.3 The Committee on Health has been keen on the implementation process for the Universal Health Coverage (UHC) to facilitate the provision of quality, affordable healthcare across the population in line with Article 43(1)(a) of the Constitution and Vision 2030. The National Hospital Insurance Fund (NHIF) has been considered as the best vehicle to roll out Universal Health Coverage.
- 2.4 Arising from a Committee Report on Alleged Irregularities on the Rolling out of the Civil Servants' Out-Patient Medical Insurance Scheme whose recommendations were rejected by the House, the Committee observed that there were key issues there were cited in the said report. Despite the 10<sup>th</sup> Parliament having not considered the issues that needed to be resolved if the NHIF would be the vehicle for rolling out the UHC.
- 2.5 The Committee took cognizance of the fact that the Ministry of Health had requested for investigations into the rolling out of the Civil Servants' Out-patient Medical Insurance Scheme by the Ethics and Anti-Corruption Commission (EACC). Subsequently, EACC in its findings filed criminal cases in court against Clinix Health Care Ltd and Meridian Medical Centre Ltd. In this regard, the Committee requested to be apprised on the progress of the matters regarding the National Hospital Insurance Fund, the Clinix Health Care Ltd and Meridian Medical Centre Ltd.

2.6 The Committee held sittings with various stakeholders who submitted evidence on the issue of the said scheme and the progress of the matter. The following stakeholders appeared before the the Committee;

- i. Clinix Healthcare Ltd
- ii. Meridian Medical Centre Ltd
- iii. National Hospital Insurance Fund
- iv. Office of the Attorney General
- v. Ethics and Anti-Corruption Commission

### 3.0 EVIDENCE

#### 3.1 Evidence from Clinix Healthcare Ltd

Appearing before the Committee on 4<sup>th</sup> and 25<sup>th</sup> February 2016, the operations Director, Clinix healthcare, Mr. James Kinyua briefed the meeting on the facility's engagement with NHIF on the Civil Servants Medical Scheme. Mr. Kinyua informed the Committee that:-

- 3.1.1 Clinix Healthcare was established in 2006. It operated and managed a network of medical and dental clinics in various locations in Kenya, Nigeria as well as Uganda. The facility offered a complete range of Primary Healthcare services which included doctors consultation, laboratory tests and investigations, ultrasound and radiology services, drug dispensing, immunization, dental services, day surgery, emergency and non-emergency ambulance services, specialist clinics and disease condition management;
- 3.1.2 Clinix's first contact with NHIF was as a result of an Expression of Interest (EOI) advertisement placed by NHIF in the Daily Nation of 21<sup>st</sup> July 2008. Clinix responded to the EOI in September 2009 and later NHIF through a press notice indicated that Clinix was one of the firms which had met the EOI criteria and hence prequalified. Subsequent to the EOI, NHIF floated a tender that Clinix and other prequalified firms responded to and were selected amongst others to offer outpatient medical service through a contract entered with NHIF. Some of the salient facts of the award were to participate in a pilot project for provision of outpatient services for a period of six months. The selected geographical locations for the pilot project under Clinix were Nairobi and Mumias with the preferred and elected payment method as capitation;
- 3.1.3 After the pilot project, the tender document was very clear that Clinix would participate in the roll out of the anticipated NHIF outpatient services for a period of five years. Pursuant to being selected in the tender, Clinix in December 2009 alongside other service providers signed contracts with NHIF detailing the terms and conditions of the pilot project. NHIF accredited and gazetted Clinix as a provider of outpatient services through a Kenya Gazette No. 172 dated 27<sup>th</sup> November 2009. The pilot project commenced on 1<sup>st</sup> December 2009 and ended in July 2010. Clinix successfully conducted the pilot project and received all payments due, save for one installment of Kshs. 16,522,666 which remains outstanding to date.
- Civil Servants and Disciplined Services Medical Scheme (CSADSMS)**
- 3.1.4 In November 2011, NHIF ran an advertisement in the print media through which it solicited for primary healthcare service providers who could offer these services to civil service members and members of the Teachers' Service Commission on capitation basis. The instructions in the advertisement were explicit that those providers who had earlier been gazetted in the NHIF panel were not required to re-apply. Clinix did not therefore reapply having been gazetted and selected to provide outpatient services. Clinix agreed to the terms

and condition of the scheme as stated in the contract. One of the key requirements in the contract was that members of the scheme would select a service provider of their choice. In order to achieve this arrangement, NHIF informed Clinix that the members were to be allowed a window period of two months to select their preferred health care providers. Clinix had no role in the selection. Clinix started providing services to the members after verification of the membership through an online platform provided by the NHIF. In addition, Clinix provided an irrevocable bank guarantee from Diamond Trust Bank in favour of NHIF. The guarantee was intended to safeguard the fund against non-performance and default by the service provider;

- 3.1.5 The agreed mode of payment was capitation at a rate of Kshs. 2,850 per member per year payable quarterly in advance. A total of 56, 747 principal members chose Clinix as their preferred service provider. It's notable that at the time the selection was going on all the government hospitals were on strike. A majority of private healthcare providers had declined to participate in the scheme. The Contract provided that Clinix could use pre-existing facilities accredited by the NHIF in areas where Clinix did not have clinics/facilities.
- 3.1.6 Contrary to the terms of the contract, a capitation premium of Ksh. 202, 161, 187. 50 due to Clinix at the start of the quarter were instead paid at the end of the first quarter, and after provision of services for three months. In the second quarter, Clinix provided Services to all who had selected the facilities even though NHIF had not paid at the beginning of the quarter as provided for in the contract.
- 3.1.7 At the conclusion of the second quarter, NHIF Caretaker Committee terminated Clinix contract without notice of cancellation as was provided for in the contract. The Caretaker Committee that terminated the contract was declared illegal by the High Court. Shortly after termination, Clinix made a demand to NHIF demanding a principal sum of 202, 161,187.50 with interest. The amounts sought by Clinix did not include general damages/loss of business that NHIF would reasonably be subjected to pay if an internationally accepted framework was adopted to compute the Clinix claim. It is notable that during the period Clinix offered the services to the CSADSMS project, neither the scheme nor NHIF ever raised a complaint against Clinix services;
- 3.1.8 NHIF sought the advice of the Attorney General (AG) through letters dated 19<sup>th</sup> September and 12<sup>th</sup> October 2012. In response, the Attorney General advised NHIF to pay amounts due to Clinix for the second quarter of the scheme. The AG further advised NHIF that the Fund was gravely exposed and expressed great doubt as to whether NHIF could legally defend a claim for the amounts relating to the second quarter. On two occasions, the NHIF Board adopted the recommendations of the AG and directed that the payments due to Clinix be made.
- 3.1.9 Failure by NHIF to pay Clinix for services rendered for the second quarter and for termination of the contract led Clinix to downsize with more than 500 persons retrenched,



divested from some of its core assets and a demand by diamond bank was made being payment of 1,252,745,116 being amounts Clinix owed to the bank;

- 3.1.10 Allegations of corruption in the scheme were later made leading to the Ministry of Health inviting the EACC, Attorney General's office, Kenya National Audit office, Efficiency Monitoring Unit, Kenya Medical Practitioners and Dentists Board, Director of medical Services and the Criminal Investigations Department to investigate the allegations. The Ethics and Anti-Corruption Commission and the Director of Public Prosecutions lodged a criminal case against the Directors of Clinix on the charges of conspiracy and obtaining money by false pretenses;
- 3.1.11 The Kenya National Audit office confirmed there was no loss of public funds and recommended amicable payment of outstanding payments while the Efficiency Monitoring unit after independent and due investigations recommended an amicable resolution to the contract termination and unpaid claims through direct informal negotiation or alternatively through arbitration as provided for in clause 19 of the contract to avoid possible litigation by the health providers. It further recommended appropriate disciplinary action against the Corporate Secretary and General Manager, Benefits and Quality Assurance for responsibility for drafting weak and inconsistent contracts and for not advising the Caretaker Board on implications of termination of contract thereby exposing the corporation to likely and unnecessary litigation. Other recommendation included further investigations into the supposedly (internally generated schedule of payment) list of facilities which included among others those under Clinix Healthcare Limited and Meridian Medical Centre said to have been paid directly by NHIF management and disciplinary action to be taken on those found culpable and to have been involved in their origination of the list;
- 3.1.12 The Medical Practitioners and Dentist Board tabled a report to the government through the Permanent Secretary confirming that there were no ghost clinics that were offering health care services to the public and all the 68 clinics were registered and licensed by the board;
- 3.1.13 There was no civil suit between NHIF and Clinix over the matter.

### **3.2 Evidence from the Meridian Medical Centre Limited:**

The Chief Executive Officer, Meridian Medical Centre, Dr. Wambugu Peter Ngunjiri informed the Committee that:-

- 3.2.1 Meridian Medical Centre participated on the NHIF Pilot Capitation Programme in 2009 and had been allocated 38,000 members. The program was successful, however, NHIF did not pay the facility Kshs. 12 million as reimbursement for services rendered for one month.
- 3.2.2 In 2011, the facility participated in the Civil Servants Capitation Programme and commenced offering services from January, 2012. However, due to hue and cry from competitors, Meridian Medical Centre was invited to appear before the Committee on

Health on 12<sup>th</sup> April, 2012. Subsequently, the contract with the Fund was terminated in June 2012, having been paid for only one quarter.

Meridian filed suit against the NHIF in July 2013 after breach of contract without notice by NHIF to claim for a total of Kshs. 815 million for its payment for 1 month and for the expenses incurred in preparations for the pilot program. The matter was coming up for hearing on 1<sup>st</sup> March 2016. On the other hand, the criminal proceedings hearing had been scheduled for 30<sup>th</sup> March, 2016.

3.2.3 Three Meridian Hospitals had not been accredited by the Fund due to the ongoing cases.

### **3.3 Evidence from the National Hospital Insurance Fund**

Appearing before the Committee on 4<sup>th</sup> and 25<sup>th</sup> February 2016, the former Chief Executive Officer, Mr. S. Ole Kirgotty and the Ag. Chief Executive Officer, NHIF, Mr. Geoffrey Mwangi informed the Committee that:-

3.3.1 The NHIF engaged the two Service providers; Clinix and Meridian Healthcare whose contracts were terminated by an Executive Board meeting held on 6<sup>th</sup> June 2012 vide letters dated 14<sup>th</sup> June 2012.

3.3.2 The Government instituted criminal proceedings against the service providers through the Ethics and Anti-Corruption Commission. The cases were coming up for hearing in March 2016;

3.3.3 There were moneys owed to both Meridian and Clinix by NHIF and the claims by both Meridian and Clinix were received at NHIF but were not addressed due to the ongoing cases since the Fund was advised by the EACC not to act on the payments as the criminal element of the matter was crucial to the case;

3.3.4 There was no civil suit between the NHIF and Clinix;

3.3.5 No successor NHIF Board had ratified the decision of the Executive Board in terminating the contracts.

### **3.4 Evidence from the Attorney General**

Appearing before the Committee on 25<sup>th</sup> February 2016, the Attorney General, the Hon. Prof. Githu Muigai informed the Committee that:-

3.4.1 The Attorney General's office received a request for a legal opinion from the C.E.O, National Hospital Insurance Fund on the termination by the Board of two contracts (Clinix and Meridian). The AG in considering the matter reviewed the Contract between NHIF Board of Management and Clinix Health Care limited dated 1<sup>st</sup> January 2012 and signed on 15<sup>th</sup> February 2012, the Contract between NHIF Board of Management and Meridian Medical Centre dated 1<sup>st</sup> January 2012 and signed on 1<sup>st</sup> March 2012, Minutes of the Special Executive NHIF Board Meeting held on 6<sup>th</sup> June 2012, copies of letters terminating

the contracts to Clinix Health Care Limited and Meridian Medical Centre both dated 14<sup>th</sup> June 2012, legal opinions dated 30<sup>th</sup> May and 6<sup>th</sup> June 2012 from Amolo and Gachoka Advocates, court order dated 19<sup>th</sup> July 2012 in miscellaneous application 278 of 2012( by Justice Korir ), NHIF Act (Act no. 9 of 2012 and the State Corporations Act cap 446 of the Laws of Kenya. The AG in giving his opinion further considered the question of whether the Board that purported to take the decision was properly constituted and the legal consequences if any, of the decision to terminate the contracts;

- 3.4.2 On the competence of the Board - The Minutes of the Special Executive Board of the NHIF Board held on the 6<sup>th</sup> June, 2012 raised the issue of whether the Board had the requisite quorum to transact business. Ordinarily, two thirds (8 members) of the eleven Board members are required to constitute quorum. In the subject meeting, only seven members were present and did not therefore constitute a quorum under the State Corporations Act. Technically, only five members attended since the Inspector General of State Corporations and the Secretary of the State Corporations Advisory Committee present in the said meeting could not be considered as Board Members capable of taking a vote in business involving state corporations due to the conflicting roles that come with their statutory duties. It was therefore possible for the decision to terminate the two contracts to be challenged for being made by a board meeting not properly constituted in accordance with the State Corporations Act;
- 3.4.3 The Kenya Medical Association through a judicial review Case number 278 of 2012 challenged the appointment of the Board which recommended the termination of the subject contracts and Mr. Justice Korir on 19<sup>th</sup> July 2012 in granting interim orders against the Board, made very categorical observations that the constitution of the Board did not comply with the mandatory provisions of section 4 (i) of the NHIF Act.
- 3.4.4 On legal implications of termination of the Contracts - The termination notices did not assign any reasons for termination of the said contracts. The reasons for termination were material as the contracts provided two methods each of which had specific legal consequences. It was therefore not clear if the termination was done under clause 17.1.3 since no particulars of misrepresentation and/or fraud on the part of respective service providers were provided or Clause 25 which allows for termination upon notice of three months by either party;
- 3.4.5 However, even assuming the contracts were terminated under clause 17.1.3, the service providers would have been entitled to payment for the services rendered before termination. Clauses 6 and 15 provided for payment to the service providers and it was in the AG's opinion that the service providers were entitled to demand for payments for the second quarter for which they continued offering services;
- 3.4.6 The failure to specify reasons for termination in the letter dated 14<sup>th</sup> June, 2012 would conceivably allow the service providers to claim that their contracts were terminated without

notice as provided for under clause 25 of the contracts of services. This in effect would mean that the Board breached the contracts and therefore the Corporation would be liable for breach of contract either in the arbitration proceedings anticipated by the contracts;

- 3.4.7 Notwithstanding the fact that there appeared to have been some legitimate basis for the termination of the contracts, the manner of the termination left the fund legally exposed. It was therefore in the AG's opinion that the service providers were in the very least entitled to be paid for the second quarter of the contract in which they continued to offer services. The AG further expressed doubt as to whether the fund could legally defend the claims for the amounts relating to the second quarter;
- 3.4.8 Regarding the payment to the two service providers for the second quarter of the contract period, the AG advised the NHIF to liaise with the various government agencies responsible for the ongoing investigations for purposes of expediting conclusion on the investigations and guiding on the treatment of NHIF's outstanding obligations under the two contracts;
- 3.4.9 The AG's office further reviewed other minutes of the Board upon request by the NHIF and advised that it was clear that the full Board of the NHIF and the Executive Board were not properly constituted on various occasions for purposes of transacting the business of the Board thereby affecting the legality of the resolutions passed during the relevant meeting;
- 3.4.10 Such anomalies could be remedied by post facto ratification of the defective Board resolutions by a properly constituted Board. Although the tenure of the Caretaker Board of the NHIF expired, remedial measures could still be taken by the successor Board, as section 4 (3) of the NHIF Act establishes the Board as a body corporate with perpetual succession.
- 3.4.11 The Fund had not reverted back to the AG on the matter and the contracts as it were had therefore never been legally terminated as no successor Board had ratified the decision of the Executive Board in terminating the contracts.

### **3.5 Evidence from the Ethics and Anti-Corruption Commission**

Appearing before the Committee on 10<sup>th</sup> March 2016, the Chief Executive Officer, Ethics and Anti-Corruption Commission Mr. Halakhe Waqo informed the Committee that:-

- 3.5.1 The EACC conducted an enquiry into alleged irregular procurement of Meridian Medical Centre and Clinix Health Care Ltd by NHIF officials to provide Medical Services to Civil Servants and Disciplined Services starting from January, 2012. The complaint letter was received from the then Permanent Secretary for Ministry of Medical Services dated 8<sup>th</sup> May, 2012 and addressed to the Secretary, EACC. The said letter was forwarded as a complaint letter from the office of the Prime Minister dated 7<sup>th</sup> May, 2012 in which it was recommended that EACC investigates the matter.
- 3.5.2 The investigations were commenced focusing on the following key areas:-
- i) The mandate of the National Hospital Insurance Fund (NHIF) Act.

- ii) The organizational structure of the NHIF.
- iii) The introduction of the NHIF outpatient scheme and the strategies that were put in place in preparation for the scheme.
- iv) The engagement of NHIF with the healthcare facilities as provided for in the NHIF Act especially Section 30 which requires facilities that provide services to NHIF members be accredited by NHIF and be declared hospitals in accordance with the Act.
- v) The accreditation procedure as carried out by NHIF i.e. application by the facility to the branch manager, the processing and forwarding of the same to the headquarters for approval, inspection of facilities by Benefit and Quality Assurance (BQA) officers and scoring of the same, forwarding the same to the headquarters, presentation and approval by the NHIF Board, gazettelement by the Attorney General, notification to the facility that it had been approved and declared and finally giving the declared facility a code in NHIF for transaction and payment purposes.
- vi) The contract signed between the then Ministry of State for Public Service for insuring the civil servants and the modes of payment i.e. capitation and fee for service methods.
- vii) The allocation of the Civil Servants to the individual health care facilities.

### 3.5.3

The investigations found out that: -

- i) The scheme was hurriedly implemented as the circular was released by government on 21<sup>st</sup> December, 2011 and by 1<sup>st</sup> January, 2012 it was rolled out without proper structures.
- ii) No Public Procurement and Disposal Act or other lawful process was followed in procurement of unaccredited Meridian and Clinix facilities (clinics) or other providers in the Civil Servants and Disciplined Services Medical Scheme (CSADSMS). This was abuse of office by the NHIF officials involved in procuring the said facilities without following procurement procedures as required of public entities.
- iii) Allocation of members was done assuming Clinix and Meridian was in every district, which was not the case. The beneficiaries allocated to Clinix and Meridian in the districts that did not have a facility had no access to health care.
- iv) A number of alleged Clinix and Meridian facilities considered to allocate members and payments were found not to exist. Many others were not accredited or even inspected by NHIF officials.

- v) The danger of using unaccredited facilities was that there may be unqualified staff in such facilities, the facility may dispense unregistered medication and the facilities may lack appropriate equipment;
- vi) Payment was made for services offered by unaccredited facilities without authority of the NHIF board. Clinix was paid Ksh 202,161,187.50 and Meridian was paid Ksh 116,935,500.00. This was for the first quarter (3 months) of 2012. The money was paid for services not rendered or not adequately rendered. This was because some of the facilities purported to have given service did not exist.
- vii) The CEO at the time constituted a project team known as the strategic business unit under the leadership of Mr. Marwa Chacha to run the CSADSMS without board approval and the board noted it was operating outside the approved NHIF structures. The team comprised junior officers picked by Mr. Richard Kerich, the former CEO.
- viii) The NHIF Act requires that payments be made only to declared facilities. Facilities are declared and gazette only after they are inspected and found suitable to offer medical services to NHIF beneficiaries by NHIF officials. However, to circumvent this requirement, NHIF coded these two facilities as single entities (business name) without the individual outlets, which was not procedural.
- ix) Beneficiaries did not deserve to be assigned to a non-existent facility or a facility that was incapable of providing standard medical services that could properly diagnose and treat their ailments.
- x) That the contracts between NHIF and these two service providers did not specify the outlets or facilities that were to provide the medical services which was a fundamental gap in the terms of the contract.
- xi) A scheme of this nature needed to have three crucial pillars before commencement:
  - a) Ensure the facilities to offer the service exist.
  - b) Ensure facilities are suitable to offer the service by inspecting and accrediting them.
  - c) Ensure that principal members choose the facilities they prefer to be treated at.

In this case, the principal members were not allowed to choose facilities of their choice. The allocation was done at the headquarters and by the time of allocation; the beneficiaries were not in those stations.

3.5.4 The Commission finalized its investigations and the following persons were charged with various offences:

- i) In the Clinix Case
  - a) Richard Langat Kerich, Former CEO, NHIF
  - b) Marwa Fadhili Chacha, Head of Strategic Business Unit, NHIF
  - c) David Kipruto Chingi, Assistant Manager, Benefits and Quality Control, NHIF
  - d) Toddy Madahana, CEO, Clinix
  - e) Anthony Kalathil Chacko, Director Clinix
- ii) In the Meridian Case
  - a) Richard Langat Kerich, Former CEO NHIF
  - b) Marwa Fadhili Chacha, Head of Strategic Business Unit, NHIF
  - c) David Kipruto Chingi, Assistant Manager, Benefits and Quality Control, NHIF
  - d) Peter Ngunjiri Wambugu, Director Meridian Medical Centre
  - e) Ndiba Warioko, Director, Meridian Medical Centre

3.5.5 The Clinix case would be coming up for hearing on 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> May, 2016 while the Meridian case would be coming up for hearing on 30<sup>th</sup> March, 2016.

3.5.6 The EACC considered the contracts entered into as void from the beginning as they were entered to on the basis of criminality.

3.5.7 The Departmental Committee on Health had no mandate to arbitrate over a matter pending in the criminal court. The same amounted to sub judice and could not be subject of proceedings in Parliament. Any involvement by Parliament at the stage the case was in may weaken the criminal case or result in another legal challenge to the proceedings.

#### 4.0 COMMITTEE OBSERVATIONS

From the meetings held and the evidence received, the Committee observed that:-

- 4.1 There were contracts that were entered into between the National Hospital Insurance Fund Board of Management and the Clinix Health Care Limited and Meridian Medical Centre Limited dated 1<sup>st</sup> January, 2012 for the provision of medical care and treatment services to Civil Servants and Members of the Disciplined Services and their declared dependants. The contracts were however signed on 15<sup>th</sup> February, 2012 for Clinix Healthcare Ltd and on 1<sup>st</sup> March, 2012 for Meridian Medical Centre.
- 4.2 Both Clinix Health Care Ltd and Meridian Medical Centre had been pre-qualified for the rolling out of pilot project of outpatient services having submitted the Expression of Interest (EOI) as published in the print media on 21<sup>st</sup> July, 2008. The pilot project was to run for six months from December 2009 till June 2010 and thereafter a rollout for five years.
- 4.3 The two contracts were terminated in June 2012. At the time of termination, NHIF owed Kshs. 16,522,666 and Kshs. 12 million to both Clinix and Meridian respectively as arrears for one installment for the provision of pilot project. In addition, the Fund owed Clinix Kshs. 202,161,187.50 as capitation for the services rendered for the second quarter while Meridian had a total claim of Kshs. 815 million owed to it for the second quarter, which included the one month unpaid claim of Kshs. 12 million for the pilot project and losses incurred due to the termination of contract
- 4.4 There was public outcry over the Civil Service and Disciplined Service Medical Scheme which resulted into the Ministry of Health inviting the Ethics and Anti-Corruption Commission to conduct investigations into the procurement of the said scheme by NHIF from Clinix and Meridian.
- 4.5 The EACC in its investigations noted that the contracts signed by the NHIF with Clinix and Meridian (the service providers) were void abinitio as they were not properly signed. This was in view of the fact that contracts signed by the Fund with health providers as limited companies without regard on the suitability and the capacity of the facilities for the companies to offer services. EACC took the two facilities to court with charges of conspiracy and obtaining money by false pretense.
- 4.6 The Attorney General's office on request by the National Hospital Insurance Fund, offered a legal opinion on the termination by the Board of two contracts (Clinix and Meridian). In his opinion, the Attorney General acknowledged that there was indeed a contract that was signed between NHIF and Clinix and Meridian and the same terminated. However, the termination of the said contract was done by a defective Board as it did not meet quorum to transact business. This left the Fund exposed and would therefore need a properly constituted Board to ratify the decision. The legality



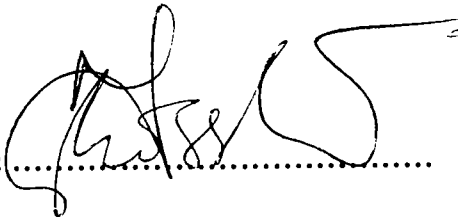
of the Board's resolution was therefore questionable.

- 4.7 The Attorney General acknowledged that the service providers were owed payment for the second quarter of the contract period however, due to ongoing cases, there was need for all the government agencies involved in the matter to liaise for purposes of expediting the process.
- 4.8 The two Health facilities (Clinix and Meridian) had ongoing criminal cases in court that were yet to be determined, while Meridian had an ongoing civil suit against the NHIF over the unpaid dues. The matters before court had dragged for a long time at the expense of service delivery to Kenyans owing to the fact that the two health providers are not accredited to offer services for the NHIF.
- 4.9 There was need for all the government agencies to liaise and expedite the process of concluding the matter as a way of ensuring that both the Fund and the health facilities are relieved off legal baggage that could hinder the achievement of the Universal Health Coverage roll out.

**5.0 COMMITTEE RECOMMENDATIONS**

Based on the evidence presented, the Committee recommends that:

- i. The Director of Public Prosecution immediately reviews Clinix Health Care Ltd and Meridian Medical Centre demand to be paid for the contracts that were terminated.
- ii. NHIF liaises with the various government agencies responsible for the ongoing investigations for purposes of expediting conclusion on the investigations and guiding on the treatment of NHIF's outstanding obligations under the two contracts.

SIGNED:.....

DATE:.....14/6/2016.....

**THE HON. DR. RACHEL NYAMAI, M.P,  
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH**

**ANNEX 1 – ADOPTION LIST**

**DC-H: DEPARTMENTAL COMMITTEE ON HEALTH**

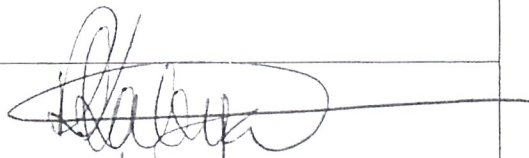
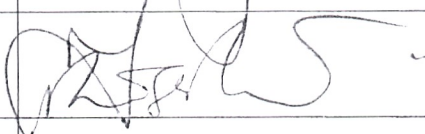

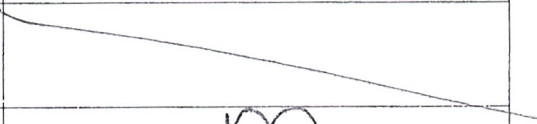

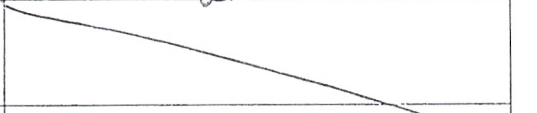

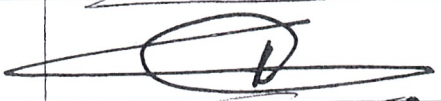
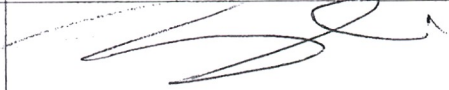
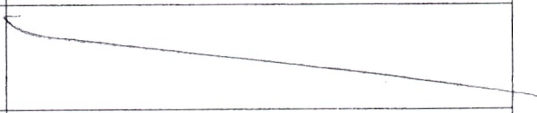


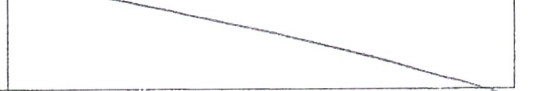
**ATTENDANCE REGISTER**



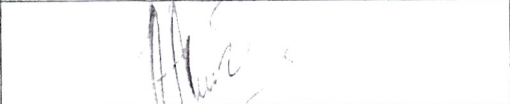


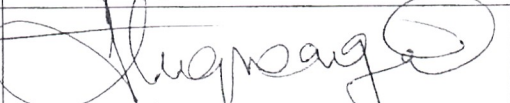
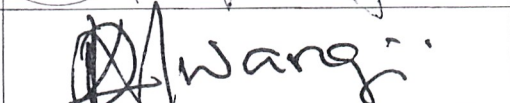



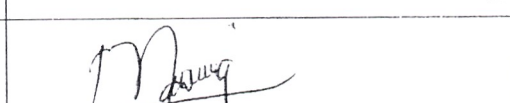
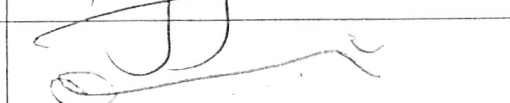

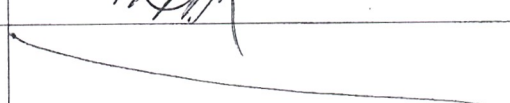

**AGENDA:**

CONSIDERATION AND ADOPTION OF PENDING REPORTS

DATE: *Thurs 21<sup>st</sup> April 2016*

VENUE: *4<sup>th</sup> flr Courtment 91*

	HON. MEMBER	SIGNATURE
1.	The Hon. Dr. Rachel Nyamai, M.P. Chairperson	
2.	The Hon. Dr. Robert Pukose, M.P. Vice Chairperson	
3.	The Hon. Alfred Agoi, M.P.	
4.	The Hon. Christopher Nakuleu M.P.	
5.	The Hon. David Karithi, M.P.	
6.	The Hon. Dr. Dahir D. Mohamed, M.P.	
7.	The Hon. Dr. David Eseli, M.P.	
8.	The Hon. Dr. Enoch Kibunguchy, M.P.	
9.	The Hon. Dr. James Murgor, M.P.	
10.	The Hon. Dr. James Nyikal, M.P.	
11.	The Hon. Dr. James O. Gesami, M.P.	
12.	The Hon. Dr. Naomi Shaban, M.P.	
13.	The Hon. Dr. Patrick Musimba, MP	
14.	The Hon. Dr. Stephen Wachira, M.P.	

	HON. MEMBER	SIGNATURE
15.	The Hon. Dr. Susan Musyoka, M.P.	
16.	The Hon. Fred Outa, M.P.	
17.	The Hon. Hassan Aden Osman, M.P.	
18.	The Hon. James Gakuya, M.P.	
19.	The Hon. John Nyaga Muchiri, M.P.	
20.	The Hon. Joseph O. Magwanga, M.P, <del>HSC</del>	
21.	The Hon. Kamande Mwangi, M.P.	
22.	The Hon. Leonard Sang, M.P.	
23.	The Hon. Michael Onyura, M.P.	
24.	The Hon. Mwahima Masoud, M.P.	
25.	The Hon. Mwinga Gunga, M.P.	
26.	The Hon. Paul Koinange, M.P	
27.	The Hon. Raphael Milkau Otaalo, M.P.	
28.	The Hon. Stephen M. Mule, MP	
29.	The Hon. Zipporah Jesang, M.P.	

**ANNEX 2 – COMMITTEE MINUTES**

**MINUTES OF THE 27<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 21<sup>ST</sup> APRIL, 2016, IN THE 4<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Michael Onyura, M.P.
4. The Hon. Dr. James Nyikal, M.P.
5. The Hon. John Nyaga Muchiri, M.P.
6. The Hon. Hassan Aden Osman, M.P.
7. The Hon. Dr. James Murgor, M.P.
8. The Hon. Raphael Milkau Otaalo, M.P.
9. The Hon. Dr. Enoch Kibunguchy, M.P.
10. The Hon. Paul Koinange, M.P.
11. The Hon. Mwinga Gunga, M.P.
12. The Hon. Leonard Sang, M.P.
13. The Hon. Joseph O. Magwanga, M.P.
14. The Hon. Kamande Mwangi, M.P.
15. The Hon. Dr. Dahir D. Mohamed, M.P.
16. The Hon. Christopher Nakuleu, M.P.
17. The Hon. James Gakuya, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. James O. Gesami, M.P.
2. The Hon. David Karithi, M.P.
3. The Hon. Dr. Stephen Wachira, M.P.
4. The Hon. Dr. Susan Musyoka, M.P.
5. The Hon. Fred Outa, M.P.
6. The Hon. Stephen M. Mule, M.P.
7. The Hon. Zipporah Jesang, M.P.
8. The Hon. Dr. Naomi Shaban, M.P.
9. The Hon. Dr. Eseli Simiyu, M.P.
10. The Hon. Alfred Agoi, M.P.
11. The Hon. Mwahima Masoud, M.P.
12. The Hon. Dr. Patrick Musimba, M.P.

**NATIONAL ASSEMBLY SECRETARIAT**

- |                      |   |                        |
|----------------------|---|------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant. |
| 2. Ms. Ruth Mwihaki  | - | Third Clerk Assistant. |
| 3. Ms. Marlene Ayiro | - | Legal Counsel II       |

**MIN.NO. DCH 109 /2016:**

**PRELIMINARIES.**

The Chairperson called the meeting to order at 10.30 am with a word of prayer by Hon. Dr. James Murgor, M.P.

**MIN.NO.DCH 110/2016:**

**CONSIDERATION AND ADOPTION OF PENDING REPORTS.**

The Committee considered the following report:

- i. **REPORT ON THE PROGRESS OF THE MATTER BETWEEN CLINIX HEALTH CARE, MERIDIAN MEDICAL CENTRE LTD AND NATIONAL HOSPITAL INSURANCE FUND ON THE CIVIL SERVANTS OUTPATIENT MEDICAL SCHEME.**

The report was adopted after being proposed by the Hon. James Gakuya, M.P and Seconded by the Hon. Dr. Robert Pukose, M.P.

**MIN.NO.DCH 111/2016:**

**ANY OTHER BUSINESS**

The Committee noted the following under this agenda item that:-

- i. The Statute Law (Miscellaneous Amendments) Bill, 2014 had been referred to the National Assembly from the Senate with amendments to the Cancer Prevention and Control Act. The proposed amendments were aimed at aligning the Act to the Devolved system of Government.  
The Committee deliberated on the matter and resolved that the Legal Counsel should review the amendments proposed, delineate the implementation functions from the policy roles and advice the Committee during the meeting scheduled for Tuesday 26<sup>th</sup> April 2016.
- ii. The Committee was informed that the Chairperson had been requested by the Clerk's Office to nominate four Members to attend the World Health Assembly scheduled for 23<sup>rd</sup> to 28<sup>th</sup> May 2016 .The delegation was to have representation from the Eastern, Nyanza, North Eastern and Nairobi regions. However, there were still no funds to facilitate members for the visit.  
Members noted that it was the Committee to agree on and nominate Members to attend the conference.

**MIN.NO. DCH 112/2016**

**ADJOURNMENT**

There being no other business the meeting was adjourned at 12.30 pm.

SIGNED.....

  
HON (DR.) RACHAEL NYAMAI, M.P  
CHAIRPERSON

DATE:.....

26<sup>th</sup> April 2016



**MINUTES OF THE 15<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 10<sup>TH</sup> MARCH, 2016 IN THE COMMITTEE ROOM ON 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM.**

**PRESENT**

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)**
3. The Hon. Hassan Aden Osman, M.P.
4. The Hon. David Karithi, M.P.
5. The Hon. Dr. James Nyikal, M.P.
6. The Hon. Mwinga Gunga, M.P.
7. The Hon. Zipporah Jesang, M.P.
8. The Hon. Dr. Enoch Kibunguchy, M.P.
9. The Hon. Dr. Dahir D. Mohamed, M.P.
10. The Hon. Dr. Eseli Simiyu, M.P.
11. The Hon. Dr. James Murgor, M.P.
12. The Hon. Fred Outa, M.P.
13. The Hon. James Gakuya, M.P.
14. The Hon. John Nyaga Muchiri, M.P.
15. The Hon. Joseph O. Magwanga, M.P.
16. The Hon. Kamande Mwangi, M.P.
17. The Hon. Michael Onyura, M.P.
18. The Hon. Paul Koinange, M.P.
19. The Hon. Raphael Milkau Otaalo, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Stephen M. Mule, M.P.
2. The Hon. Dr. Stephen Wachira, M.P.
3. The Hon. Christopher Nakuleu, M.P.
4. The Hon. Dr. James O. Gesami, M.P.
5. The Hon. Dr. Naomi Shaban, M.P.
6. The Hon. Alfred Agoi, M.P.
7. The Hon. Dr. Susan Musyoka, M.P.
8. The Hon. Mwahima Masoud, M.P.
9. The Hon. Leonard Sang, M.P.
10. The Hon. Dr. Patrick Musimba, M.P.

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 1. Ms. Esther Nginyo  | - | Third Clerk Assistant.  |
| 2. Ms. Ruth Mwhaki    | - | Third Clerk Assistant.  |
| 3. Mr. Dennis Mogare  | - | Third Clerk Assistant.  |
| 4. Mr. Eugene Luteshi | - | Audio Recording Officer |

## **ETHICS AND ANTI-CORRUPTION COMMISSION**

1. Mr. Halakhe Waqo -CEO, Ethics and Anti-Corruption Commission
2. Mr. Julius Muraya -Deputy Director, Ethics and Anti-Corruption Commission

## **MINISTRY OF HEALTH**

1. Mr. Fred E.G. Mwangi - Ministry of Health.
2. Ms. Anne N. Marimbet - Ministry of Health.

### **MIN.NO. DCH 57/2016: PRELIMINARIES.**

The Chairperson called the meeting to order at 10.28 am and a word of prayer was said by Hon. Paul Koinange, M.P. The Chairperson thereafter welcomed all those present to the meeting and asked them to introduce themselves.

### **MIN.NO.DCH 58/2016: CONFIRMATION OF MINUTES**

Confirmation of the Minutes of the previous sitting was deferred to the next meeting.

### **MIN.NO. DCH 59/2016: MEETING WITH THE CHIEF EXECUTIVE OFFICER, EACC ON THE PROGRESS MADE IN THE CASE INVOLVING CLINIX HEALTHCARE ON TERMINATION OF THEIR CONTRACT BY NHIF.**

The CEO, Ethics and Anti-Corruption Commission, Mr. Halakhe Waqo, appeared before the Committee and presented that:

1. The EACC conducted an enquiry into alleged irregular procurement of Meridian Medical Centre and Clinix Health Care Ltd by NHIF officials to provide Medical Services to Civil Servants and Disciplined Services starting from January, 2012.
2. The complaint letter was received from the then Permanent Secretary for Ministry of Medical Services dated 8<sup>th</sup> May, 2012 and addressed to the Secretary, EACC. The said letter was forwarded as a complaint letter from the office of the Prime Minister dated 7<sup>th</sup> May, 2012 in which it was recommended that EACC investigates the matter.
3. The investigations were commenced focusing on the following key areas:
  - i) The mandate of the National Hospital Insurance Fund (NHIF) Act.
  - ii) The organizational structure of the NHIF.
  - iii) The introduction of the NHIF outpatient scheme and the strategies that were put in place in preparation for the scheme.
  - iv) The engagement of NHIF with the healthcare facilities as provided for in the NHIF Act especially Section 30 which requires facilities that provide services to NHIF members be accredited by NHIF and be declared hospitals in accordance with the Act.
  - v) The accreditation procedure as carried out by NHIF i.e. application by the facility to the branch manager, the processing and forwarding of the same to the headquarters for approval, inspection of facilities by Benefit and Quality Assurance (BQA) officers and scoring of the same, forwarding the same to the headquarters, presentation and

approval by the NHIF Board, gazettelement by the Attorney General, notification to the facility that it had been approved and declared and finally giving the declared facility a code in NHIF for transaction and payment purposes.

- vi) The contract signed between the then Ministry of State for Public Service for insuring the civil servants and the modes of payment i.e. capitation and fee for service methods.
- vii) The allocation of the Civil Servants to the individual health care facilities.

4. The investigations found out that:

- i) The scheme was hurriedly implemented as the circular was released by government on 21<sup>st</sup> December, 2011 and by 1<sup>st</sup> January, 2012 it was rolled out without proper structures.
- ii) No Public Procurement and Disposal Act or other lawful process was followed in procurement of unaccredited Meridian and Clinix facilities (clinics) or other providers in the Civil Servants and Disciplined Services Medical Scheme (CSADSMS). This was abuse of office by the NHIF officials involved in procuring the said facilities without following procurement procedures as required of public entities.
- iii) Allocation of members was done assuming Clinix and Meridian was in every district, which was not the case. The beneficiaries allocated to Clinix and Meridian in the districts that did not have a facility had no access to health care.
- iv) A number of alleged Clinix and Meridian facilities considered to allocate members and payments were found not to exist. Many others were not accredited or even inspected by NHIF officials.
- v) The danger of using unaccredited facilities is that:
  - a) There may be unqualified staff in such facilities.
  - b) They may dispense unregistered medication.
  - c) They may lack appropriate equipment
- vi) Payment was made for services offered by unaccredited facilities without authority of the NHIF board. Clinix was paid Ksh 202,161,187.50 and Meridian was paid Ksh 116,935,500.00. This was for the first quarter (3 months) of 2012. The money was paid for services not rendered or not adequately rendered. This was because some of the facilities purported to have given service did not exist.
- vii) The CEO at the time constituted a project team known as the strategic business unit under the leadership of Mr. Marwa Chacha to run the CSADSMS without board approval and the board noted it was operating outside the approved NHIF structures. The team comprised junior officers picked by Mr. Richard Kerich, the former CEO.
- viii) The NHIF Act requires that payments be made only to declared facilities. Facilities are declared and gazette only after they are

inspected and found suitable to offer medical services to NHIF beneficiaries by NHIF officials. However, to circumvent this requirement, NHIF coded these two facilities as single entities (business name) without the individual outlets, which was not procedural.

- ix) Beneficiaries did not deserve to be assigned to a non-existent facility or a facility that was incapable of providing standard medical services that could properly diagnose and treat their ailments.
- x) That the contracts between NHIF and these two service providers did not specify the outlets or facilities that were to provide the medical services which was a fundamental gap in the terms of the contract.
- xi) A scheme of this nature needed to have three crucial pillars before commencement:
  - a) Ensure the facilities to offer the service exist.
  - b) Ensure facilities are suitable to offer the service by inspecting and accrediting them.
  - c) Ensure that principal members choose the facilities they prefer to be treated at.

In this case, the principal members were not allowed to choose facilities of their choice. The allocation was done at the headquarters and by the time of allocation; the beneficiaries were not in those stations.

5. The Commission finalised its investigations and the following persons were charged with various offences:
  - a) In the Clinix Case
    1. Richard Langat Kerich, Former CEO, NHIF
    2. Marwa Fadhili Chacha, Head of Strategic Business Unit, NHIF
    3. David Kipruto Chingi, Assistant Manager, Benefits and Quality Control, NHIF
    4. Toddy Madahana, CEO, Clinix
    5. Anthony Kalathil Chacko, Director Clinix
    6. Clinix Health Care Ltd.
  - b) In the Meridian Case
    1. Richard Langat Kerich, Former CEO NHIF
    2. Marwa Fadhili Chacha, Head of Strategic Business Unit, NHIF
    3. David Kipruto Chingi, Assistant Manager, Benefits and Quality Control, NHIF
    4. Peter Ngunjiri Wambugu, Director Meridian Medical Centre
    5. Ndiba Warioko, Director, Meridian Medical Centre
    6. Meridian Medical Centre Ltd.
6. The Clinix case would be coming up for hearing on 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> May, 2016 while the Meridian case would be coming up for hearing on 30<sup>th</sup> March, 2016.
7. The EACC considered the contracts entered into as void from the beginning as they were entered to on the basis of criminality.

8. The Departmental Committee on health had no mandate to arbitrate over a matter pending in the criminal court. The same amounted to *sub judice* and could not be subject of proceedings in Parliament. Any involvement by Parliament at the stage the case was in may weaken the criminal case or result in another legal challenge to the proceedings.

The representative of the Ministry of Health, Mr. Fred E.G. Mwangi, stated that he did not have authority to give the position of the Ministry of Health on the matter. He therefore requested to get the position of the Ministry on the matter before commenting.

### **COMMITTEE OBSERVATIONS/CONCERNS**

Members observed that:

1. The representation of the Ministry of Health was casual as officers sent to represent the Ministry could not provide the Ministry's position with regard to the matter at hand. The Committee reiterated the need for the Ministry to take its engagements with the Committee seriously.
2. There was need for the EACC to pursue not only the criminal angle of the cases but also the civil angle by instituting recovery suits to recover lost funds.
3. The EACC needed to engage the Judicial Service Commission and develop a strategy to fast track the cases in order to clear them in the fastest time possible to support the country's vision of Universal Health Coverage. The delay in conclusion of the cases could be a strategy to ensure maximum payments were made as compensation to the concerned parties. Equally, the Attorney General had advised that the contracts in question were still enforceable and had not been cancelled.
4. In the two cases, the NHIF entered into contracts with limited companies instead of specific facilities which was a major weakness in the contracts. There was however, need to review other contracts entered into by the NHIF to establish their legality in light of findings on the two cases.
5. The legal basis for NHIF receiving the medical allowances forfeited by civil servants in the Civil Servants and Disciplined Services Medical Scheme (CSADSMS) was not clear.
6. The EACC had conducted its investigations thoroughly and therefore there was need to let it follow up the cases to their logical conclusion.
7. The EACC needed to hold a stakeholders consultation involving the Attorney General, the Ministry of Health, the Efficiency Monitoring Unit among others to review the status of the cases and chart the way forward. This was in light of the view that the position of the EACC contradicted that of other agencies involved and may therefore be unsustainable.
8. There was need for the EACC to provide a schedule of other contracts entered into between the NHIF and other service providers to ascertain that the malpractices reported were not reflected in the other contracts.

### **RESOLUTIONS**

The Committee resolved that:

1. The CEO, EACC should provide a schedule of the status of the other contracts between NHIF and other service providers within a week from the date of the meeting.
2. The Director of Public Prosecutions should be invited to a meeting with the Committee over the matter involving the NHIF, Clinix and Meridian.

**MIN.NO. DCH 60/2016: ANY OTHER BUSINESS**

The Chairperson informed the Committee that:

- a) A Petition conveyed by the Speaker pursuant to the provisions of Standing Order 225 (2)(b) on behalf of Mr. Brian Onyango regarding alleged irregularities at Medanta Afri-Care Group of Hospitals, a private health facility had been committed to the Committee for consideration.
- b) The Committee had been invited to a meeting organised by the National Council for Population and Development of Kenya jointly with Partners in Population and Development Africa regional office based in Kampala, Uganda. The meeting was scheduled for March, 24<sup>th</sup>, 2016 at Intercontinental Hotel, Nairobi.

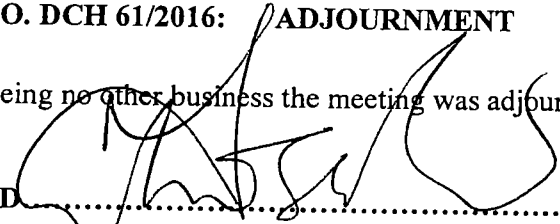
The Committee resolved to have representation in the meeting.

- c) The Committee had been invited for a breakfast meeting by the Parliamentary Initiatives Network, a forum of non-state actors in Kenya with a programmatic interest in the work of Parliament. The meeting was intended to share findings of a study conducted to establish the extent of adherence to the policy document on norms and standards in health. The meeting was scheduled for the 17<sup>th</sup> March, 2016 at the Serena Hotel, Nairobi from 7.30 to 9 am.

The Committee resolved to have representation in the meeting.

**MIN.NO. DCH 61/2016: ADJOURNMENT**

There being no other business the meeting was adjourned at 12.47 pm.

SIGNED.....  
  
**HON (DR.) RACHAEL NYAMAI, M.P**  
**CHAIRPERSON**

DATE:..... 14 / 04 / 16 .....

MINUTES OF THE 10<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 25<sup>TH</sup> FEBRUARY, 2016 IN THE COMMITTEE ROOM ON 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM.

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Dr. James O. Gesami, M.P.
4. The Hon. Dr. Stephen Wachira, M.P.
5. The Hon. Christopher Nakuleu, M.P.
6. The Hon. Hassan Aden Osman, M.P.
7. The Hon. Alfred Outa, M.P.
8. The Hon. John Nyaga Muchiri, M.P.
9. The Hon. David Karithi, M.P.
10. The Hon. Alfred Agoi, M.P.
11. The Hon. Dr. James Murgor, M.P.
12. The Hon. Paul Koinange, M.P.
13. The Hon. James Gakuya, M.P.
14. The Hon. Raphael Milkau Otaalo, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Enoch Kibunguchy, M.P.
2. The Hon. Dr. Susan Musyoka, M.P.
3. The Hon. Dr. Eseli Simiyu, M.P.
4. The Hon. Dr. James Nyikal, M.P.
5. The Hon. Dr. Naomi Shaban, M.P.
6. The Hon. Mwahima Masoud, M.P.
7. The Hon. Kamande Mwangi, M.P.
8. The Hon. Zipporah Jesang, M.P.
9. The Hon. Stephen M. Mule, M.P.
10. The Hon. Joseph O. Magwanga, M.P.
11. The Hon. Michael Onyura, M.P.
12. The Hon. Dr. Dahir D. Mohamed, M.P.
13. The Hon. Leonard Sang, M.P.
14. The Hon. Mwinga Gunga, M.P.
15. The Hon. Dr. Patrick Musimba, M.P.

**IN ATTENDANCE**

**ATTORNEY GENERALS OFFICE**

- |                          |   |                   |
|--------------------------|---|-------------------|
| 1. Prof. Githu Muigai    | - | Attorney General  |
| 2. Ms. Bernice Gachegu   | - | Registrar General |
| 3. Mr. Tom Odede         | - | State Counsel     |
| 4. Mr. Abdillahi Hussein | - | State Counsel     |

### **NATIONAL HOSPITAL INSURANCE FUND**

1. Mr. Geoffrey Mwangi - Ag. Chief Executive Officer
2. Mr. Ambrose Lugho - Director, Operations & Quality Assurance
3. Ms. Ruth Makallah - Legal Affairs

### **ETHICS AND ANTI CORRUPTION COMMISSION**

1. Mr. David Too - Director Legal Services
2. Mr. Gideon Rukaria - Investigator

### **CLINIX HEALTH CARE:**

1. Mr. James Kinyua - Operations Director
2. Mr. Jotham Arwa - Company Advocate

### **MERIDIAN CLINICS**

1. Dr. P.N. Wambugu - CEO
2. Dr. Ndiba Nairioko - Director

### **NATIONAL ASSEMBLY SECRETARIAT**

1. Ms. Esther Nginyo - Third Clerk Assistant
2. Ms. Ruth Mwhaki - Third Clerk Assistant.
3. Mr. Simon Muinde - Audio Recorder
4. Ms. Noelle Chelagat - Media Relations Officer III
5. Ms. Faith Makena - Serjeant at Arms

### **MIN.NO. DCH 38/2016:**

### **PRELIMINARIES.**

The Chairperson called the meeting to order at 10.03 am and invited all present for a round of introductions.

### **MIN.NO.DCH 39/2016:**

### **SUBMISSIONS FROM THE ATTORNEY GENERAL, NHIF, EACC, CLINIX AND MERIDIAN CLINICS ON THE PROGRESS MADE IN THE CASES ON TERMINATION OF THEIR CONTRACTS.**

#### **1. Clinix Health Care Ltd**

The Operations Director, Clinix Health Care Ltd informed the Committee that;

1. Clinix was established in 2006 and operates and manages a network of medical and dental clinics in various locations in Kenya, Nigeria as well as Uganda;
2. Clinix offers a complete range of Primary Healthcare services which include doctors consultation, laboratory tests and investigations, ultrasound and radiology services, drug dispensing, immunization, dental services, day surgery, emergency and non-emergency ambulance services, specialist clinics and disease condition management;
3. Clinics first contact with NHIF was as a result of an Expression of Interest (EOI) advertisement place by NHIF in the Daily Nation of 21<sup>st</sup> July 2008. Clinix responded



- to the EOI in September 2009 and later NHIF through a press notice indicated that Clinix was one of the firms which had met the EOI criteria and hence prequalified;
4. Subsequent to the EOI, NHIF floated a tender that Clinix and other prequalified firms responded to and were selected amongst others to offers outpatient medical service through a contract entered with NHIF;
  5. Some of the salient facts of the award were to participate in a pilot project for provision of outpatient services for a period of six months. The selected geographical locations for the pilot project under Clinix were Nairobi and Mumias with the preferred and elected payment method as capitation;
  6. After the pilot project, the tender document was very clear that Clinix would participate in the roll out of the anticipated NHIF outpatient services for a period of five years. Pursuant to being selected in the tender, Clinix in December 2009 alongside other service providers signed contracts with NHIF detailing the terms and conditions of the pilot project;
  7. The pilot project commenced on 1<sup>st</sup> December 2009 and ended in July 2010. Clinix successfully conducted the pilot project and received all payments due save for one installment of Kshs. 16,522,666 which remains outstanding to date;
  8. NHIF accredited and gazetted Clinix as a provider of outpatient services through a Kenya Gazette No. 172 dated 27<sup>th</sup> November 2009.

#### **Civil Servants and Disciplined Services Medical Scheme (CSADSMS)**

9. In November 2011, NHIF ran an advertisement in the print media through which it solicited for primary healthcare service providers who could offer these services to civil service members and members of the Teachers' Service Commission on capitation basis. The instructions in the advertisement were explicit that those providers who had earlier been gazetted in the NHIF panel were not required to re-apply. Clinix did not therefore reapply having been gazetted and selected to provide outpatient services;
10. Clinix agreed to the terms and condition of the scheme as stated in the contract. One of the key requirements in the contract was that members of the scheme would select a service provider of their choice. In order to achieve this arrangement, NHIF informed Clinix that the members were to be allowed a window period of two months to select their preferred health care providers. Clinix had no role in the selection. Clinix started providing services to the members after verification of the membership through an online platform provided by the NHIF. In addition, Clinix provided an irrevocable bank guarantee from Diamond Trust Bank in favour of NHIF. The guarantee was intended to safeguard the fund against non-performance and default by the service provider;
11. The agreed mode of payment was capitation at a rate of Kshs. 2,850 per member per year payable quarterly in advance. A total of 56, 747 principal members chose Clinix as their preferred service provider. It's notable that at the time the selection was going on all the government hospitals were on strike. A majority of private healthcare providers had declined to participate in the scheme;
12. Contrary to the terms of the contract, a capitation premium of Ksh. 202, 161, 187. 50 due to Clinix at the start of the quarter was instead paid at the end of the first

- quarter, and after provision of services for three months. In the second quarter, Clinix provided Services to all who had selected the facilities even though NHIF had not paid at the beginning of the quarter as provided for in the contract;
13. At the conclusion of the second quarter, NHIF caretaker committee terminated Clinix contract without notice of cancellation as was provided for in the contract. The caretaker committee that terminated the contract was declared illegal by the High Court. Shortly after termination, Clinix made a demand to NHIF demanding a principal sum of 202, 161,187.50 with interest.
  14. NHIF sought the advice of the Attorney General (AG) through letters dated 19<sup>th</sup> September and 12<sup>th</sup> October 2012. In response, the Attorney General advised NHIF to pay amounts due to Clinix for the second quarter of the scheme. The AG further advised NHIF that the Fund was gravely exposed and expressed great doubt as to whether NHIF could legally defend a claim for the amounts relating to the second quarter. On two occasions, the NHIF board adopted the recommendations of the AG and directed that the payments due to Clinix be made.
  15. The amounts sought by Clinix did not include general damages/loss of business that NHIF would reasonably be subjected to pay if an internationally accepted framework was adopted to compute the Clinix claim;
  16. Failure by NHIF to pay Clinix for services rendered for the second quarter and for termination of the contract led Clinix to downsize with more than 500 persons retrenched, divested from some of its core assets and a demand by diamond bank was made being payment of 1,252,745,116 being amounts Clinix owed to the bank;
  17. During the period Clinix offered the services to the CSADSMS project, neither the scheme nor NHIF ever raised a complaint against Clinix services;
  18. Based on allegations of corruption in the scheme raise by a few people who did not understand capitation, Ministry of Health invited the EACC, Attorney General's office, Kenya National Audit office, Efficiency Monitoring Unit, Kenya Medical Practitioners and Dentists Board, Director of medical Services and the Criminal Investigations Department to investigate the allegations;
  19. The Kenya National Audit office confirmed there was no loss of public funds and recommended amicable payment of outstanding payments;
  20. The Efficiency Monitoring unit after independent and due investigations recommended an amicable resolution to the contract termination and unpaid claims through direct informal negotiation or alternatively through arbitration as provided for in clause 19 of the contract to avoid possible litigation by the health providers.
  21. It further recommended appropriate disciplinary action against the Corporate Secretary and General Manager, Benefits and Quality Assurance for responsibility for drafting weak and inconsistent contracts and for not advising the caretaker board on implications of termination of contract thereby exposing the corporation to likely and unnecessary litigation. Other recommendation included further investigations into the supposedly (internally generated schedule of payment) list of facilities which included among others those under Clinix Healthcare Limited and Meridian Medical Centre said to have been paid directly by NHIF management and disciplinary action

- to be taken on those found culpable to have been involved in their origination of the list;
22. The Medical Practitioners and Dentist Board tabled a report to the government through the Permanent Secretary confirming that there were no ghost clinics that were offering health care services to the public and all the 68 clinics were registered and licensed by the board;
  23. The Contract provided that Clinix could use pre-existing facilities accredited by the NHIF in areas where Clinix did not have clinics/facilities.
  24. The Ethics and Anti-Corruption Commission and the Director of Public Prosecutions lodged a criminal case against the Directors of Clinix on the charges of conspiracy and obtaining money by false pretenses. The business continued to suffer as a result of these charges;
  25. There was no civil suit between NHIF and Clinix over the matter.

### **Committee observation**

The Committee Observed that the advocate representing Clinix currently was not the same advocate who represented them when the Health Committee in the Tenth Parliament investigated the matter. The Committee therefore resolved that Clinix provides a copy of the letter of engagement for the current advocates before the end of the day.

### **2. Attorney General**

The Attorney General, Professor Githu Muigai, informed the Committee that;

1. He had requested the Registrar of Companies to accompany him so that she could give the background on the formation, ownership and directorship of the contracting companies in the matter;
2. The Attorney General's office received a request for a legal opinion from the C.E.O, National Hospital Insurance Fund on the termination by the board of two contracts (Clinix and Meridian);
3. Advice from the AGs office was only on specific issues sought by the NHIF
4. The AG in considering the matter reviewed the Contract between NHIF Board of Management and Clinix Health Care limited dated 1<sup>st</sup> January 2012 and signed on 15<sup>th</sup> February 2012, the Contract between NHIF Board of Management and Meridian Medical Centre dated 1<sup>st</sup> January 2012 and signed on 1<sup>st</sup> March 2012, Minutes of the Special Executive NHIF Board Meeting held on the 6<sup>th</sup> of June 2012, copies of letters terminating the contracts to Clinix Health Care Limited and Meridian Medical Centre both dated 14<sup>th</sup> June 2012, legal opinions dated 30<sup>th</sup> May and 6<sup>th</sup> June 2012 from Amolo and Gachoka Advocates, court order dated 19<sup>th</sup> July 2012 in miscellaneous application 278 of 2012( by Justice Korir ), NHIF Act (Act no. 9 of 2012 and the State Corporations Act cap 446 of the Laws of Kenya;
5. The AG in giving his opinion considered the question of whether the board that purported to take the decision was properly constituted and the legal consequences If any, of the decision to terminate the contracts;

6. On the competence of the Board, the Minutes of the Special Executive Board of the NHIF board held on the 6<sup>th</sup> June raised the issue of whether the board had the requisite quorum to transact business. Ordinarily, two thirds of the eleven board members required at least 8 members of the board to constitute quorum. In the subject meeting, only seven members were present and did not therefore constitute a quorum under the State Corporations Act. Technically, only five members attended since the Inspector General of State Corporations and the Secretary of the State Corporations advisory Committee present in the said meeting could not be considered as Board Members capable of taking a vote in business involving state corporations due to the conflicting roles that come with their statutory duties. It was therefore possible for the decision to terminate the two contracts to be challenged for being made by a board meeting not properly constituted in accordance with the State Corporations Act;
7. The Kenya Medical Association through a judicial review Case number 278 of 2012 challenged the appointment of the Board which recommended the termination of the subject contracts and Mr. Justice Korir on 19<sup>th</sup> July 2012 in granting interim orders against the board, made very categorical observations that the constitution of the Board did not comply with the Mandatory provisions of section 4 (i) of the NHIF Act.
8. On legal Implications of termination of the Contracts, the termination notices did not assign any reasons for termination of the said contracts. The reasons for termination were material as the contracts provided two methods each of which had specific legal consequences. It was therefore not clear if the termination was done under clause 17.1.3 since no particulars of misrepresentation and/or fraud on the part of respective service providers were provided or clause 25 which allows for termination upon notice of three months by either party;
9. However, even assuming the contracts were terminated under clause 17.1.3, the service providers would have been entitled to payment for the services rendered before termination. Clauses 6 and 15 provided for payment to the service providers and it was in the AG's opinion that the service providers were entitled to demand for payments for the second quarter for which they continued offering services;
10. The failure to specify reasons for termination in the letter dated June 14, 2012 would conceivably allow the service providers to claim that their contracts were terminated without notice as provided for under clause 25 of the contracts of services. This in effect would mean that the Board breached the contracts and therefore the Corporation would be liable for breach of contract either in the arbitration proceedings anticipated by the contracts.
11. Notwithstanding the fact that there appeared to have been some legitimate basis for the termination of the contracts, the manner of the termination left the fund legally exposed. It was therefore in the AG's opinion that the service providers were in the very least entitled to be paid for the second quarter of the contract in which they continued to offer services. The AG further expressed doubt as to whether the fund could legally defend the claims for the amounts relating to the second quarter;

12. Regarding the payment to the two service providers for the second quarter of the contract period, the AG advised the NHIF to liaise with the various government agencies responsible for the ongoing investigations for purposes of expediting conclusion on the investigations and guiding on the treatment of NHIF's outstanding obligations under the two contracts;
13. The AG's office further reviewed other minutes of the Board upon request by the NHIF and advised that it was clear that the full Board of the NHIF and the Executive Board were not Properly constituted on various occasions for purposes of transacting the business of the board thereby affecting the legality of the resolutions passed during the relevant meeting;
14. Such anomalies could be remedied by post facto ratification of the defective board resolutions by a properly constituted board. Although the tenure of the Caretaker board of the NHIF expired, remedial measures could still be taken by the successor board, as section 4 (3) of the NHIF Act establishes the board as a body corporate with perpetual succession.
15. The Fund had not reverted back to the AG on the matter and the contracts as it were had therefore never been legally terminated as no successor board had ratified the decision of the Executive Board in terminating the contracts.

### **Registrar General**

The Registrar General, Ms. Bernice Gachegu informed the Committee that;

1. The information was as had been presented to the Health Committee in the 10<sup>th</sup> Parliament.
2. The Directors of Clinix Ltd were Pharma Investments Holding (99%)(and Beneficial Limited(1%).The Directors of Beneficial Limited were Eric Mutua Munzyu and Mtalaki Mwashimba both Kenyans while Pharma Holdings was registered in the British Virgin Island under number C.1028943.
3. Under the previous Company law, there was no requirement for disclosures by foreign companies and but the New Companies Act required major disclosures by foreign companies.

The Committee observed that the information received was not comprehensive and resolved that the registrar provided a summarized version of the submission before the end of the day.

### **National Hospital Insurance Fund**

The Chief Executive Officer, NHIF informed the Committee that;

1. the NHIF did engage the two Service providers, Clinix and Meridian whose contracts were terminated by an Executive board meeting held on 6<sup>th</sup> June 2012 vide letters dated 14<sup>th</sup> June 2012;
2. The Government instituted criminal proceedings against the service providers through the Ethics and Anti-Corruption Commission. The cases were coming up for hearing in March 2016;
3. There was no civil suit between the NHIF and Clinix;

4. No successor NHIF Board had ratified the decision of the Executive Board in terminating the contracts.

#### **Committee Observations**

The Commit Observed that:-

1. The NHIF had gone to court to block paying Clinix on the basis that there was a pending criminal case;
2. There had been laxity in decision making on the Part of the NHIF board as regards the matters that were not already in court;( in reference to the Advice by the AG that the service providers were in the very least entitled to be paid for the second quarter of the contract in which they continued to offer services.)
3. There was an imminent loss of Public funds by the NHIF due to the accrued interests on the payments to Clinix as long as the Fund continued to delay making a decision on the matter and the subsequent delays in payments.

#### **Committee Resolution**

The Committee resolved that the NHIF should expedite making a decision on the matters not in court.

#### **Meridian Medical Centre:**

The Committee observed that Meridian Medical Centre had sued the NHIF for the termination of the contract. Therefore, they could not present on the matter as it was sub-judice. The committee resolved not to take evidence from the Chief Executive Officer, Meridian Medical Centre.

#### **Ethics and Anti-Corruption Commission**

Mr. David Too, Director Legal Services informed the Committee that he was representing the Chief Executive Officer who was indisposed.

The Committee observed that the Director Legal Services did not have a written consent to represent the CEO in the meeting.

The Committee therefore resolved that the CEO be invited to appear in person on Thursday 3<sup>rd</sup> March 2016.

#### **MIN. NO. DCH 40/2016**

#### **ANY OTHER BUSINESS**

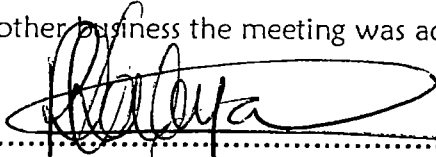
The Committee resolved to meet in the afternoon to consider and adopt the Report on the Budget Policy Statement once the Speakers approval was sought and received for the sitting.

#### **MIN. NO. DCH 41/2016**

#### **ADJOURNMENT**

There being no other business the meeting was adjourned at 11.40 am.

SIGNED.....



HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE: 29/03/2016

MINUTES OF THE 2<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 4<sup>TH</sup> FEBRUARY, 2016 IN THE COMMITTEE ROOM ON 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 1.00 PM.

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Dr. James O. Gesami, M.P.
4. The Hon. Dr. Eseli Simiyu, M.P.
5. The Hon. Dr. James Nyikal, M.P.
6. The Hon. Dr. Stephen Wachira, M.P.
7. The Hon. Hassan Aden Osman, M.P.
8. The Hon. Paul Koinange, M.P.
9. The Hon. James Gakuya, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. James Murgor, M.P.
2. The Hon. Christopher Nakuleu, M.P.
3. The Hon. David Karithi, M.P.
4. The Hon. Dr. Enoch Kibunguchy, M.P.
5. The Hon. Dr. Susan Musyoka, M.P.
6. The Hon. Alfred Outa, M.P.
7. The Hon. Dr. Naomi Shaban, M.P.
8. The Hon. Mwahima Masoud, M.P.
9. The Hon. Raphael Milkau Otaalo, M.P.
10. The Hon. Kamande Mwangi, M.P.
11. The Hon. Zipporah Jesang, M.P.
12. The Hon. Stephen M. Mule, M.P.
13. The Hon. Joseph O. Magwanga, M.P.
14. The Hon. Michael Onyura, M.P.
15. The Hon. John Nyaga Muchiri, M.P.
16. The Hon. Dr. Dahir D. Mohamed, M.P.
17. The Hon. Leonard Sang, M.P.
18. The Hon. Alfred Agoi, M.P.
19. The Hon. Mwinga Gunga, M.P.
20. The Hon. Dr. Patrick Musimba, M.P.

**IN ATTENDANCE**

**NATIONAL HOSPITAL INSURANCE FUND**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Mr. S. Ole Kirgotty | - | Chief Executive Officer           |
| 2. Mr. Ambrose Lugho   | - | Director, Operations and Quality  |
| 3. Mr. Geoffrey Mwangi | - | Director, Finance and Investments |

**CLINIX HEALTH CARE:**

- |                     |   |                     |
|---------------------|---|---------------------|
| 1. Mr. James Kinyua | - | Operations Director |
| 2. Mr. Jotham Arwa  | - | Company Advocate    |



**MERIDIAN MEDICAL CENTRE:**

- |                      |   |                         |
|----------------------|---|-------------------------|
| 1. Dr. Wambugu P.N   | - | Chief Executive Officer |
| 2. Dr.Ndiba Wairioko | - | Executive Director      |

**NATIONAL ASSEMBLY SECRETARIAT**

- |                        |   |                             |
|------------------------|---|-----------------------------|
| 1. Ms. Esther Nginyo   | - | Third Clerk Assistant       |
| 2. Mr. Dennis Mogare   | - | Third Clerk Assistant.      |
| 3. Ms. Ruth Mwihaki    | - | Third Clerk Assistant.      |
| 4. Mr. John Mungai     | - | Audio Recorder              |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer III |

**MIN.NO. DCH 04/2016:**

**PRELIMINARIES.**

The Chairperson called the meeting to order at 1.04 pm and invited the Members present, and officials from the National Hospital Insurance Fund, Clinix Health Care Meridian Clinic to introduce themselves.

**MIN.NO.DCH 05/2016:**

**SUBMISSIONS FROM NHIF, EACC, CLINIX AND MERIDIAN CLINICS ON THE PROGRESS MADE IN THE COURT CASE ON TERMINATION OF THEIR CONTRACTS.**

**Ethics and Anti-Corruption Commission**

The Committee was informed that the Chief Executive Officer, EACC had responded to the invitation letter for the meeting indicating that he was unable to attend the meeting, and had requested for a rescheduling of the meeting to a later date.

**Clinix Health Care Ltd**

The Company advocate, Clinix Health Care Ltd informed the Committee that;

1. Clinix Health Care had participated in an open tendering process for the provision of outpatient Services in Nairobi and Mumias, starting with a six month period pilot project and thereafter a roll out for five years. The contracts were signed with NHIF in December 2009 detailing the terms and conditions of the pilot project. Payment mechanism was capitation model. NHIF did the accreditation and gazzeted the accredited facilities through Kenya Gazette no. 172 of 27<sup>th</sup> November, 2009. Clinix was among the gazzeted facilities. The project started on 1<sup>st</sup> of December, 2009 till July 2010. The payment for the project was made except for one installment of Kshs 16,522,666 which is still outstanding.
2. The NHIF in November 2011 ran an advertisement in print media for provision of healthcare services to civil service and members of the teacher's service commission (CSADSMS) on capitation basis. Facilities earlier gazzeted were not to apply. Clinix did not re-apply. In January 2012, Clinix was invited by NHIF to participate in CSADSMS. They signed the contract and were informed that members of CSADSMS were given a window period of about two months to select their preferred healthcare providers of choice. Clinix begun providing services to the members

after verification of the membership through an online platform provided by NHIF and also provided an irrevocable bank guarantee from Diamond Trust Bank in favour of NHIF.

3. The mode of payment agreed was capitation and a capitation premium of 2,850 per member per year was payable quarterly in advance. Clinix was assigned 56,747 principal members by NHIF based on the members who chose the facility. Contrary to the agreement, a capitation premium of 202,161,187.50 was paid to Clinix at the end of the first quarter that means after provision of services for three months. The capitation payment for the second quarter was not paid while services were rendered until the end of second quarter, reason being a termination letter was issued by NHIF for termination of the contract;
4. Clinix had not taken the matter of the termination of the contract to court but had sent a demand letter to the NHIF dated 27<sup>th</sup> August 2012, demanding a principal sum of Kshs. 202,161,187.50 outstanding with interest. NHIF sought the opinion of the Attorney general and was advised to settle the payments due to Clinix. The payments are yet to be made and the civil case was yet to commence;
5. Allegations of corruption in the scheme were later made leading to the Ministry of Health inviting the EACC, Attorney General's office, Kenya National Audit office, Efficiency Monitoring Unit, Kenya Medical Practitioners and Dentists Board, Director of medical Services and the Criminal Investigations Department to investigate the allegations. The Ethics and Anti-Corruption Commission and the Director of Public Prosecutions lodged a criminal case against the Directors of Clinix on the charges of conspiracy and obtaining money by false pretenses. The hearing date had been set for 18<sup>th</sup> February 2016.

#### **Meridian Medical Centre:**

The Chief Executive Officer, Meridian Medical Centre informed the Committee that:-

1. Meridian Medical Centre participated on the NHIF Pilot Capitation Programme in 2009 and had been allocated 38,000 members. The program was successful, however, NHIF did not pay the facility Kshs. 12 million as reimbursement for services rendered for one month.
2. In 2011, the facility participated in the Civil Servants Capitation Programme and commenced offering services from January, 2012. However, due to hue and cry from competitors, Meridian Medical Centre was invited to appear before the Committee on Health on 12<sup>th</sup> April, 2012. Subsequently, the contract with the Fund was terminated in June 2012, having been paid for only one quarter.
3. Meridian filed suit against the NHIF in July 2013 after breach of contract without notice by NHIF to claim for a total of Kshs. 815 million for its payment for 1 month and for the expenses incurred in preparations for the pilot program. The matter was coming up for hearing on 1<sup>st</sup> March 2016;
4. On the other hand, the criminal proceedings hearing had been scheduled for 30<sup>th</sup> March, 2016.
5. Three Meridian Hospitals had not been accredited by the Fund due to the ongoing cases.

### National Hospital Insurance Fund

The Chief Executive Officer, NHIF informed the Committee that:-

1. The matter of Meridian Medical Centre vs National hospital Insurance fund, Civil Suit no. 345 of 2013 was pending determination in Court;
2. There was no court case between Clinix Healthcare and the NHIF;
3. There were moneys owed to both Meridian and Clinix by NHIF and the claims by both Meridian and Clinix were received at NHIF but were not addressed due to the ongoing cases;
4. The Fund was advised by the EACC not to act on the payments since the criminal element of the matter was crucial to the case.

### Committee Observation

The Committee observed that since Clinix was yet to take the matter of termination of contract and non-payment of dues to court, there was still room for the two institutions to engage.

### Committee Resolution:

The Committee resolved that:

1. The NHIF should seek legal advice on a way forward regarding the payments owed to Clinix Health Care;
2. The meeting with the Ethics and Anti-Corruption Commission, National Hospital Insurance Fund, Meridian Medical Centre and Clinix Healthcare and be rescheduled and that the Attorney General be invited to attend the said meeting.

### MIN. NO. DCH 06/2016

### ANY OTHER BUSINESS

The Committee was informed that the Ministry of Health had planned a two day retreat for Members in order to brief the Committee on the Budget Policy Statement. The Retreat was scheduled for Thursday 18<sup>th</sup> to Friday 19<sup>th</sup> February 2016. Members would depart from Nairobi on Wednesday 17<sup>th</sup> and return on Saturday 20<sup>th</sup> February 2016.

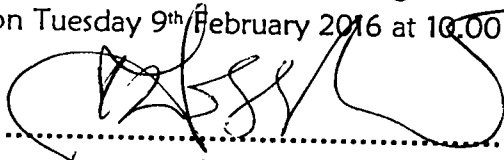
The Committee resolved to attend the retreat as scheduled.

### MIN. NO. DCH 07/2016

### ADJOURNMENT

There being no other business the meeting was adjourned at 15.21 pm. The next meeting to be held on Tuesday 9<sup>th</sup> February 2016 at 10.00 am.

SIGNED.....



HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....

16 / 02 / 2016